ZONING BOARD OF APPEALS

MEETING – FEBRUARY 25, 2016

(Time Noted – 7:04 PM)

Mr. Manley: Good evening. I’d like to call the meeting of the Zoning Board of Appeals 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 relief under the Code. 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. It will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on speaker or on silent and when speaking, please speak directly into the microphone it is being recorded. Ms. Gennarelli if we could have the Roll Call please?

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by Council Scott Manley

(Time Noted – 7:06 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 7:06 PM)

DON & TAMMY MURPHY 299 LAKESIDE ROAD, NBGH

(50-1-22) R-1 ZONE

Applicant is requesting area variances for the maximum allowed height, the maximum lot building coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to add on to the second floor, expand the existing first floor and add front and rear covered porches on the residence.

Mr. Manley: The first item this evening is a letter from Don and Tammy Murphy owners of 299 Lakeside Road, regarding the continuation of this evening’s Public Hearing for the proposed new house on 299 Lakeside Road in Newburgh. The letter is as follows:

Please be advised that we have made several changes and modifications to our proposed new house located at 299 Lakeside Road. Unfortunately we were unable to have final plans completed with our architect in time for the hearing on Thursday, February 25th as such we respectfully request an adjournment until the next Hearing date of March 24, 2016 so that we may submit all final plans and requested items no less than ten days before the hearing date. We apologize for any inconvenience. Thank you for your understanding. Sincerely, Don Murphy

Based on the letter from the Murphy’s do I have motion from the Board to continue the Public Hearing to our next meeting date of March 24, 2016?

Mr. McKelvey: I’ll make that motion.

Mr. Scalzo: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: If there is anybody here in the audience that is for tonight’s Public Hearing Don and Tammy Murphy there will not be a re-notice. The Hearing will take place next month March 24th at 7:00PM here.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:07 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 7:07 PM)

MAHO BAY REALTY, LLC. 1 POWELTON ROAD, NBGH

(80-6-7) B ZONE

Applicant is requesting area variances for the front yards setbacks on Powelton Road and North Plank Road (NYS Route 32), the minimum lot area and the minimum lot width for additions and renovations to an existing building to build a three-story pediatric dental office.

Mr. Manley: The next item on tonight’s agenda is Maho Bay Realty, LLC. located at 1 Powelton Road in Newburgh, NY requesting an area variance for the front yards setbacks on Powelton Road and North Plank Road (NYS Route 32), the minimum lot area and the minimum lot width for additions and renovations to an existing building to build a three-story pediatric dental office. Could you just give us a second? Do you have the readings for this evening?

Ms. Gennarelli: Yes. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, February 17th and The Sentinel on Friday, February 19th. This applicant sent out twenty-four letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you and if you could give us your name for the record please?

Mr. Whelan: Absolutely. My name is Steve Whelan I am the architect. I’m from Highland’s Architecture. Also joined tonight by Dr. Jennifer Blair- Payami. She is one of owners of Maho Bay Realty. I’m also joined tonight by the owner’s attorney Katherine Zalantis of Silverberg and Zalantis and our consulting civil engineer Zach Pearson of Insite Engineering. The proposal is to make site improvements and renovate and construct additions to the building located at 1 Powelton Road. The existing building is 2-stories, masonry and wood framed and it’s a business occupancy. Each floor is currently fifteen hundred gross square feet. On the first floor is approximately eight hundred and eighty square feet of basement which houses the mechanical equipment and storage. Also on the first floor is tenant space which is approximately five hundred and fifty square feet. The second floor was previously occupied by a dentist. On this floor there are approximately five operatories, each with a dental chair, exam rooms, offices, two toilet rooms, a reception area and a waiting room. As stated, we are proposing both site and building improvements. For the site, the existing parking lot will be regraded so that the storm water drains to the existing catch basins located on Powelton Road and not to the neighboring properties as it currently does. The parking lot would also be slightly reconfigured and restriped so that all sixteen parking spaces are on the property. Currently there are several spaces that are off or over the property line. We are also proposing to have four additional parking spaces in a tandem layout on the northwest side of the property for staff parking. These spaces will be constructed over a pervious pavement. In addition, the handicap parking space on the southeast side of the property will be reconfigured with its own ingress and egress access road which goes directly out onto Powelton Road. As for the building, we will be removing the wood frame ramp and deck on the west side of the building as well as the sidewalks leading to this ramp. The vestibule on the east side of the building will also be removed. We’re then proposing to construct a two hundred and seventy square foot addition on the southeast side which will house the elevator, the stair and the lobbies which will service each floor. On the northeast side of the building we’re proposing a one hundred and thirty-six square foot addition which will house the second egress stair. The existing first floor will remain as is except for a few structural modifications. The existing second floor will be renovated to house four operatories with a future space for a fifth, an office, two toilet rooms; one will be handicap accessible and a few other support and dental space. Each operatory will have a modern, more efficient dental chair. We’re also proposing to construct a third floor addition. Part of this floor will be open to the waiting room on the second floor and a second story…to create a two-story space. The balance of this floor will be for storage only. Since our last presentation we’ve addressed the comments received from McGoey, Hauser & Edsall the consulting engineers in their letter dated November 13, 1015. The following revisions were made: the building will now be sprinklered, parking stops will be provided in each parking space in lieu of concrete curb, concrete curb detail has a gravel foundation and the parking lot striping detail now reflects the Town of Newburgh’s requirements. We’ve also submitted documents to and received comments from the Orange County Department of Planning in a letter dated August 12, 2015 they stated that the department has received the above referenced site plan and has found no evidence that significant intermunicipal or Countywide impacts will result from its approval. The letter also states that the handicap parking space needs to be near the handicap ramp but that was based off a prior site plan because the current site plan now has handicap accessibility from the parking space across the site and to any floor of the building. Three of the four variances we are seeking are pre-existing, non-conforming. Those three are the lot area, the lot width and the front yard setback from North Plank Road. The fourth variance is for a front yard setback from Powelton Road. For further discussion on the variance items I’m going to turn the presentation over to Kathy Zalantis. Following Kathy’s discussion Zach Pearson, our civil engineer is going to briefly talk about the septic system and then we’re going to close with a couple of words from the owner Dr. Blair Payami.

Ms. Zalantis: Good evening, Kathy Zalantis from Silverberg Zalantis and we represent the applicant. We submitted a letter to this Board and you should have it before you and I’m not going to go through it in a lot of great detail I just want to highlight some items. Some of you may remember that this application came before you on October of last year. There’s been substantial modifications to the plan and the scope of the project has been substantially reduced. As a result of this, we eliminated the need for one variance and we…we reduced the scope of another variance. So as we detail in the letter there is now only one variance that’s not related to an existing condition and that’s the front yard variance from Powelton a…we’re seeking to allow a front yard setback of sixteen point seven five feet. Previously we sought a setback of sixteen a…but so overall the variance we are requesting is a minimal variance of four point zero five feet from what’s presently existing. All the other variances relate to what’s already existing on the building and under the Zoning Code Section 185-19-C we’ve taken the position that we don’t actually need variances from these provisions because that section provides that a building that is dimensionally non-conforming as to lot area, lot width and front yard setback may be reconstructed or enlarged provided that such expansion does not increase the degree or create any new non-conformity. So with respect to those three variances which is lot area, lot width and front yard setback from North Plank Road all those are pre-existing non-conforming and as you know, this Board not only has the power to grant variances, it has the power to determine and over rule determinations. And I’m not sure in this case whether there actually has been a determination that the variances are required. I know that the planning board referred it for variances but as you know, the planning board has no authority to interpret the Code in the first place only the Building Inspector does. But in any event this Board…

Mr. Manley: I could probably answer that for you. It’s been the past practice of this Board to interpret the increasing the degree of non-conformity as requiring a variance because you are enlarging the actual structure beyond what its original structure is. In a lot of residential throughout the Town where the Zoning has changed it’s always been referred to us for a non-conforming and the Board take into account the scope the…the increase of the non-conformity. If it’s minimal the Board usually has always ruled that it’s minimal and…and has granted it but there have been cases where if the degree of non-conformity is substantial that, you know, the Board does look at that.

Ms. Zalantis: If that is your interpretation and your determination we accept that. We would then request in the alternative that the variances be granted. A…so as you know, just going through the standards of this Board looks at whether there will be an undesirable change in the character of the neighborhood the front yard proposed variance again sixteen point seven five setback it’s in with keeping with the character of the neighborhood. We submitted evidence that there’s other properties in the immediate neighborhood that also have non-compliant front yard setbacks. So we’re not proposing anything that’s out of character of the neighborhood. With respect to the other variances that are non-conforming those have existed for decades so they can’t create an undesirable condition on the neighborhood because they’ve been there for decades. Also it’s important to note that we’re proposing to make this non-compliant building even a…even make it more conforming so we’re attempting to bring it a…in…into code compliant at least in some respect because if you look at the side yard setback variance it…it…no variance is needed. It’s existing at fourteen point five which is non-compliant. We’re proposing to make it twenty-two which is more than the required fifteen feet so we’re improving through this project an existing condition and making the building more conforming at least with respect to that side. There is no other feasible way. We’ve reduced the scope of this project. This is a non-conforming lot, non-conforming building, if you did anything to the building based on that interpretation you would trigger the need for a variances. So there’s no other feasible method other than to come before this Board and request variances. A…the substantial factor, if you look at the front yard variance again it’s minimal. We’re asking for fourteen point zero five feet over what’s there…what’s already existing and that setback doesn’t even apply to the whole entire building. There’s portions of that front yard setback that are greater than that goes to the impacts that this Board looks at. A…in the letter that we’ve present to this court an appellate court that has jurisdiction from this area has determined that just because it’s substantial that in and of itself is not a basis to deny a variance especially when there’s other non-conforming lots in the immediate vicinity like the case that we have here. Adverse in fact…impacts this project will have a beneficial effect on the neighborhood. We’re proposing to make improvements to the existing parking lot and drainage. I know that neighbors at the…at the last time they were before this Board raised that as an issue. We heard those concerns and now we’re proposing to regrade the parking lot and to drain the storm water towards Powelton and eventually into the catch basins. So as a result of this project there is going to be an improvement to an existing condition. You’re going to hear more about this from the project engineer but there’s existing dental chairs they are not as efficient as the modern chairs. There’s going to be much more water efficient chairs as a result of this project. Off street parking is being increased. So overall we’re improving currently existing conditions as a result of this project. Also this is not a self-created hardship. Again it’s pre-existing, non-conforming and that alone in and of itself is not a basis to deny a variance. As for whether this is the minimum variance? We would submit to this Board that it is. We’ve gone back and made the building as tight and reduced the scope of the project as much as we could. Again we negated the need for one of the variances and we reduced the scope of another variance. Therefore, I would request that this Board grant the variances and allow this project to proceed to the next level which is a…to obtain site plan review. Thank you.

Mr. Manley: Thank you.

Mr. Pearson: Chairman, Members of the Board my name is Zach Pearson with Insite Engineering I’m here on behalf of the applicant. Based on some of the comments that were received at the…the last meeting there were some questions raised on the existing septic system a…our office was contracted to review the septic on the property. A…based on the existing site conditions the only thing visible a…was a…a small lid for the septic tank which was over in this area here. We did research with the Orange County Department of Health and the Town as well. This ap…this building was originally built in the fifties so there was no As Built found a…we worked with a licensed a…septic contractor we had the septic tank pumped to get a good look at that. That’s of…that’s of newer vintage pre-cast concrete a…and what we did find was found a…a blockage in the line between the septic tank and the distribution portion of the septic a…it was a…Orangeburg pipe. I don’t know if any of you guys are familiar with Orangeburg pipe, bituminous fiber pipe, typically crushes over amount of time. That’s exactly what we found that pipe was crushed a…between the existing septic tank and the absorption trenches. That pipe was replaced a…so a…based on you know, the existing…existing use had five dental chairs, they’re proposing five so there’s a…there’s a non-increase in wastewater flow from this project moving forward so.

Ms. Blair-Payami: My name is Dr. Jennifer Blair-Payami I’m the owner of Maho Bay Realty and I’m gonna be the owner of this project to…

Ms. Gennarelli: Excuse me Jennifer if you could just tilt the microphone down towards you more or take it off.

Mr. McKelvey: Or take it off.

Ms. Gennarelli: You can take it off too.

Ms. Blair-Payami: I just wanted to introduce myself and put a name to a…a face to a name. You know I’ve obviously invested a lot of time and effort into hiring the right people around me to address the concerns that was raised at the Board last meeting. So I hope…I hope that the presentation tonight answered questions you know, for my community. I’ve introduced myself to the community and I just wanted to let everybody know that I…I have been practicing for a…the past six years since I finished my residency at Montefiore Medical Center in the Bronx a…and you know it’s always been a dream of mine to open a practice a…I’m happy to say that it’s nice that I bought…I purchased a practice that you know was an existing dental practice and now I’m going to keep it that way. And I know the previous owners are very happy with that and…and you know I grew up in a small town in New Hampshire a…you know, I’m very excited to be honest to have found this property and I’m…I’m really trying to make it much better. You know if you walk into the practice, I don’t know if any of you would have your teeth taken care of there. A…so you know, I…I’m trying to make the community better a…and I’m excited honestly to take care of the children of the Town of Newburgh. I a…you know, if there are any questions I’m here also to answer any questions you know, the…the community has a…I think that is it. Thank you very much.

Mr. Manley: Thank you.

Mr. Levin: Are you the only doctor there?

Ms. Blair-Payami: Yes, yes that’s one thing I wanted to say yes. In…in the past there were two doctors, a husband and wife a…team and I will be the only doctor a…that being said there is room a…for another doctor but there are no plans as of yet. Thank you.

Mr. McKelvey: I will say before the drainage problem will have to be addressed by the planning board so make sure that you notify them.

Mr. Whelan: Just wanted to make one more comment a…we’ve had comments about like what this building is actually going to look like on the corner of Powelton and North Plank. I’d like to just pass this image around. This is like an approximation of what it’s actually going to look like. It’s a proposed rendering. If the neighbors want to see it I also have a larger version on this one drawing here.

Mr. Whelan approached the Board.

Mr. Manley: Before we turn to the public comments I’d like to turn it over to the Board, if the Board has any questions or comments for the a…consultants.

Mr. McKelvey: I just…I…on the a…third floor I missed one thing you said, part of was for storage what was the other part?

Mr. Whelan: The other part is going to be open to the second floor; it’s going to be a two-story waiting room.

Mr. McKelvey: Okay.

Mr. Manley: So part of the…the third floor will be a waiting room and storage?

Mr. Whelan: No part of the third…I want to bring this up to show you.

Mr. Manley: I have…I have this here it says second floor is the reception area…

Mr. Whelan: The second floor the waiting room…

Mr. Scalzo: Lower left hand portion on the sheet Jim.

Mr. Whelan: …it’s the third floor. You can see we had a section on the top right corner of that plan…I’m sorry, top left corner of that plan that’s open to below, the rest of it is just storage.

Mr. Manley: Is there just a…out of…a reason why you kept that open?

Mr. Whelan: To have a…

Mr. Manley: (Inaudible)

Mr. Whelan: …yeah, we wanted to get like some almost like floor to third floor ceiling windows.

Mr. Manley: Okay.

Mr. Whelan: Just to get a lot of light in there.

Mr. Manley: Which is on your picture here?

Mr. Whelan: Correct.

Mr. Manley: So right up here is going to be, this is going to be all…this will not the third floor; it will be all open right there.

Mr. Whelan: Right.

Mr. Manley: Okay, I’m just trying to get an idea of what… The storage, what were you going to store in the storage. I mean that’s a lot of storage thirteen hundred square feet of storage.

Mr. Whelan: It’s a lot. I mean it’s mostly for you know, I’m sure Dr. Payami can attest more to this but it’s mostly, you know, dental records and a…the initial a…idea was, you know, in case for future expansion but we’ve throttled back on that. It’s now just going to be file…

Mr. Scalzo: File cabinets filled with papers a…file a…that sort of thing?

Mr. Whelan: Yes, just record storage, paper storage.

Mr. Scalzo: Were there any load considerations that a…your engineer perhaps has looked at for a…?

Mr. Whelan: Structural engineer yeah, he’s designed…it’s gonna be a…gonna be a wood truss floor system you know, we’re accounting for all that weight.

Mr. Scalzo: Okay.

Mr. Manley: And would there be any issue with the Board, if the Board were to grant…

Mr. Whelan: No.

Mr. Manley: …that much storage area that there be a condition that it would be for storage not for offices or…?

Mr. Whelan: Absolutely. Yeah there would be no occupancy on that floor.

Mr. Manley: And that third floor is going to be sprinklered?

Mr. Whelan: Yeah, we’re going to be sprinklered…

Mr. Manley: …the whole building is going to be sprinklered?

Mr. Whelan: Yeah, exactly. We’ve reviewed the Town of Newburgh’s a…Building Code requirements.

Mr. Manley: And that’s one of them.

Mr. Whelan: Yeah.

Mr. Manley: Any other Board Members have questions?

Mr. McKelvey: What’s the height of the building?

Mr. Whelan: The highest point…the highest point of the building from the average grade is thirty-one feet six inches and that’s to the tower so they roof is actually…

Mr. Scalzo: No variance required.

Mr. Whelan: …the roof is actually is a little bit…the main roof is actually lower.

Mr. Manley: Any other Board Members have any other questions?

Mr. Masten: I have nothing Jim.

Mr. Scalzo: I actually…I just had one more and actually John McKelvey had brought it up before for your engineer. I…I understand that any drainage considerations will be taken up with the planning board but have you had a chance to evaluate…I’m reading the planning board meeting minutes a…that they’re directing additional water to Powelton Avenue a…in the meeting minutes they’re going to see where that additional water is going to go. Right now it goes to the neighbor’s yard putting it out on the Powelton Avenue may not be the answer either. Have you had a chance to evaluate?

Mr. Pearson: (Inaudible).

Ms. Gennarelli: Excuse me, you have to go to the microphone it is being recorded. Thank you.

Mr. Pearson: Sorry, we haven’t assessed it yet I mean those are…those are Steve’s plans, the architecture’s plans. I mean we were just contracted to look at the septic so…

Mr. Scalzo: Okay.

Mr. Pearson: … (Inaudible) board will working closely with Steve and the planning board’s concerns.

Mr. Scalzo: Okay, that I…that was more of curiosity that…

Mr. Pearson: Yeah, sure.

Mr. Scalzo: …that’s a planning board issue a…

Mr. Pearson: Right.

Mr. Scalzo: …if you had evaluated and I was curious to hear what you had to say. Thank you.

Mr. Levin: I believe the main complaint was the water on the…on a…that was seeping over, yeah.

Mr. Pearson: (Inaudible)

Mr. Levin: …the parking lot, yeah.

Mr. Pearson: Right, yeah the parking lot...

Mr. Levin: … from your neighbor’s.

Mr. Pearson: The parking lot is right now is kind of pitched to the north to the neighbor to the north a…I believe Steve’s plans have been revised to reflect that the…the parking lot is going to be kind of back pitched to allow that water to flow out to Powelton as opposed to just flowing right over onto the neighbor to the north.

Mr. Manley: If the Board were to grant the variance more than likely we would add an addendum just to let the planning board know that there were comments from the public relative to something that was outside of our purview and this way they can…they may or may not have a Public Hearing so this way at least the comments from the public here could be addressed at that level.

Mr. Pearson: Absolutely.

Mr. Manley: If there are no other questions from the Board at this point I’m going to go ahead and open it up to the public. If there’s any questions that the public has regarding the application before us please step before the microphone and state your name and your address and your question for the Board.

Mr. Scheiner: Good evening. Alan Scheiner, ABS Realty, we’re next door neighbor 22 North Plank Road. I have several questions on the project. One is the elevator is what you’re looking for the variance for, the elevator addition that borders Powelton Road?

Mr. Whelan: Correct, it’s the addition that’s right here.

Mr. Scheiner: And how many feet from Powelton Road would that be?

Mr. Whelan: A…I don’t know how much it is from Powelton Road, it’s sixteen point seven five feet from the property line.

Mr. Scheiner: Which is Powelton Road or no?

Mr. Whelan: That’s the Powelton Road side, yes.

Mr. Donovan: But not to the paved portion, you’re talking just the…

Mr. Whelan: Not to the paved, it’s more than…it’s more than that to the paved portion.

Mr. Scalzo: It’s to the property line, offsets.

Mr. Donovan: Do you have...do you have any idea from the…from the property line to the paved portion what the distance is? Or what, more importantly, what the distance would be from the building to the nearest paved portion of the road?

Mr. Whelan: I would guesstimate about twenty-five feet…

Mr. Donovan: But…

Mr. Whelan: …if it’s sixteen point seven from…

Mr. Donovan: …the engineer must have a scale, right or…?

Mr. Pearson: (Inaudible)

Mr. Scalzo: Yeah, but that’s an architectural plan, they don’t use scales like we do.

Mr. Pearson: An engineering scale.

Mr. Scalzo: Oh, very good.

Mr. Pearson: Pretty close.

Mr. Scalzo: Guesstimate, twenty-five…?

Mr. Pearson: Twenty…twenty-nine.

Mr. Donovan: And just for clarity, what is it now? What is it now before you put the elevator up?

(Inaudible)

Mr. Scalzo: Dave, you’re just asking to the tower or the nearest portion to Powelton?

Mr. Donovan: I just want to…I mean there’s obviously there’s a building there so now it’s being increased to accommodate the elevator so what is the extent of that increase versus what the building is now? How far is the setback now?

(Inaudible)

Ms. Gennarelli: Excuse me, could you just say that into the microphone?

Ms. Zalantis: Sorry, (Inaudible) we’re increasing by four point zero five feet over what’s existing.

Mr. Scheiner: So that elevator only sticks out an extra four point something feet?

Mr. Whelan: (Inaudible) where it is on the building cause like right now the furthest most point closest to Powelton Road it’s approximately thirty feet from the paved surface but it’s kind of hard to judge that because right now some of the parking spaces where the handicap parking is, right off of Powelton, it’s partially on the property and partially on what’s technically Powelton Road.

Mr. Scheiner: Right, I did notice that on your plans that some of the parking along that side there on Powelton Road is actually on Powelton Road…

Mr. Whelan: That’s correct, yeah.

Mr. Scheiner: …so it encroaches on Powelton Road so some of your parking figure proposing is actually not on the property.

Mr. Whelan: No the…all the parking that we’re proposing it’s all on the property. The only thing that’s not is the access drive to the main parking lot and to the handicap space.

Mr. Manley: Yeah, at the planning board level they are not going to allow any parking that’s on Town property or on private. It’s going to have to be on their own, they’ve got to provide parking on their own parcel for what they need.

Mr. Whelan: This is another one of those issues that we could have left it alone, it’s pre-existing non-conforming but we’re choosing to fix it.

Mr. Scheiner: At the plans I looked at today, they look like all the parking that you were…that there were…I think there were six parking spots and they look like there were actually on Powelton Road.

Mr. Whelan: That must have been the existing, I’ve got the proposed right here.

Mr. Scalzo: Mr. Whelan, can you flip that one around? It’s got almost a loop road a…like a frontage type…

Mr. Scheiner: Then I guess I didn’t…

Mr. Scalzo: Mr. Scheiner, you can come up and take a look.

Mr. Scheiner: This over here is what?

Mr. Scalzo: It…it’s no longer…

Mr. Whelan: This right here the existing handicap parking is right in here so this is just an access drive. There’s the handicap parking space, you can see it’s beyond…it’s onto the property.

Mr. Scheiner: Okay.

Mr. Whelan: So anybody that, you know, needs handicap accessibility they pull in here, they park their car, there’s the accessible isle and there will be a ramp going down to the main entrance of the building.

Mr. Scheiner: (Inaudible)

Mr. Donovan: Before Betty kicks me over just the meeting is recorded. So if you want to…you’re welcome to stand there but talk into the microphones, okay.

Ms. Gennarelli: We have two mics Alan.

Mr. Whelan: This is Powelton.

Mr. Scheiner: That’s Powelton?

Mr. Whelan: Yep.

Ms. Gennarelli: They both come off so you can take it if you need to go over there again.

Mr. Scheiner: Alright. This is off.

Ms. Gennarelli: No, it’s on.

Mr. Donovan: You can take it off the stand.

Ms. Gennarelli: So you can take it off with you.

Mr. Scheiner: Oh, okay.

Ms. Gennarelli: Bring it with you.

Mr. Scheiner: My next question is a…the elevator is on the east, north, southeast corner?

Mr. Whelan: A…yes.

Mr. Scheiner: And you enter from the elevator on the second level?

Mr. Whelan: No you’d be entering on the first level.

Mr. Scheiner: You enter in the basement? Or the…the first level…(Inaudible)?

Mr. Whelan: The first level, yes.

Mr. Scheiner: …to the third level. So you enter the elevator on the first floor from an area that’s…you have labeled as storage and do not include it in the square footage?

Mr. Whelan: No, storage is only going to be on the…on the third floor and in the basement. That’s why we’re doing this addition…

Mr. Scheiner: But this is the basement, right?

Mr. Whelan: You’re not going to be walking in to the basement this is an addition from the basement.

Mr. Scheiner: So I don’t understand, you walk in on one level and then the elevator goes down and it goes up…it goes down one level and it goes up…?

Mr. Whelan: Do you want to come over here and take a look?

Mr. Scheiner approached the easel

Mr. Whelan: This is the existing building footprint right here, this is the lower level plan, you’ll be entering…the main parking lot is over here, we’re going to have sidewalks. The handicap parking is going to be out here you only turn into here into that lobby. This is all brand new. That’s all an addition.

Mr. Scheiner: Okay, so you enter the lobby the first floor.

Mr. Whelan: Correct.

Mr. Scheiner: The elevator goes to the second floor and the third floor?

Mr. Whelan: Correct.

Mr. Scheiner: So the elevator you enter, you enter in an area that’s existing basement storage…

Mr. Whelan: No, you’re not going to be going into the basement, you’re going to be entering into the lobby and then you either go up the stairs to the dentist’s office…that door there is only for access into the basement or you get into the elevator.

Mr. Scheiner: Okay, so the first floor is…okay. And then it goes to the second floor which is the dental office and it goes to the third floor which is storage. So…

Mr. Whelan: Right but patients won’t be going up to the third floor.

Mr. Scheiner: The only place that elevator goes is to the first floor…?

Mr. Whelan: The second floor.

Mr. Scheiner: Second floor.

Mr. Whelan: (Inaudible)

Mr. Scheiner: It looks like a lot of work to put an elevator in to go…

Mr. Whelan: Well we’re most like just gonna put in…

Mr. Scheiner: …two floors.

Mr. Whelan: …we’re gonna put in just a two stop elevator but we’re got to have stairs…we have to have access to go up to the third floor.

Ms. Blair-Payami: We’re…we’re…we’re removing the handicap accessible ramp a…and so the building you don’t enter at a…you know, at the first floor. You enter at the basement a…so I just thought for convenience I mean, we’re looking at different elevators there might be just a lift that goes a…but just also for convenience too if we’re going to be putting heavy equipment which dental equipment can be…having an elevator to lift to the third floor is a…is…is needed. Thank you.

Mr. Scheiner: Dental equipment on the third floor? For storage?

Ms. Blair-Payami: For storage, yeah.

Mr. Manley: I’d probably also add that ADA, Americans with Disabilities Act probably also requires the elevator.

Mr. Whelan: Currently the current accessible or handicap accessible route doesn’t meet the ANSI Code. I mean you pull into a parking lot, the sidewalk is incredibly steep, you go around to a wood frame ramp which is not the correct dimensions, not the correct slope. So again, another issue we’re trying to address and make much better.

Mr. Scheiner: (Inaudible) my…my last question would be on the septic system back there and there’s been problem with the septic over the years there. I think we all know that. But the engineer that was here, can you definitely say that the septic system is adequate for expansion of the building and adequate for future needs?

Mr. Pearson: They’re not expanding the building. They’re…they’re not expanding the use of the building, it’s a five chair, five chair dental office there now, they’re coming back in with a five chair dental office.

Mr. Scheiner: Okay.

Mr. Pearson: So they’re not increasing the wastewater flows a…like I said they’re…they…I guess some of the neighbors brought the fact that when it rains heavy, you know, the septic tank may have bubbled out. I mean we found a plug; the pipe was plugged leaving that septic tanks so that…that’s been restored to its original condition at this point.

Mr. Scheiner: Original condition.

Mr. Pearson: Right for solid...

Mr. Scheiner: But would it up to today’s standards?

Mr. Pearson: It’s…the pipe, of course. The septic system…the septic system is…is sized…it’s sized based on what it was sized for when the building was built. There’s been no, you know, no evidence of breakout, septic breakout. There’s no evidence of…of septic failure other than the reports where the septic may have come up out of the septic tank and that could have been cause by the clog in the…in the pipe.

Mr. Manley: And this Board’s…this Board’s authority and purview is specifically on the variances. We have no authority or we have no decision making over the septic that would be a planning board issue and would certainly be addressed at that level. If there’s an issue with the septic not meeting proper requirements the planning board would certainly address that at their…at their level.

Ms. Blair-Payami: The other comment I want to make too is that we had a plumber investigate. We had constant running water a…and that has…is going to be…well has been shut off and is going to be corrected so that’s possibly, you know, why they would have excess water to in the septic system or there is…that is why.

Mr. Manley: You’ve also indicated that you have replaced the chairs. The chairs will be replaced which are more water efficient chairs so the amount of water that will be going into the septic systems is going to be reduced based on…?

Ms. Blair-Payami: Sure, absolutely.

Mr. Manley: …the fixtures, correct?

Ms. Blair-Payami: Yes, the…these dental chairs are extremely efficient. I mean, we even have documentation as to what they…you know what…what the water waste would…

Mr. Manley: And you’re also going to be redoing the bathrooms which also will probably have…

Mr. Pearson: Low flow.

Mr. Manley: …low flow faucets and which also is another limiting factor.

Ms. Blair-Payami: Yes, this…the whole building needs to be updated, a lot of issues with it.

Mr. Scalzo: Mr. Scheiner, the original septic was probably designed for all the higher flow facilities. You…you actually may have less flow now.

Mr. Scheiner: As an engineer, you believe it probably would be good?

Mr. Scalzo: Well I’m not here in that capacity but I a…I would…

Mr. Donovan: You only play one on TV, Darrin.

Mr. Scalzo: I play one on TV.

Mr. Scheiner: Thank you for your time.

Mr. Manley: Thank you. Are there any other questions or comments from the public?

Mr. Yozzo: Hello, my name is Anthony Yozzo and I live on Powelton Road as well and my…the…the one thing, the first thing I’d like to be addressed the actual elevator is getting reduced in size from three hundred and some square feet to two seventy and that’s the reduction that we’re talking about in the plan, in the scope of the plan…scope whatever? And also where the actual the elevator is located just like the other person said is…is that going to limit the view when individuals in their cars try to get out onto 32?

Mr. Whelan: That’s one of the major changes that we made because originally we had that elevator, stair and lobby addition much closer to North Plank Road so we shifted it back beyond the face of the front of the building and we also reduced the width of it as well. As small as…we’re trying to get it as small as we can.

Mr. Donovan: So could you give us how far from the intersection?

Mr. Whelan: The…?

Mr. Donovan: The elevator area going to be the gentleman has asked about. It’s a good thing you brought that scale.

Mr. Whelan: Again, it’s approximately twenty-nine feet from Powelton Road but from that corner it’s approximately thirty-five feet and we’re also getting rid of right now there’s a sign on the corner, we’re getting rid of that sign and…

Mr. Yozzo: All…all I’m trying to do is just understand I mean, to be able to see if…if anyone here has ever tried to get out onto that road. I don’t know if that’s in your purview that would a…stop you from giving a variance in order to be able to pull out of that road, pull out of Powelton Road onto existing 32 is…is a nightmare as it exists now so you know, I…I just wanted that pointed out and on the record. I don’t know if that…you guys would be able to limit it as a result of that…but…

Mr. Manley: In some cases, some traffic may be something that this Board could utilize but in most cases traffic is something that’s really handled at the planning board level.

Mr. Yozzo: Okay.

Mr. Manley: They utilize traffic studies, we do not. If a…somebody from the public presented us with a traffic study or showed us something concrete that potentially affected the health, safety and welfare of the residents that in itself might be something that you know, we could…we could look at but in…in general terms, no. We specifically look at how does it impact the area, can they achieve it…can they achieve the variance another way, those are the things that we have to…we have to look at.

Mr. Whelan: I’ve got a picture you may want to take a look at.

Mr. Yozzo: Okay.

Mr. Whelan: I took a picture of that corner because I knew that was a…a topic that came up at the last one. I got a picture here I can even give this to you. It’s on the…it’s looking…I’m standing on Powelton Road and I’m actually looking diagonally towards north…

Mr. Yozzo: Certainly.

Mr. Whelan: So if you could imagine this right here, this is only going to go…

Mr. Yozzo: (Inaudible)

Mr. Whelan: …this is all that…all that landscaping is all going to go away, the only thing that’s going to stay is the stop sign…

Mr. Yozzo: (Inaudible)

Mr. Whelan: …that is just going to go up so the only thing you are going to lose vision of is that tree right there.

Mr. Yozzo: Okay, okay but the…but the rest of the building is also going to increase because the existing size of the building…

Mr. Whelan: But it’s not…

Mr. Yozzo: (Inaudible)

Mr. Whelan: …it’s not impacting your view of North Plank Road.

Mr. Yozzo: Right, okay.

Mr. Scalzo: Mr. Yozzo, as…as you look at the photo a…when you’re vehicle is at the stop bar, the white stripe on the ground I would be more concerned with what the planting schedule. I don’t think the building is going to interfere with your line of sight.

Mr. Yozzo: Okay, it’s set back but…yeah, alright…I don’t know I’m…but…that’s okay, I understand (Inaudible).

Mr. Whelan: Just to assure the Board, we’re not going in into anything tall, it’s all going to be low growing.

Mr. Manley: You know, unfortunately, there may come a day, you know, when traffic gets busier and it has nothing to do with this particular project but they may only in the future be able to make a right turn only out of there because of the…you know, because of the you know, making a left is very difficult.

Mr. Yozzo: I’m totally not against that. I…I would rather that because it’s an accident waiting to happen when people try to come out onto that section there and I do it all the time so it’s an accident waiting to happen and I just want that on the record. If they force it to be a…a right turn only it’s okay.

Mr. Manley: But with this particular project that won’t happen…

Mr. Yozzo: Okay.

Mr. Manley: …but the residents may want to do and it’s something that you could get the residents together in your neighborhood and you know, come before the Town Board because they’re the ones that actually can regulate traffic.

Mr. Yozzo: Right.

Mr. Manley: And, you know, ask them to work with the State D.O.T.

Mr. Yozzo: The Town Board not the planning board?

Mr. Manley: The Town Board, if you want to change the law so that you can only make a right turn only the Town Board would have to work with the D.O.T. because it’s a State road and…

Mr. Yozzo: Well, yeah and as a result of not being against that it’s also going to increase the…if…if someone wants to turn left at that it’s going to increase. You know the people that come down Powelton Road that use it as a thoroughfare…

Mr. Manley: Absolutely.

Mr. Yozzo: …to get on to 32 it’s going to increase the traffic flow down Meadow Street…

Mr. Manley: Absolutely.

Mr. Yozzo: …and on to Winding…

Mr. Manley: Correct.

Mr. Yozzo: …so that’s gonna be increased and there’s a lot of young families that live there with children and it’s going to increase traffic.

Mr. Manley: So it’s a double edge sword.

Mr. Yozzo: Right. No, I’m…I’m not…I’m definitely not against economic progress and you know, you know raising the…the tax base of the Town of Newburgh and things so that, you know we…we get more revenue or the Town gets more revenue. But the…the thing with storage on the third floor is…is there going to be (Inaudible) for the, you know, like water flow things and…?

Mr. Manley: I think they testified that there would be no a…nothing it would be just simply storage only and the question was posed to the applicant if we put on the condition of approval if this Board granted the approval that there could be no a…you know, no office or no treatment on the third floor.

Mr. Yozzo: Okay.

Mr. Whelan: The owners are well aware of that if in the event that they do want to expand their practice and they want to get bigger they have to start this whole process all over again.

Mr. Yozzo: Okay. The other…the other thing is the…the actual surface area of the increased height of the roof, what is going to be the addition…the additional surface area of the roof structure? The existing is X and what is going to be the increase?

Mr. Whelan: Cause we’re…I’ll give you the short answer…

Mr. Yozzo: Okay.

Mr. Whelan: In as much as the building got a little bit bigger…

Mr. Yozzo: It got bigger this way…or…?

Mr. Whelan: …it got a little bit bigger with the two additions by about five hundred square feet…

Mr. Yozzo: Right.

Mr. Whelan: …and even though we’re putting a third floor on it it’s still the same footprint as the building so it really only increased it by about five hundred square feet so that did increase…partially increase the…the impervious area but we removed other things like sidewalks…

Mr. Yozzo: Okay.

Mr. Whelan: …and other things to bring the impervious actually down so we’re now actually below that now.

Mr. Yozzo: So it’s like a wash…whatever it’s...

Mr. Whelan: We’re making it better.

Mr. Manley: They went from sixty-six to sixty-five is what…

Mr. Yozzo: Okay. So it’s a one square.

Mr. Manley: One percentage reduction.

Mr. Yozzo: Oh, percent, okay. I thought you’re talking…well I mean square footage, a roof would be in square footage. It’s just a…it’s just a question, I don’t know if you guys…you guys don’t deal with that piece of it either because that would affect the septic.

Mr. Manley: But we do…we do look at…we look at lot coverage area and we’re charged with looking at surface coverage so that’s part of what this Board looks at to insure that somebody is not overgrowing the property that’s part of what we look at. In this particular project the applicant is going up versus going out.

Mr. Yozzo: Okay.

Mr. Manley: Going out just a slight just a slight bit but their biggest variance is going up.

Ms. Zalantis: I just wanted to note…

Mr. Yozzo: But I didn’t think…I’m sorry.

Mr. Manley: If you could just let the…

Mr. Yozzo: Sure.

Ms. Zalantis: I just wanted to note that just to respond to your inquiry that a…as a result of reducing the scope of this project we reduced the lot building coverage from nineteen percent to seventeen percent and sixty percent is allowed. We reduced the lot surface coverage as Mr. Chairman said has been reduced from sixty-six percent to sixty-five percent where eighty-five percent is allowed. The height is…has been compliant from the start, so that there’s no height variance at issue.

Mr. Yozzo: Okay. But when you guys talk about percentages can we talk like you know, square footage or what…that…that really confuses me.

Mr. Scalzo: I think I know where you’re going Mr. Yozzo.

Mr. Yozzo: Okay.

Mr. Scalzo: When we look at a plan we look at a flat piece of paper. We look at lot coverage as it relates to the flat piece of paper. When you talk about a slope on a roof we don’t consider slope distances or surface area that way. We’re looking at lot coverage as a flat looking straight down on a lot.

Mr. Yozzo: But that doesn’t take into account the amount of, like you guys call it, impervious surface area. Right because water would catch more on a larger size roof and half to be…

Mr. Scalzo: Not necessarily.

Mr. Yozzo: Okay.

Mr. Whelan: There’s a bad condition there right now.

Mr. Yozzo: Right.

Mr. Whelan: You know if you look at…look at some of these existing pictures only a third of that roof is pitched, the rest of it is flat.

Mr. Yozzo: Yeah.

Mr. Whelan: So that water is going to pond up and it’s going to run off the side, it goes right down into the parking lot…

Mr. Yozzo: Right.

Mr. Whelan: …and goes right into the back neighbor’s property.

Mr. Yozzo: Yes.

Mr. Whelan: What we’re proposing to do is only increasing the roof area by under five hundred square feet. Even though we’re putting a third floor on it the roof area and we’re putting a hip roof on it with drainage gutters.

Mr. Yozzo: But what he said was that your percentage is going down from sixty-six to sixty-five…

Mr. Whelan: Because right now there’s a lot of sidewalks on the property.

Mr. Yozzo: Okay.

Mr. Whelan: We’re getting rid of a lot of them.

Mr. Yozzo: Oh, alright.

Mr. Whelan: So that the water now drains…

Mr. Yozzo: Oh that’s the…

Mr. Whelan: …into the ground.

Mr. Yozzo: Got it, you said that before. Okay. Alright, and…okay that’s basically it. And, I mean I…I, you know we definitely would like to welcome the…the dentist into the community and everything and we don’t want to be difficult we just want it to be done the right way, that…that’s it. I mean that’s basically what it is. We’re not…we’re not trying to say that we don’t want the dentist in the area it’s good pedi…we need pediatric dentists in the area.

Mr. Manley: Well and if…I think because of the comments of the last Public Hearing that we had in October, okay, where the residents came out and voiced some concerns the project…the project at that point was denied by the Board as far the variances. The applicant then took the information that they received and they reworked their plans. Now the Board…this Board has to determine whether or not those reworked plans based on what they’ve done have now you know, satisfied this Board as far as what we can grant.

Mr. Yozzo: In…in continually saying that they’ve reduced the scope it’s a…I…I mean I don’t know how to put that in a nice way because I mean reducing the scope meaning that they’re going put storage up in the third floor area, right that’s basically…

Mr. Whelan: We’ve reduced the size of the building considerably when we tried to get it down cause we know…everybody knows it’s a tight site. We’ve got, you know, the existing building. It is what it is. But with the two additions we were actually going bigger, you know, we had a couple of architectural features which we had to get rid of. We’ve realized we got this as tight as we can so that we can…so that the variances we’re looking for are you know, not as much as we were looking for the first time.

Mr. Yozzo: But if…if you say…I mean, I just…I just want to be clear on this if you say that the…the square footage of the addition for the elevator was three hundred and what square feet previously?

Mr. Whelan: About five hundred square feet.

Mr. Yozzo: It was actually that much? Because in an initial plan I saw that it was like three hundred and sixty if I remember correctly. I don’t know positively…

Mr. Whelan: That’s…

Mr. Yozzo: …but then the second, the…the one than now is before the Board is two seventy so that’s a reduction of ninety square feet. Right?

Mr. Whelan: We’ve reduced the elevator size, we reduced the size of the stairs because we were going to go with more of like an ornamental stair and be much bigger (Inaudible).

Mr. Yozzo: So you’re including in the…in the actual square footage of that addition, the stairs as well as the…

Mr. Whelan: Have to; it’s all part of the addition.

Mr. Yozzo: Okay. All right so that might be the extra one forty. Whatever but I mean, to say that it’s reduced in scope drastically is not, in my opinion, you know totally fact. It’s reduced a certain percentage but it’s not reduced you know, substantially reduced. All right, it might be semantics but…

Mr. Manley: And you certainly with respect to this project, this is just the one hurdle. Once if…if the applicant you know is granted the variance through the…through the Zoning Board it will then go back to the planning board. The planning board then has to look at a host of other issues before granting their approval. Now, you know, as a resident you certainly can make comments in writing to the planning board…

Mr. Yozzo: Only in writing?

Mr. Manley: Well if they…if they choose to have a Public Hearing you would be able to speak like you are this evening and you would be Noticed of such. But if they do not have a Public Hearing you can certainly send your comments in to the planning board and you know, they’ll take into consideration your comments with regard to traffic, noise, whatever your concerns, the drainage. Those are all the issues, you know, that the planning board would look at. But this Board and we have to keep…we certainly have a time constraint and when we want to give you ample time to comment but we need to keep the…the Hearing focused specifically on the variances and not on the other items that are not part of our…our review.

Mr. Yozzo: Got you.

Mr. McKelvey: As Jim says the planning board doesn’t have to grant a Public Hearing.

Mr. Yozzo: Right, right.

Mr. McKelvey: But you have a right to…

Mr. Yozzo: So it would be better to…just write…

Mr. McKelvey: …you have a right to write to them.

Mr. Yozzo: Yeah, okay. All right and the planning board is here as well or it’s in Orange County?

Mr. Manley: They meet here, the planning board meets here.

Mr. Yozzo: Okay. Thank you.

Mr. McKelvey: I think it’s first…

Ms. Gennarelli: 308 Gardnertown, the Building Department.

Mr. Yozzo: Okay. Thank you very much for your time. Thank you.

Mr. Manley: You’re very welcome.

Mr. Whelan: Can I just make one more comment about the changes that we made? I just wanted to be clear…

Mr. Yozzo: Sure.

Mr. Whelan: …just so you know not only have we reduced them in size, the second egress stair used to be on the west side of the building…

Mr. Yozzo: Yeah.

Mr. Whelan: …we moved it to the east side. I can’t even tell you what kind of hell that raised with trying to move the plan all around but we got it to the east side of the building cause now that we’re sprinklered we’re allowed a closer distance to the other egress stair and we had to reduce…both additions are reduced in size and plus the scope of the project. Eventually, yes, our original proposal was to occupy that third floor.

Mr. Yozzo: Right.

Mr. Whelan: So by taking that completely out of the scope that was a huge change for the owners.

Mr. Yozzo: Okay. But when…when you…when you keep on saying the…the other stairs…those other stairs that were in the front, you…you moved that to the back?

Mr. Whelan: Knowing…knowing that we’re on a time constraint I mean, I don’t want to…I can show you out in the hallway.

Mr. Yozzo: Alright, sure, okay. Thank you very much. Thank you.

Mr. Manley: You’re very welcome. Are there any other comments from the public with regard to this application?

No response.

Mr. Manley: At this point, I’ll look for…before we look for a motion I just want to enter into the record that the Orange County Department of Planning also commented (February 11, 2016) and they indicated that this would be a Local Determination. So at this point, I’d look for a motion to close the Public Hearing.

Mr. Scalzo: I’ll make a motion we close the Public Hearing.

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

(Time Noted - 7:58 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 9:46 PM)

MAHO BAY REALTY, LLC. 1 POWELTON ROAD, NBGH

(80-6-7) B ZONE

Applicant is requesting area variances for the front yards setbacks on Powelton Road and North Plank Road (NYS Route 32), the minimum lot area and the minimum lot width for additions and renovations to an existing building to build a three-story pediatric dental office.

Mr. Manley: Let me know when you are ready Ms. Gennarelli.

Ms. Gennarelli: Okay.

Mr. Manley: The Zoning Board is resuming its meeting for this evening. Before we start for this evening’s proceedings going through our deliberations process I do want to let everybody know that we’re operating with five Members this evening which means that every application this evening requires at least four votes in the affirmative in order for the item to pass. If there is anybody this evening that has any concerns with regard to their application and wishes to have the full Board which would be our six Members at our March meeting we can hold your application over. We always make sure that we advise the applicants this so that they have the benefit of the full Board. Is there anybody this evening that wishes to have their application moved to the March meeting? And again, there’s no guarantee that we will have a full Board but you have more of a chance to have the six Members versus the five.

Mr. Levin: Can he hold it to the next meeting also?

Mr. Manley: March.

Mr. Levin: Just March, okay.

Mr. Manley: Okay if there is no one that has any objections we’ll proceed with our deliberations on each application. The first application the Board is going to be considering this evening is Maho Bay Realty, LLC., 1 Powelton Road in Newburgh. This is an Unlisted Action under SEQR and the Board must provide a Negative Declaration once we get to the point of if the Board is going to vote in the affirmative they would have to pose a Negative Declaration first. So we’re going to go through our balancing test with regard to the area variances that were presented. The first one is whether the benefit can be achieved by other means feasible to the applicant if the Board could please comment on that particular area.

Mr. McKelvey: I don’t think could.

Mr. Levin: Are we not going in order?

Mr. Manley: We could go in order if you’d like. Mr. Scalzo?

Mr. Scalzo: Thank you Jim. I believe they’ve reduced it sufficiently I…I think if they would reduce it any more a…then I don’t know if it would be a benefit so I believe no, they couldn’t achieve it any other way.

Mr. Manley: Okay, I…I would seem to concur with you, you know, the applicant originally came with a much larger request. They’ve removed quite a few of the treatment rooms which would have been on the third floor making it storage a…and that’s going to also result in less impact. It also limits, I think, the future growth and the applicant did mention that they’d be willing to have in the decision that there’d be no future a…use for space or treatment rooms.

Mr. Scalzo: Which I agree should be a condition of…if we have a positive result.

Mr. Manley: Mr. Levin?

Mr. Levin: I concur with Mr. Scalzo. I think that it’s a…a they’ve proved that it’s…it’s a…been properly taken care of by shrinking the size of the building.

Mr. McKelvey: I have to agree…

Ms. Gennarelli: Can you pull your mics in? You are talking very low down there. Thanks.

Mr. McKelvey: I agree, I think it fits with the property now.

Mr. Levin: Yes.

Mr. Masten: I agree to Jim, everything falls in context with a smaller version of everything.

Mr. Manley: Okay, on the next test is the undesirable change in the neighborhood or character or detriment to nearby properties? How does everybody feel with respect to that test?

Mr. Scalzo: I actually think with looking at the renderings it would actually make the neighborhood a little bit more desirable so a…I would say there is no undesirable change.

Mr. Levin: I agree with that.

Mr. McKelvey: I think that’s true.

Mr. Masten: I agree too, Jim.

Mr. Manley: I mean the only thing that I’ll and you know, and it may not be a negative but you know, there are not a lot of three-stories…I mean they did provide some information that there…there are three-stories but most of our three-story buildings are our…our hotels in the I/B zone…

Mr. Masten: Yeah.

Mr. Manley: …so this is unique to this particular area but I don’t believe that it really creates an undesirable change.

Mr. Scalzo: I agree with it, the topography actually a…the three stories, yes it is. However, with the renderings if you looked at the top line of the building compared to the property to the west it appeared as though it was almost the same height.

Mr. Manley: Correct, correct. The next test that we have to look at is whether the request is substantial in nature and I’ll only add that initially it was and they’ve since (Inaudible) that back in their second submittal so you know, they did change that quite a bit. I don’t know if anybody else wants to add…

Mr. Scalzo: Would the right-of-way taking of the New York State as well as the front yard constraint, they have two front yards, so I think they were constrained to begin with so that being considered I don’t believe that it’s substantial.

Mr. McKelvey: I agree.

Mr. Levin: I agree.

Mr. Masten: Same, Jim, I agree.

Mr. Manley: Okay, the next test is whether the request will have an adverse physical or environmental effect and does anybody have any comments on that?

Mr. Scalzo: I believe any environmental concerns that I had will be addressed by the planning board so my answer would be I don’t believe it would have an adverse effect.

Mr. Manley: And they did present a…documentation to us and testimony that in fact that was an area that they were addressing which was not addressed previously. Mr. Levin?

Mr. Levin: They will be improving the environmental effect by a…getting the sewer in working…the septic tank.

Mr. McKelvey: Definitely improve…it will improve.

Mr. Masten: I agree Jim.

Mr. Manley: And then the last is whether or not the alleged difficulty is self-created. Self-created although it is not something that is relevant but not determinative and you know, it is self-created but in the balancing test that we look at the others…you know, the balance is more towards the applicant in this particular case in…in my opinion.

Mr. Scalzo: I…I agree with you. The biggest area was tower portion and for them to meet the ADA standards they would to had to really dig into the old portion of the building to do that so I…I believe it’s self-created however it needed to be.

Mr. McKelvey: And they lowered the height.

Mr. Scalzo: Yeah.

Mr. Manley: All right, the Board has gone through the a…the tests required. Do we have at this point, either a Negative Declaration or do we have a motion for disapproval?

Mr. McKelvey: I'll make a motion for a Negative Dec.

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: At this point the Board has determined that there’s a Negative Declaration at this point, do we have a motion to approve?

Mr. McKelvey: I’ll make a motion we approve.

Mr. Levin: I second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:53 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 7:58 PM)

DAWN & PAUL McDOWELL 33 BRIARWOOD CRESCENT, NBGH

(88-3-3) R-1 ZONE

Applicant is requesting area variances for the maximum building coverage, the maximum lot surface coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built addition and rear deck on the residence.

Mr. Manley: The next item on tonight’s agenda is Dawn and Paul McDowell, 33 Briarwood Crescent in Newburgh, requesting an area variance for the maximum building coverage, the maximum lot surface coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built addition and rear deck on the residence. Ms. Gennarelli do you have the posting?

Ms. Gennarelli: Yes, this applicant sent out fifty-seven letters. All the mailings, publications and postings are in order.

Mr. Manley: Okay, if the applicant would like to approach the Board, give us there name and address for the record please.

Mr. McDowell: Paul McDowell, 33 Briarwood Crescent in Newburgh.

Ms. McDowell: Dawn McDowell, 33 Briarwood Crescent, Newburgh.

Mr. Manley: Okay, also into the record we have the Orange County Department of Planning also required to be noticed on this and their feedback to this Board was Local Determination. Would you like to just give us a brief synopsis of what you’re looking to do and what you’re asking the Board?

Mr. Donovan: Brief being less than one hour.

Mr. McDowell: We have an addition that was put on and a deck and a…was looking for a Permit and we didn’t a…didn’t widen it, you know, the house any wider it’s the same distance from the original house to the back. There’s an original addition that was put on there when we bought the house.

Mr. Manley: Okay.

Mr. McDowell: Back in ’79.

Mr. Manley: Are you currently selling the house?

Mr. McDowell: Yes.

Ms. McDowell: Yes.

Mr. Manley: So that’s how all this came about?

Mr. McDowell: Yes.

Mr. Manley: Was the addition and the deck there when you purchased the house in 1979.

Ms. McDowell: The…the one addition was, the second addition we put on along with the deck. That was put on in 2007.

Mr. Manley: Okay. So you’re not sure if the building is up to Code or not, correct?

Ms. McDowell: Well we a…

Mr. Manley: There was no Permit obtained, correct?

Ms. McDowell: No.

Mr. McDowell: No.

Mr. Manley: Who actually built addition?

Ms. McDowell: The first addition we have no idea.

Mr. Manley: The second addition was built by?

Ms. Gennarelli: Can you just get a little closer to the mic?

Mr. McDowell: Scott…I think it is.

Ms. McDowell: A…a…I can’t remember his last name a…but we had a…Talcott Engineering come in and go over everything that was done a…which I believe those things were submitted.

Ms. Gennarelli: To the Zoning Board or to the Building Department?

Ms. McDowell: To the Building Department.

Mr. Donovan: So relative to the…your engineer’s inspection now that’s not when it was built…?

Ms. McDowell: No, no, no.

Mr. Donovan: …the Building Department is looking for some sort of certification that it meets Code and that’s what Talcott is supposed to have submitted to them?

Ms. McDowell: Yes.

Mr. Manley: Okay, does the Board have any questions?

No response.

Mr. Manley: If the Board does not have any questions, at this point I would look to open it up to the public. Is there anybody from the public that has any questions or comments with regard to this application before the Board?

No response.

Mr. Manley: Hearing nothing I will go back and ask if there are any questions or comments from the Board?

No response.

Mr. Manley: Alright, it appears to be very straightforward. At this point, I’ll look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Okay, the Public Hearing is closed, the Board will at the end of the evening vote on all of the applications.

Ms. McDowell: Okay, thank you.

Mr. McDowell: Thank you.

Mr. Manley: Thank you.

(Time Noted - 8:03 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 9:54 PM)

DAWN & PAUL McDOWELL 33 BRIARWOOD CRESCENT, NBGH

(88-3-3) R-1 ZONE

Applicant is requesting area variances for the maximum building coverage, the maximum lot surface coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built addition and rear deck on the residence.

Mr. Manley: The next item before the Board is Dawn and Paul McDowell of 33 Briarwood Crescent in Newburgh. This is a Type II Action under SEQR. The Board will go through the same balancing tests for the area variance. We’ll start on my right this time with Mr. Masten and give you break. How’s that?

Mr. Scalzo: Thank you.

Mr. Manley: The first thing we are going to look at is whether the benefit can be achieved by other means feasible to the applicant. Do you have any…?

Mr. Masten: I have no comments Jim, they said some of the additions were prior and everything meets the standards so I say it’s okay.

Mr. McKelvey: I think the property looked neat even with the additions.

Mr. Levin: It’s all prior conditions.

Mr. Scalzo: Absolutely, I don’t know…I know it’s one of our criteria but when it’s already in place I don’t know how we could even, you know, go against that one of those criteria…that criteria.

Mr. McKelvey: And there was nobody here from the neighborhood to complain.

Mr. Manley: Well and that goes to the next test which is the undesirable change in the neighborhood character or detriment to nearby properties. And that’s where you would hear that and we didn’t have any testimony to that.

Mr. Scalzo: Driving through that neighborhood I thought that the additions that are on the house were very in character with the neighborhood and I didn’t, you know quite honestly, unless we were here for this action I wouldn’t have known any different.

Mr. Manley: And the next is whether or not the request is substantial in nature. I would just point out that there’s other properties in the neighborhood that’s just as large as that.

Mr. Masten: Yes.

Mr. Levin: Yes.

Mr. Scalzo: Yes, with lot coverage very similar.

Mr. Manley: Next is whether or not the request will have any adverse physical or environmental effects?

Mr. Scalzo: I don’t believe so.

Mr. McKelvey: I don’t think so.

Mr. Masten: I don’t think so.

Mr. Manley: And whether or not the alleged difficulty is self-created? Partially is, partially isn’t, they didn’t build the one addition so…

Mr. Masten: Right.

Mr. Levin: But they did put up additions.

Mr. Manley: Right.

Mr. Levin: But I don’t think it’s substantial enough to disprove this.

Mr. Manley: Well at this point do we have either a motion for approval or disapproval? This is a Type II Action under SEQR.

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

Mr. Levin: I'll second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:55 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 8:03 PM)

MADISON ROSE PROPERTIES LLC. 16 MADRE DE CRISTO ROAD, WALLKILL

(1-3-13) A/R ZONE

Applicant is requesting an area variance for the front yard setback to continue with the construction of the single-family dwelling unit.

Mr. Manley: The next application before the Board is Madison Rose Properties, LLC., 16 Madre De Cristo Road in Wallkill requesting an area variance for the front yard setback to continue with the construction of the single-family dwelling unit. Ms. Gennarelli, are all the mailings in order?

Ms. Gennarelli: Yes, this applicant sent out nine letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: How are you?

Mr. Radke: Good, how are you?

Mr. Manley: Okay, if you could just identify yourself for the record and share with the Board what you are requesting this evening.

Mr. Radke: My name is Joseph Radke, I’m partners in Madison Rose Properties and I’m requesting a front yard variance for a house under construction a new home. I am building currently six homes in the subdivision.

Mr. Manley: Okay and the six homes have you received Building Permits on those?

Mr. Radke: Just for two of them so far.

Mr. Manley: Okay and you’re the builder?

Mr. Radke: Yes.

Mr. Manley: And how long have you been building homes for?

Mr. Radke: Thirty years.

Mr. Manley: Okay and have you built homes within the Town of Newburgh before?

Mr. Radke: Over a hundred.

Mr. Manley: Over a hundred in the Town of Newburgh?

Mr. Radke: Yes.

Mr. Manley: Okay so you’re pretty familiar with the operation of the Town’s Building Codes and…

Mr. Radke: Yes.

Mr. Manley: …and I would imagine a hundred homes you’re pretty much an expert…

Mr. Radke: Well obviously not.

Mr. Manley: Oh. Okay well I guess we’re getting to that.

Mr. McKelvey: That’s what I was going to ask. How…how did you…

Mr. Radke: Obviously not…

Mr. McKelvey: …how did you it not get it where it belonged?

Mr. Radke: Well what happened was, I’m not making excuses it’s all my fault, a…we came to the subdivision, it’s a new subdivision, I didn’t show due diligence and get the surveyor that originally did the surveying thinking I could measure it off the curb. We measured off the curb sixty-five feet and I did take into consideration the easement, the utility easement, but we are sixty-five feet from the curb but unfortunately I’m within the easement of the road and there’s a curb right there. And again it’s my fault I…

Mr. Manley: You are aware…

Mr. Radke: …take full responsibility.

Mr. Manley: …that this Board has to look at self-created as far as whether or not the difficulty that you’re bringing before the Board is self-created or not. Now certainly that’s not the only factor we look at but certainly if the hardship is self-created this Board has to consider that as part of its…its balancing test.

Mr. Radke: And I understand and again I take full responsibility for it. Like I said a hundred homes I’ve never been here before. I’ve never had to go for this and it’s my fault.

Mr. Manley: Okay. Now there is also documentation submitted by the Building Department, unfortunately they are not here this evening, but some of the documentation that they have indicated is that construction after the Stop Work Order continued even after the Town had posted the Stop Work Order. Can you explain how that happened?

Mr. Radke: I have two other houses outside of the Town of Newburgh that I’m building. I did not give the subcontractors immediate notification that work was to be stopped and the plumber was in there for a day and when I…John Terry told me, I spoke to him I called to ask if I could put the windows in he said that you couldn’t do that. And at that time he had another inspection on another house and he saw that the a…the risers, the pipe risers in the garage were done so…

Mr. Manley: Right. He also noted in his email, I have copies of his emails that apparently somebody had taken down the Stop Work Sign.

Mr. Radke: That I did not no…they blew off and we put them right back up like a week later and I met John at the job. He came out to see me.

Mr. Manley: Okay.

Mr. Radke: And we had a meeting at the job and they…one was only in plastic, he had two pictures that were in paper and those two pieces of paper blew away within two days. So he was made aware of that…I definitely made him aware of that.

Mr. Manley: Okay, have you since provided the Town with the documentation that they need with regard to exactly where everything sits on the property, in the building envelope?

Mr. Radke: Yes. I gave them that survey map.

Mr. Manley: Okay and that survey is exact at this point?

Mr. Radke: Correct.

Mr. Manley: So you’re looking for exactly how much of a variance?

Mr. Radke: I believe it’s two and a half feet if I’m not mistaken. Forty-seven and a half feet is the closest on a overhang that we have on the second floor. If you like I can give you a copy of this if you want?

Mr. Manley: Alright because on my copy here it says the front yard setback required is fifty feet, the existing is forty-eight point five…

Mr. Radke: Right.

Mr. Manley: …so that’s a foot and a half.

Mr. Radke: Well it’s forty-seven point five on the overhang. I don’t know if you have that.

Mr. Manley: So this did not have the overhang calculated in it?

Mr. Radke: I don’t know what you have in front of you.

Mr. Manley: Okay. If you could please share that because I’m showing that you need one point five…that bump out…

Mr. Radke: That’s what I assume he’s got… you can have that.

(Mr. Radke approached the Board)

Mr. Manley: That overhang is for the a…

Ms. Gennarelli: Can you take the microphone please?

Mr. Manley: That overhang is for a porch?

Mr. Radke: No, a second floor overhang for the Bedroom. There is no front porch.

Mr. Manley: Pass that along. (to the Board)

Mr. Radke: I’ve obviously since met up with the surveyor that did the surveying and he’s doing my other houses as well so I know there won’t be any future problems.

Mr. Scalzo: Were you constrained by where the septic was supposed to be in the back a…or I don’t know is this…?

Mr. Radke: The septic is on the side.

Mr. Scalzo: Okay, so the…you went sixty-five feet you could have gone seventy-five feet?

Mr. Radke: Yeah, I’ll tell you what my…the biggest grip over is since there’s not a lot of great lots left is the backyard. That’s been our number one downfall as far future customers or potential customers that the backyards haven’t been big enough. So again, I didn’t use the surveyor to do the…the stakeout on this particular house. I just pulled the sixty-five feet from the curb and I thought that…it’s twenty-five feet from center road I thought was the easement and I’m off a foot and a half.

Mr. Scalzo: Boy that’s tight. As I look at the application, the information submitted by the Code Compliance folks I’m looking…foundation location submitted and reviewed and I really wish Jerry was here but are you required to provide a foundation survey prior to starting framing?

Mr. Radke: No. They…they accept the…the a…building envelope with the map on here on the main map for the whole subdivision.

Ms. Gennarelli: Sorry, you might need clarification from Code Compliance because I’m really not qualified to answer for them; I know you’re looking at me.

Mr. Scalzo: I am going to need clarification from Code Compliance.

Mr. Manley: It’s my understanding that you are supposed to submit something to show before you move forward as to where everything is going to be...

Mr. Radke: Proposed, correct.

Mr. Manley: …because there have been problems in the past where you know, we’ve had a number of them since they have implemented this is the first one that we’ve had since they’ve implemented it. The applicant is testifying that he overlooked this that it was a…a mistake but that’s the process is they’re supposed to…before anything is done they’re supposed to provide that. And that eliminates this issue. We’ve had with Price Chopper they built too close to Gidney Avenue and then the building was completely done and then when the Building Department did their final found out that they were too close to Gidney Avenue.

Mr. Radke: If I could…?

Mr. Manley: Yes.

Mr. Radke: We’re…we’re supposed to give a proposed where the proposed house, septic, deck are supposed to go within the building envelope then they won’t give you another inspection until you get the As Built once the foundation is put in.

Mr. Manley: And that is also from the surveyor that shows that it’s where it’s supposed to be.

Mr. Radke: Correct. Correct.

Mr. Scalzo: Okay and you just said exactly what I was hoping to hear that they don’t allow you to start framing until…

Mr. Radke: No, they do.

Mr. Scalzo: …you’re not allowed to move forward.

Mr. Radke: They absolutely do. They won’t give you any other inspections.

Mr. Scalzo: Okay, I’m…I’ll take you at your word but I’m going for myself I’m going to need that from Code Compliance.

Mr. Manley: And unfortunately Jerry is not here this evening.

Mr. Scalzo: Of all nights.

Mr. Radke: As a matter of fact we’re doing a house right now two…two lots down and we framed the whole house before the As Built on the foundation again was done.

Mr. Scalzo: It would appear that there’s a safeguard that’s missing in that process so…

Mr. Manley: Well at this point because we don’t have our partners from Code Compliance here a…at this point I’ll see if there’s anybody here from the public with regard to this application if not, I’m going to look for a motion from the Board to hold this over…hold the Public Hearing open until our March meeting so that we can confer with Code Compliance.

Mr. Radke: How come they’re not here tonight to represent?

Mr. Manley: Apparently Mr. Canfield had unfortunately something else come up. Normally they’re here but they’re not so unfortunately we’ll have to hold the Public Hearing open and what we’ll do is we will confer with him and ask him to, you know, bring that information to the next meeting so that we can have that information to make a decision. So at this point, is there anybody here from the public for the application of Madison Rose Properties, LLC.?

No response.  
  
Mr. Manley: If not then, at this point, based on Mr. Scalzo’s comments I would look for a motion to hold the Public Hearing open until the March 24th meeting at 7PM. Do I have a motion for that?

Mr. Scalzo: I’ll make that motion.

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: At this point, we will not re-notice for next month just make sure that you’re here next month, March 24th 7PM and we’ll be able to get the information from Mr. Canfield and then ask any further follow-up questions.

Mr. Radke: Right. Alright, have a good night.

Mr. Manley: Thank you.

Mr. Scalzo: Thank you.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:13 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 8:13 PM)

DAVID RHODES 50 FIFTH AVENUE, NBGH

(73-1-24) R-3 ZONE

Applicant is requesting an area variance for the minimum side yard setback to keep the prior built breezeway addition connecting an accessory building (garage) to the residence.

Mr. Manley: The next application before this evening is David Rhodes, 50 Fifth Avenue in Newburgh, he is requesting an area variance for the minimum side yard setback to keep the prior built breezeway addition connecting an accessory building (garage) to the residence. Ms. Gennarelli is the postings in order?

Ms. Gennarelli: Yes, this applicant sent out fifty-one letters. All the mailings, publications and postings are in order.

Mr. Manley: Good evening.

Mr. Schwartz: Good evening my name is Kenneth Schwartz from the law office of Farer & Schwartz, P.C. in Latham, New York. I’ve traveled this distance because the applicant is my brother-in-law.

Mr. Manley: Lucky you.

Mr. Schwartz: It’s called free legal advice. To give you a brief history, Clayton my father-in-law and Mary Helen, my mother- in-law acquired title to the property on this Fifth Avenue parcel back in December of 1954. Clayton constructed the residence in the mid to late 1950’s. Construction of the house, garage and breezeway, enclosed porch were all part of the original construction which occurred prior to the Town’s record keeping of such matters.

Ms. Gennarelli: Excuse me; I just have to ask you a question.

Mr. Schwartz: Yes.

Ms. Gennarelli: Do you have a proxy for me?

Mr. Schwartz: I do not. I have Mr. Rhodes here.

Ms. Gennarelli: Oh, he’s here. Okay, I’m sorry. I’m sorry I didn’t see you, sorry.

Mr. Schwartz: According to a letter from Gerald Canfield to Esquire Title Agency dated 2/10/16 the file…their files indicated that the above structure was built prior to their record keeping and therefore there is no Certificate of Occupancy for this structure nor was one needed. It further stated that the enclosed porch, covered porch detached garage and deck are part of the original construction. Mary Helen Rhodes died in December of 1985 and Clayton was the surviving tenant by the entirety as part of an estate plan. Clayton conveyed title to…created a trust and conveyed title to his son David, the applicant herein who is the trustee of that trust. Clayton died last September. In preparation for placing the property on the market for sale the applicant sought a Building Permit for purposes of obtaining any required Certificates of Occupancy or Certificates of Compliance for delivery to potential purchasers. He obtained a survey of the property which disclosed the present side line violation as the current zoning laws exist. This property is consistent with the present zoning but for the side line setback and there is no change in use anticipated and there’s no change of construction anticipated. The discoveries created a practical difficulty which may very well impede the applicant’s ability to sell the parcel since the purchaser who needs to obtain financing requires that the building be in compliance with zoning. This violation is not substantial. We’re talking about a variance request of a…six point four feet on a fifteen foot required setback. The property and structures have been in place for over fifty years without any adverse impact to the adjoining property, does not impact population density of the neighborhood nor does it produce a detrimental change in the character of the neighborhood. The practical difficulty cannot be obviated by any other method in this case. It would be economically infeasible to do so. Assuming that the current zoning setback requirements were either in place back in the mid to late 1950’s or if not in existence the violation under today’s zoning standards were truly caused by an error at the time of the construction of the house, the garage, breezeway and enclosed porch. It’s our position that a denial of an area variance will result in a significant economic loss and that the current contract of sale would be cancelled and the likelihood of our ability to enter into a new contract without the variance would be near zero. Furthermore the denial of the area variance we believe would result in a…a destruction of the garage or the enclosed porch and breezeway to bring it into conformity with the current zoning which we believe the original structures were built in good faith. Based upon this we are respectfully requesting that the Board grant this area variance as requested. Thank you.

Mr. Manley: Thank you. Do any of the Board Members have any questions for the applicant or the applicant’s attorney?

Mr. Masten: Jim, just to let you know, I remember when Mr. Rhodes built that house. I lived up the street at the time.

Mr. Manley: It’s been there quite a while.

Mr. Masten: Oh yes, I...I grew up with his daughters, Patty and Joan.

Mr. Schwartz: Yes, my wife is the other daughter.

Mr. Masten: Oh.

Mr. Manley: Is there anybody from the public that may have any questions with regard to this application?

No response.

Mr. Manley: Hearing none and there being no questions from the Board at this time I would like to make a motion…I would like to ask for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Manley: Do we have a second?

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Schwartz: Thank you for your time.

Mr. Manley: Thank you.

(Time Noted - 8:19 PM)

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ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 9:55 PM)

DAVID RHODES 50 FIFTH AVENUE, NBGH

(73-1-24) R-3 ZONE

Applicant is requesting an area variance for the minimum side yard setback to keep the prior built breezeway addition connecting an accessory building (garage) to the residence.

Mr. Manley: The next matter is Madison Rose Properties that’s being held over till our March 24th meeting. The next item before the Board this evening is David Rhodes, 50 Fifth Avenue in Newburgh. It’s a Type II Action under SEQR. We’re going to go through the discussion as we did with the balancing test for the area variance. Does the Board feel whether the benefit can be achieved by other means feasible to the applicant? Do we have comment on that?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Scalzo: No

Mr. Masten: No.

Mr. Manley: And the next test is will it result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: No.

Mr. McKelvey: No, because it’s been there for years.

Mr. Masten: No.

Mr. Scalzo: It’s probably as old or older, you know, well it’s probably built around the same time as the other homes in the neighborhood.

Mr. Manley: The next is whether the request that the applicant is seeking is substantial in nature? It really isn’t in my opinion.

Mr. McKelvey: No.

Mr. Scalzo: I don’t think so.

Mr. Levin: I agree.

Mr. Manley: We’re talking feet.

Mr. McKelvey: Yeah.

Mr. Scalzo: Quite honestly if the breezeway wasn’t attached they wouldn’t be here.

Mr. Manley: The next is whether the request will have any adverse physical or environmental effects?

Mr. Scalzo: No.

Mr. McKelvey: No.

Mr. Manley: It hasn’t proven to be at this point.

Mr. McKelvey: No.

Mr. Manley: And finally whether the alleged difficulty is created? And…

Mr. Scalzo: Well the answer is yes but probably sixty years ago.

Mr. Manley: Yes but not for this applicant.

Mr. Scalzo: But not for this application, no.

Mr. Manley: At this point after going through our test do we have a motion?

Mr. Levin: I move to approve.

Mr. Masten: I'll second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:58 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 8:19 PM)

LAURIE BUTLER/KENNY VAN GORP 15 WINTERGREEN AVENUE, NBGH

(67-3-7) R-3 ZONE

Applicant is requesting an area variance for the front yard setback to construct a covered front porch (6 x 10) on the residence.

Mr. Manley: The next item on tonight’s agenda is Laurie Butler/Kenny Van Gorp, 11 Wintergreen Avenue in Newburgh requesting an area variance for the front yard setback to construct a covered front porch (6 x 10) on the residence. Ms. Gennarelli…

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

Mr. Manley: Thank you. Good evening.

Mr. Van Gorp: Kenny Van Gorp.

Ms. Butler: Laurie Butler.

Mr. Manley: And you’re requesting an area variance so that you can construct a front porch?

Mr. Van Gorp: Yeah, we want to rip out the existing concrete steps and replace them, pour footing and replace them with Trek and put a covered porch on with a railing for the 93 year old father that lives in our house and we currently do not have a railing on the steps. So it makes it kind of hard for him to get in and out of the house so…

Mr. Manley: Understandable.

Mr. Van Gorp: By the way you said it was 11 Wintergreen Avenue, it’s actually 15.

Mr. Masten: Yeah, I noticed that on the…when I pulled up to the house.

Mr. Scalzo: Yeah, well the a…

Mr. Masten: The sheet said 11 and I saw it was 15.

Mr. Scalzo: Yeah, the application Jim says 15.

Ms. Gennarelli: Did I make a mistake on the agenda?

Mr. Donovan: That’s not possible.

Mr. Manley: That is not possible.

Ms. Gennarelli: All right, that was my mistake for the year.

Mr. Donovan: I’d hate to do that in February.

Ms. Gennarelli: Uh oh, it’s a little early.

Mr. McKelvey: Well that’s why we went to the wrong house.

Mr. Manley: We’ll correct the record…

Ms. Gennarelli: Yes.

Mr. Manley: …let the record reflect that the application before the Board is for 15 Wintergreen Avenue however the agenda reflects 11 Wintergreen Avenue…

Ms. Gennarelli: All the Notices and everything were 15.

Mr. Manley: …went out as 15 so we’re fine. Do you concur Counsel?

Mr. Donovan: Yes, your legal advice is perfect.

Mr. Manley: Okay.

Mr. Donovan: Yes.

Mr. Manley: And you thought Ron Hughes advice was good.

Mr. Levin: I think we drove the people nuts at 11.

Mr. McKelvey: Yeah, because we all stopped at 11.

Ms. Gennarelli: Oh, and no one said anything.

Mr. Van Gorp: No wonder they don’t talk to us anymore.

Ms. Gennarelli: You should have called me. Someone should have called me.

Mr. Manley: So, I have no questions. The only thing I will enter into the record is that the Orange County Department of Planning because it’s within 500 feet of State Route 52 it has to be notified by law. They were notified and they responded back to the Town with no comments, Local Determination. Anybody from the Board have any questions?

Mr. McKelvey: I think it will be an improvement to the house.

Mr. Scalzo: Yeah, I think that house has great character…

Mr. McKelvey: Yes.

Mr. Scalzo: …I think the addition that you throw on or the front end there looks in kind.

Ms. Butler: Thank you.

Mr. Manley: Is there anybody from the public that has any comments with regard to this application?

No response.

Mr. Manley: Hearing none I’ll ask for a motion to close the Public Hearing.

Mr. Levin: I’ll make a motion to close.

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Okay, at this point the Public Hearing is closed. Later on in the evening the Board will probably take this up for a vote so if you want to stick around if not, you can call the office in the morning and they’ll give you the a…

Ms. Butler: We’ll stick around; we’ve been waiting a long time.

Mr. Manley: Okay.

Ms. Butler: Thank you.

Mr. Manley: You’re welcome.

(Time Noted - 8:23 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 9:58 PM)

LAURIE BUTLER/KENNY VAN GORP 15 WINTERGREEN AVENUE, NBGH

(67-3-7) R-3 ZONE

Applicant is requesting an area variance for the front yard setback to construct a covered front porch (6 x 10) on the residence.

Mr. Manley: The next application before the Board this evening is Laurie Butler and Kenny Van Gorp, 15 Wintergreen Avenue in Newburgh. It’s Type II Action under SEQR. The applicant is seeking a six point four foot, six point four feet variance in order to construct a covered front porch. Again going through the tests, you’re all familiar with the balancing tests involved. Can the benefit be achieved by other means feasible to the applicant? If they relocate the entrance to the house I suppose.

Mr. Levin: I don’t think so.

Mr. McKelvey: Yeah, I don’t thinks so.

Mr. Levin: And being that they have a father that is handicapped I think that’s a definite (Inaudible) to the house.

Mr. Manley: Whether or not this particular request creates any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: I think it will improve.

Mr. Levin: I think it improves the doorway.

Mr. Scalzo: Well I think it certainly going to make the front of the house look a little better as well.

Mr. McKelvey: Yes.

Mr. Manley: Whether or not the request is substantial?

Mr. Scalzo: I don’t believe so.

Mr. McKelvey: No.

Mr. Manley: Six point four feet. Whether the request will have any adverse physical or environmental effects on the area?

Mr. McKelvey: No

Mr. Masten: I don’t believe so. I don’t believe so.

Mr. Levin: No.

Mr. Manley: Whether or not the alleged difficulty is self-created? I mean you can say yes, it is but it’s again…it’s something that is a…may be relevant but not necessarily has to be determinative and again it’s that balancing test.

Mr. McKelvey: Yes.

Mr. Manley: At this point, going through the tests involved to we have a motion for either disapproval or a motion for approval?

Mr. Scalzo: I’ll make a motion for approval.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Motion carried.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY (Time Noted – 10:00 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 8:23 PM)

SARA (EGAN) DAVIS 25 HOPEVIEW COURT, NBGH

(23-2-44.2) R-3 ZONE

Applicant is requesting area variances for the maximum height, the maximum allowed square footage of accessory structures, the maximum allowed four vehicle storage and shall not be closer to fronting street than the main building to build a three-car detached garage and pool house (36’6” x 52 x 21’6”) on the premises.

Mr. Manley: The next applicant before the Board this evening is Sara Egan Davis, 25 Hopeview Court in Newburgh requesting area variances for the maximum height, the maximum allowed square footage of accessory structures, the maximum allowed four vehicle storage and shall not be closer to fronting street than the main building to build a three-car detached garage and pool house (36’6” x 52 x 21’6”) on the premises. Ms. Gennarelli…

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

Mr. Manley: Thank you. Good evening. Okay could you share with the Board your…

Ms. Gennarelli: If you could just introduce yourselves for the record?

Ms. Davis: Sure, Sara Davis and my husband Muraah Davis.

Mr. Davis: Did you have a question first?

Ms. Gennarelli: Just to introduce yourselves and you did.

Mr. Davis: And we did, yes.

Ms. Davis: We did. I think you have the plans there. We’re proposing to build a garage/pool house. The pool house portion would face our existing pool which was constructed last summer and then the garage would obviously be facing the street. We had originally bought our house on the existing lot; we bought the lot next door to us which is effectively the lot where the pool is. Before constructing the pool we did work with the Town to merge the two lots together and effectively this is the lot where the pool house or garage will be constructed.

Mr. Davis: The larger of the two lots.

Mr. Manley: Could you share for the record the amount of acreage that you have?

Ms. Davis: Sure, each lot…I don’t know the exact but they’re both about three quarters of an acre.

Mr. Davis: The existing one with our house on it that’s I want to say point seven nine of an acre and then the other lot I believe it is point eight five something like that it’s closer to an acre.

Mr. Manley: Okay.

Mr. Davis: But it is bigger than what the original site plan that we had.

Ms. Davis: And…and that lot where we’re putting both the garage and pool house was already, part of it was already cut out for a house a…that was originally going to be built there.

Mr. Davis: We gave…I wanted to be thorough and what Mr. Fiola, the architect, so I had do duplicates of everything that…that we have so that the picture would be painted more clearer for everyone. It’s already…it’s a BOHA certified lot the…the lot that we merged together. It’s got already an existing driveway cut through it so it is certified to be building on a…we just didn’t want a house there. The a…it’s already cut in also for a foundation hence the elevation changes. It’s lower in the front on the street level and as you progress to the rear of it right before the swimming pool it goes up another, I want to say, four feet…four and a half feet. We haven’t altered it at all before the swimming pool we just maintained it as far as with the grass cutting and weeds, pulling and everything else and garbage and whatnot.

Mr. Levin: The new building will have a three-car garage?

Mr. Davis: It’s…it’s going to be an open area inside. It’s going to be basically like a barn you can fit up to about three cars in there, yes. If anybody came by our…our house, Ms. Betty told us that you guys would just to check the site out; there would be three cars on the driveway. I consider that an eyesore because it’s out. I’m the only resident that has cars that are always fixtured on the…on the driveway so I wanted to just put those indoors so they wouldn’t be an eyesore. They are not rust buckets they’re all a…they’re all registered and insured.

Mr. Scalzo: We were there. We’re obligated to go and visit the properties.

Mr. Davis: Yeah, I’m glad you did, I’m glad.

Mr. Levin: How many cars do you have in the main home?

Mr. Davis: In the main home we have her vehicle and then I have two vintage BMW’s which if I put them outside they would succumb to the moisture and everything. I’ve invested a lot of money and time through the years and I hope to pass them to my sons. So they stay in the two-car. We have an attached garage to the house. It’s a one-car which is my wife’s, to keep her happy closest to the house and then the double door has my two vintage BMW’s there.

Mr. Donovan: But how many vehicles to propose to have all together?

Mr. Davis: As far as in the new space?

Mr. Donovan: Yeah, how many would you have all together on the property?

Mr. Davis: I would have that would be seen that would be three that would be inside the garage and the other two would just stay where they are inside the other garage.

Mr. Donovan: So there would be five in total then?

Mr. Davis: Yes, yes. The exterior of the new structure proposed would be conducive to the…the character of the neighborhood too. It’s going to mimic my house or our house.

Mr. Manley: The one thing that this Board has to look at and that we have to weigh, the balancing test, you know this Board has an obligation to look at is the amount of square foot that the Town allows by Code which is a thousand square feet for any accessory structure and you’re looking to put in a…one thousand eight hundred and ninety eight which is the size of a fairly large one family home. So basically it’s pretty much the size of two one-family homes on that…on that property. So the variance that is looking to be granted is eighty-nine percent above what the Town allows. So we have to make sure that we balance out your needs versus what, you know, we can…what we can approve.

Mr. Davis: Mr. Manley, I totally understand where you are coming from. The reason why it is that size is also can bring everything out of that’s not…that are not vehicles out of our garage…

Mr. Manley: Right.

Mr. Davis: …to put inside there so that she has more space for the boys as well. Also on a personal level when we got this house we didn’t have any children. She swindled me into occupying it and I’ve been moved to every a…they say man cave, they say my own space and everything else so I have been moved all over the residence and I was looking to have my own fixtured spot where I can just kind of destress from work and a…just hide away for a little while and everything else.

Ms. Davis: And additionally because it was a separate lot the size of the house, if you’ve been to the neighborhood, all…all of the houses are close to four thousand square feet…

Mr. Davis: Yeah, we actually have a smaller one.

Ms. Davis: …so this structure is by far significantly a fraction of that a...so while when you’re looking at it for purposes of the Code here if you think about it as what it was originally meant to be it’s significantly smaller than that.

Mr. McKelvey: What’s the square footage of your house?

Mr. Davis: My…our house is…

Ms. Davis: It’s about thirty-eight hundred square feet and it’s one of the…one of the smaller ones in the neighborhood.

Mr. Davis: Right, the residences that have the better river view those are five thousand square feet then they have the smaller estate homes which is on the top of the hill which have the vantage point those are, I want to say, probably twenty-two to twenty-five hundred square feet. Also for privacy as well because that’s going to be shielding the a…the swimming pool from the road and when we had the swimming pool this year, this past summer, when we used that everyone that comes driving through on a Sunday afternoon they stop and watch us swim. It’s kind of a…

Mr. Manley: Now it is going to be a two-story structure is there a way to bring the height down to minimize the variance of the…of the height itself? The Town allows for fifteen feet for…for height of an accessory structure…

Mr. Davis: Right.

Mr. Manley: …and this is almost seven feet above that. Can you bring that down some so that…?

Mr. Davis: But Mr. Manley, it’s only going to be a one…a one level structure if you look at the…

Mr. Manley: The back.

Mr. Davis: …right at the back that’s just for…for storage that’s going to be on the top so I’m going to say that’s probably going to be I think it’s a hundred square feet if I’m correct. I don’t remember off the top of my head and again there’s…I do have to make a note of the…remind you of the elevation changes that’s already there. They…Lennar Homes already dug that out for a…for a foundation and it’s…goes up to, I want to say, probably about four feet. The level part that’s the ground level that’s actually hilly and I’d have to excavate that anyway to get it level so that would drop it down a little more as well. On the A-1 diagram it would show it better on the lower left hand it’s a side view of the structure proposed.

Mr. Manley: Do any of the other Board Members have questions for the applicant?

Mr. Scalzo: We’re also looking at a variance here for front yard?

Mr. Davis: It says that…

Mr. Scalzo: Yeah, it requires fifty a…well…

Mr. Davis: I thought it was forty, forty feet was the setback, sir.

Mr. Scalzo: A…it would be fifty to the main residence now this is…because this is an accessory building a…is that still applicable? I…I’m…

Mr. Donovan: Did you see a front yard Darrin? I did not see a front yard.

Ms. Gennarelli: It’s a corner kind of it goes in front of the…

Mr. Scalzo: Corner doesn’t.

Ms. Gennarelli: It’s in the front of…the fronting the house remember…

Mr. Donovan: Oh, closer to the fronting street than the main building.

Ms. Gennarelli: …fronting street than…it’s not a front yard.

Mr. Davis: That be it Mr. Scalzo I understand your concern because I was made aware of that from the architect. Our house the furthest point or the point closest to the curb or to the setback would be fifty one feet and…

Mr. Scalzo: Fifty one feet, yes.

Mr. Davis: …fifty one three feet and I believe that what you gentlemen or the Board allows is forty. Is it forty feet…for a structure?

Mr. Donovan: Well I think we have a situation given the…the way the house sits…

Mr. Davis: Right it can’t...

Mr. Donovan: …that…that…correct so you’re going to have this proposed accessory structure can’t be forward of the main house. So it’s not a matter of how many feet it’s a matter of where the garage is proposed to be located in relation to the house. Right?

Ms. Gennarelli: Because the road goes…

Mr. Donovan: Yeah, yeah.

Mr. Davis: Even then because of that it wouldn’t…it would be by feet it would be like you said closer but it would be an optical illusion it wouldn’t be pressed out farther because of the…the house is…the house we stay in is going to be further to the left hand side. It’s going to be well over forty feet and I couldn’t go back any more, any further because the swimming pool is there.

Ms. Davis: And again I think we’re already using what was already cut out for a home that was going to be put there.

Mr. Manley: What resulted in the home not being placed there? Is there…?

Mr. Davis: Basically the market with the banks giving all the money and people spending before the…you know, more than their means…

Mr. Manley: Right.

Mr. Davis: Lennar actually chose to pull out. They didn’t finish construction over there. They sold all the properties that weren’t built…that were buildable that didn’t have any structures on them to local realtors. I tried to get the lot next door to us from NY Estate.net and he inflated the price a lot so I couldn’t afford it. Some gentleman bought it from him a local home builder and I was able to just wait and he brought his price down and that’s how we were…I worked a lot of overtime and so did she to get it.

Mr. Manley: Okay.

Mr. Davis: There’s only, I believe there’s only three…three or four lots that are not built on they’re...right, within the community, I’m sorry, there are…they are held by the…I believe the Filiberti’s…

Mr. Manley: Okay.

Mr. Davis: …and their children and then a…what’s the restauranteur…what’s his name…across the street from us he has a…Bonura, I’m sorry and he has a lot as well.

Mr. Manley: Okay. Are there any other questions from the Board?

No response.  
  
Mr. Manley: At this point, we’ll open it up for any questions from the public. Is there anybody here from the public that has questions regarding this application? If you could please come forward and state name and address for the record?

Mr. Feder: I’m Bill Feder from Rockwood Drive. A…nothing against the project but I noticed it’s thirty-six feet deep and cars are not near that long. Perhaps the depth of the building could be reduced to move the front of the building back a...just food for thought.

Mr. Davis: That’s also going to be sir, where the a…the swimming pool area is going to be as far as for the outdoor…we have an overhang in the back which would face the swimming pool. That would be, I want to say, probably twelve feet, it will be covered…a patio floor and then we’ll have a closing, if you want to say, French doors or sliding doors inside there will be where the changing area would be at. And then that’s going to be another…oh, I just folded everything up, I’m sorry…that’s going to be another I want to say another ten feet? And then it will start the garage area.

Mr. Feder: Yeah, the dimensions are up to you.

Mr. Davis: Thank you. Thank you sir.

Ms. Davis: Can I just say…? The reason for the extended overhang area there is…where our home is it is extremely windy and when they developed the neighborhood they literally leveled the entire neighborhood. There’s not a single tree until we planted all the trees that you see in our yard.

Mr. Davis: Yes, she needs the shade, I’m sorry.

Ms. Davis: But we wanted a permanent shade there so that we can just have comfort out by the…by the pool area.

Mr. Manley: Now will the garage have heat in it?

Mr. Davis: Yes, it will.

Mr. Manley: Will the upstairs…there…is there a…there’s a second level to it?

Mr. Davis: It’s not going to run the whole level or the whole length of the structure. It’s going to be floor to ceiling with lights when you walk in and I’m going to say probably twenty feet back will be the eight foot ceiling with the…where I have stairs to go up to store things.

Mr. Manley: Okay, the…the…the concern also…the Board…the reason why the Town has limited the size of accessory structures for that purpose is a lot of times unfortunately they morph into other things. So the fact that the building is going to be heated, the fact that it from the plans there’s going to be a bathroom there a…it…it, the concern of the Zoning Board would be that it’s going to become a…a second residence or even utilized as a guest…you know as a guest property a…and that’s where the concern of the Board…

Mr. Davis: Right I totally understand that and that’s why I tried my best when I was speaking with Mr. Fiola that I didn’t want it a two level or an apartment or anything else like that. All my family is down in New York City, they come up, they get scared of the country and they go back home. No one is staying with us or anything like that.

Mr. Manley: Mosquitos.

Mr. Davis: Yeah, no they don’t like the quiet to be honest with you.

Ms. Davis: And the reason for the bathroom is…you don’t have the floor plans of your house but when you go in to our house the bathroom…you go in through the back door and you literally have to walk across the entire house to get to the bathroom and I just don’t want with the pool our kids running through my entire house soaking wet to run to the bathroom. So it’s one of the reasons for that.

Mr. Scalzo: A bathroom in a pool house is fine; it’s the heat that becomes the issue.

Mr. Davis: I mean I’m not going to have a heat source, I’m going to have it insulated just I’m not going to have a heat source.

Mr. Scalzo: So no radiant heat no…?

Mr. Davis: No it’s going to be…whatever windows are going to be there they’ll be the a…what would be for houses, double pane insulated and the reason for that is because a…from Carter Avenue and from across the river that wind comes down I want to say almost hurricane force. I…I looked into wind power but I couldn’t a…you need about a hundred foot tower and then you have to be a hundred feet from the nearest residence and then the blades are fifty foot long. It’s just…it was just a lot…it’s just a lot of wind.

Mr. Manley: If…if the Board conditioned if the Board was inclined to approve the project and they put some conditions on it with respect to it could not be used for, you know, any type of habitational purposes…

Mr. Davis: That’s fine.

Mr. Manley: If they put a condition on it no heat you know, so far as heating the area so that it kind of prevents…would there be any issue with that?

Ms. Davis: Could you make it so it’s not habitational but if we did at some point want to have heat in there? He does like to work on his cars a lot in the wintertime in fairness…

Mr. Davis: I’m not a mechanic, I just clean my cars, I am not a mechanic…

Ms. Davis: Yeah.

Mr. Davis: …by any stretch of the imagination. I don’t want the Board to think that I’m going to be trying to set up a shop there. I work for the City of Newburgh Police Department. I work about eighty hours a week. This is just my de-stress. She likes to clean the house; I’d rather vacuum the cars out. That’s all.

Ms. Davis: All I was asking for was just optionality on that but you could make it absolutely not inhabitable no issues whatsoever.

Mr. Manley: Any other…

Mr. McKelvey: Sounds good.

Mr. Manley: …questions from the Board?

No response.

Mr. Manley: At this point I’d look for a motion to close the Public Hearing.

Mr. Masten: I’ll make a motion.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Ms. Davis: Thank you very much for your time.

Mr. Davis: Thank you.

Mr. Manley: You’re very welcome.

(Time Noted - 8:42 PM)

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ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 10:00 PM)

SARA (EGAN) DAVIS 25 HOPEVIEW COURT, NBGH

(23-2-44.2) R-3 ZONE

Applicant is requesting area variances for the maximum height, the maximum allowed square footage of accessory structures, the maximum allowed four vehicle storage and shall not be closer to fronting street than the main building to build a three-car detached garage and pool house (36’6” x 52 x 21’6”) on the premises.

Mr. Manley: The next item before the Board tonight is Sara Egan Davis, 25 Hopeview Court in Newburgh, it’s a Type II Action under SEQR and they are seeking area variances for height, the maximum allowed square footage of accessory structures, the maximum allowed four vehicle storage and shall not be closer to the fronting street than the main building to build a three-car detached garage and pool house (36’6” x 52 x 21’6”) on the premises. As we go through the balancing test before we do I just want to clarify with the applicant a…you had testified earlier that the number of vehicles that would be stored on the premises was five is that correct?

Mr. Davis: Yes, a total of five, there’s two that’s in the one that’s attached the house and there would be the three that the gentlemen saw when you went by the house that would be in, and then they’d be the eyesore they would be inside the other garage that’s going to double as a pool house.

Mr. Manley: Okay and the reason why we had to verify that is this Board in considering our determination in the Town of Newburgh you are only allowed four vehicles so we would then have to provide a variance for that fifth vehicle. So if we were to make a motion to approve it has to include five vehicles which means you could have no more than five vehicles on the property (stored)…

Mr. Davis: Okay.

Mr. Manley: …at any one time.

Mr. Davis: Well there are two actually are going to be for sale soon anyway. So…

Mr. Manley: Okay. Thank you.

Mr. Davis: Thank you.

Mr. Manley: In going through the balancing tests for the area variance criteria a…does the Board feel that the benefit can be achieved by other means feasible to the applicant?

Mr. Levin: I would say no because of the placement of the house. It’s a…limited to move it any place else.

Mr. McKelvey: I’d like to say that…

Mr. Scalzo: I struggle with the height and this is a unique situation to me because it used to be two lots however it was consolidated. I still need to view it as one lot because that’s what it is. We have in the past a…granted you know, a height variance I…I think twenty-one six is just about as high as I’ve…I’ve seen a…I…I…the plans look fantastic. It would probably be in character with the neighborhood. Are you married to these plans? Can you…can you talk to Mr. Fiola to perhaps drop it a foot or two or three?

Mr. Davis: I could and I had asked him about that. He was just telling me because it’s…it…right where the curb level is the street level. It’s actually hilly and I have to make that excavated to make that flat and then as you look back even the pictures that I provided it goes up another four feet. So his theory was that even if it was twenty-one it technically wouldn’t be a…higher than the other buildings because it’s already lower.

Mr. Scalzo: Right. We would measure building height from the ground surface right in front of the building.

Mr. Davis: Right.

Mr. Donovan: Correct.

Mr. Davis: It’s…it’s lower than my house the a…where it sits at right now because my house is up on the small…over the knoll or the…

Mr. Scalzo: Yeah and…and it’s beautiful it’s just as it applies to accessory structures a…it…it again if…if you’re willing to a…

Mr. Manley: If it was a primary structure you could…you could go up higher.

Mr. Scalzo: Yeah, you could go to thirty-five…

Mr. Davis: Oh, yeah…

Mr. Manley: It’s just what the…with…with an accessory structure they’re limited…you know, the Town limits the height and there’s…there’s lots of reasons why they limit it but it’s…for years it’s been the fifteen foot rule.

Mr. Davis: Okay.

Mr. Manley: So I…I think what Mr. Scalzo is…is looking at is in our balancing tests, you know, does the applicant really need twenty-one feet or you know, does it start to become where it…it…it’s the variance is growing too big. So that…that’s I think what he’s…

Mr. Davis: Okay, yeah I’m definitely, I’m sorry, I’m definitely open to going back to the drawing board with Mr. Fiola that was all…all on him I didn’t…

Mr. Scalzo: And that’s fine. Keep in mind when you…should you get positive votes we can a…allow up to a…right now you’re asking for twenty-one six high if you were to say to us a…I will go eighteen six high then we can grant you the variance for eighteen six and that way Mr. Fiola would have…and I’m only…these are arbitrary numbers…

Mr. Davis: I understand what you’re saying.

Mr. Scalzo: I…a…you know, so you can go back to Mr. Fiola and say this is the limits that I have.

Mr. Davis: Okay.

Mr. Scalzo: So…

Mr. Davis: I…I’m open to that, I mean I don’t, again this is all new to me, that’s why I hired him so he can help me with the planning and everything. I think his…his a…his justification was just so that it was all like the same kind of height with everything else not up down, up down…

Mr. Scalzo: Sure.

Mr. Davis: And then with the…the size of all the homes, again I have the smallest one in that little area so I think that’s what he was going…but I’m not opposed to going back and speaking to him and saying do we really need it to be that high.

Mr. Scalzo: Okay.

Mr. Davis: Not at all.

Mr. Scalzo: So and again you’re looking for twenty-one six…what do you think nineteen six, eighteen six a…?

Mr. Davis: I have no…I have no clue it’s…it was all based everything off of basically we sat down with him and said this is what we have to work with a…what’s the best that you can do basically and that’s what he provided us. I wasn’t…I didn’t have any specific numbers in…in my head I just needed to know…I told him I needed to put a couple cars, three cars in there and that I wanted to appease my wife with back to the for…the pool house aspect of it.

Mr. Manley: Now keep in mind the Board where we are limited is the law allows us to grant a variance for the minimum amount that’s needed in order for the applicant to…to do what they need to do. So, you know, a lot of times we’ll have people come to us I mean we’ve had before the Board people come to us with twenty-six feet high and you know, when we ask them what do you need that…well I want all sorts of storage up there in the second floor…not that you’re doing that but…

Mr. Davis: No, I know.

Mr. Manley: …in that particular case and we can’t grant that because that’s…that’s way to over what we can allow…

Mr. Davis: Sure I understand.

Mr. Manley: …you know that’s why I think what we’re trying to come up with is something that will…that will work.

Mr. Davis: I don’t…he was very reasonable and very a…he wasn’t set in his ways or anything else like that. I’m pretty sure if I went back and told him or just you need a better suggestion he would keep it…bring that roof level down.

Mr. McKelvey: Yeah, we can’t tell you what height really…we can’t tell you.

Mr. Davis: And I wouldn’t know I would have to base off of what he…

Mr. Scalzo: We’re…we’re trying to prevent you from having to come back here.

Mr. Davis: Okay, thank you.

Mr. Scalzo: And that…but that’s why I think we…we need a number from you. I…I…a…

Mr. Donovan: But what kind of…he’s kind of pulling it out of the air though, right Darrin?

Mr. Scalzo: Yeah, yeah I understand.

Mr. Manley: If the applicant wishes we can do what is called a Reserve Decision. Okay? What that means is that we have up to sixty-two days to make a decision. If you go back to your architect and say, listen I need to bring that thing down three, four feet, whatever, he can re-work it up and submit something to us. If we get close to the sixty-two days you can turn around and say that you waive those sixty-two days which allows it to go longer but if you don’t we have to make a decision. Okay? So, the Board has that as an option if you want us to take that option or you have the option of allowing us to move forward and continue our deliberations.

Mr. Davis: Well, I don’t want to hold anything up but again I don’t want to get denied flat on my face either.

Mr. Manley: Right.

Mr. Davis: So…and I understand…

Mr. Donovan: You should have made your wife stay because if you go home with bad news it’s not going to be good for you.

Mr. Davis: I know she is very tough too. I would…I would like to confer with…with Mr. Fiola if that’s okay and not get…I mean I know it’s a vote but not get…not get right now slammed down but I am very flexible with…with the roof height. I didn’t even think that that would…that wasn’t my numbers, that was…that was him proportioning everything else.

Mr. Scalzo: Right, sure.

Mr. McKelvey: Do you think you can have a figure…?

Mr. Davis: I’m just a Police Officer that’s it.

Mr. McKelvey: Do you think you can have a figure by next month?

Mr. Davis: I mean I could have a figure within like three days. I can just call him up and go down to his home office and crunch with him. I mean I’m off so…

Mr. Manley: Okay, well why don’t…why don’t we do this at this point why don’t we look for a motion to Reserve…I look for a motion to Reserve Decision which would allow Mr. Davis the opportunity to confer with his architect or make whatever changes to the height so that perhaps he can bring that back to this Board with something more palatable.

Mr. Scalzo: Okay.

Mr. McKelvey: That gives him sixty-two days.

Mr. Scalzo: I think I will get to that I…but there are other variances that we were looking at here as well.

Mr. Manley: Correct which we probably should go through the rest of them to insure that…

Mr. Scalzo: Correct.

Mr. Manley: …that’s the only thing that’s left.

Mr. Scalzo: The square footage sir, the variance percentage you’re almost ninety percent over what is typically allowed and that’s not to say a…well it’s ninety percent that’s quite a bit a…maximum is a thousand square feet you’re looking at…at eighteen hundred and ninety-eight so you’re eight hundred and ninety eight square feet over what Code allows and since you’re going to be visiting with Mr. Fiola perhaps you may want to consider the forty-two foot distance from the front to the back and that’s not including the covered patio because I mean there’s…you just…you need ten feet it’s just how…you know…but perhaps you could shrink that forty-two foot distance a…a…

Mr. Davis: Are you saying for the a…for the fifteen hundred square footage or…

Mr. Scalzo: Yeah, a…currently a…I don’t know if you have seen this or not but currently you are eight hundred and ninety-eight square feet over what’s allowed so perhaps and I’m not…again I’m…it…it’s your garage and pool house it’s wonderful but perhaps you could look for some savings in the square feet by reducing one of the dimensions. But I suppose if you were looking for access with the doors and I saw the a…the renderings it may not be appropriate to do it in the front. You may want to lose some of your depth. And again just take it back to your architect and…and perhaps he can…I mean that’s…that’s what they’re professionals at…at doing and figure out.

Mr. Davis: I just…the only thing I worry about and I’m not trying to be argumentative or anything like that it’s just that…again that’s the size of where it was at and you guys went by the house you saw the chain link fence that’s only temporary. It’s actually going to be on both sides of that it’s not going to be just strictly in the front and I just didn’t want it to be dwarfed by my house and then the neighbor’s home as well. I also do a lot of exercise too so I wanted to have my…move my stuff from out of the basement that the kids can have that and I would you know, work out in there too. So I kind of just wanted room to do what I had to do but not in the house and disrupting the house and everything.

Mr. Scalzo: Okay and just to confirm there is no heat planned for this, correct?

Mr. Davis: I did not have any heat planned for right away. In the wintertime I’d like to just clean my cars and get the salt off of it when it’s subzero degrees outside and stuff like that. We don’t have heat in the garage that’s attached to the house and it is kind of chilly in there but that was my only reasoning to put heat in there. It would just be for that.

Mr. Donovan: I’m only…I’m only a lawyer but what do you do with the bathroom if there is no heat? What do you do with the water in the bathroom?

Mr. Levin: Well...

Mr. Scalzo: Bleed your pipes every winter I suppose.

Mr. Levin: Bleed the pipes in the winter.

Mr. Donovan: Well but does he know that that’s…I assume he’s got to the bathroom there in the wintertime.

Mr. Davis: I didn’t even think…

Mr. Scalzo: In the pool…in the pool house?

Mr. Donovan: Well maybe he’s out…in all seriousness if he is in there working out or he’s working on his cars? I…I just…did you plan to have heat there?

Mr. Davis: I didn’t have but there’s floor heat in there. He just like I said he put everything together.

Mr. Donovan: Okay.

Mr. Davis: That’s what she came with, she had a list of…a list of items she wanted to have be fulfilled and she gave it to him and then I just said I wanted to have a…a just an area where I could put the three cars in there, exercise, maybe sing…I don’t just whatever my own little destress area.

Mr. Scalzo: Okay, I mean, you know as I was mentioning dimensionally front to back I…I don’t know that you are going to see that from the neighborhood so I…I…I would be willing to accept the dimensions of…of the structure. Height obviously is something that is going to be worked on.

Mr. Davis: Right and I didn’t have a problem with that.

Mr. Manley: So at this point we can Reserve Decision if…if that’s the Board’s pleasure we would need a motion to Reserve Decision and this would give the applicant sixty-two days. If we got close to that sixty-two days and you weren’t yet ready with your plans you’d have to let the Board know you weren’t ready and you’d have to waive that requirement because if you waive the requirement we can go beyond the sixty-two days.

Mr. Davis. Right.

Mr. Manley: If you don’t waive the requirement we have to vote…

Mr. Davis: Right, I understand.

Mr. Manley: …because we have only sixty-two days to make a decision.

Ms. Gennarelli: Excuse me, Jim, if you are going to Reserve Decision wouldn’t you be doing it until the next meeting?

Mr. Manley: We would.

Ms. Gennarelli: So he would have to let us know by the next meeting whether he was going to be here or not.

Mr. Manley: That would be correct.

Ms. Gennarelli: Yes.

Mr. Donovan: Thank you Betty.

Ms. Gennarelli: Okay.

Mr. Davis: Thank you, you are very good. Thank you. I love her. She’s helped me out immensely.

Mr. Manley: Betty keeps us all straight here.

Mr. Davis: Well she is very, very good at what she does.

Ms. Gennarelli: Thank you.

Mr. Davis: Very good.

Ms. Gennarelli: Thank you.

Mr. Davis: Just to be clear so I don’t mess it up when I go tell my wife and everything. Basically I just have to go back to the a…Mr. Fiola and just have him crunch it down a little bit more and then come back and do the process all over again as far as…?

Mr. McKelvey: Try and get the…

Ms. Gennarelli: Plans.

Mr. Davis: No I understand the roofline to get that a…

Ms. Gennarelli: To get the plans in.

Mr. McKelvey: Yeah, yeah but I say to we have to have them ten days before.

Mr. Donovan: But you don’t need to do another Public Notice or…

Ms. Gennarelli: No.

Mr. Davis: Oh, okay.

Ms. Gennarelli: None of that again.

Mr. Manley: That’s all; we’re avoiding all that for you.

Mr. Davis: Oh, thank you, thank you.

Mr. Manley: So that’s why we’re Reserving Decision to give you time to get those plans and then you’ll submit them to Betty and she’ll…

Ms. Gennarelli: And Joe will look at them, do up the figures…

Mr. Davis: Okay, okay.

Ms. Gennarelli: …and then we’ll have them…

Mr. Davis: Okay.

Ms. Gennarelli: …before the next meeting for them.

Mr. Davis: Alright.

Mr. Manley: And then the next meeting we can then review it and then make a decision you know from there and hopefully everything will be where it needs to be.

Mr. Davis: Sure, okay.

Ms. Gennarelli: If you need to call me tomorrow you can.

Mr. Davis: Okay, I will.

Mr. McKelvey: I’ll make a motion.

Mr. Manley: This is…this is Betty’s last meeting tonight. We’ve got Mary who is going to be here next month so…

Ms. Gennarelli: Oh, really, she’s coming back?

Mr. Manley: She is coming back.

Mr. McKelvey: I’ll make a motion to Reserve Decision till next month.

Mr. Manley: We have a motion, do we have a second?

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Reserved Decision so at this point you’re all set and Betty will see you with those new plans hopefully in the next couple of weeks.

Mr. Davis: Couple of weeks.

Mr. Manley: Alright, thank you.

Mr. Levin: Thank you very much.

Mr. Davis: Thank you.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 10:16 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Time Noted – 8:43 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

(97-1-47.2) R-3 ZONE

Applicant is requesting reconsideration of the request for an interpretation and the issuance of a special permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh Rental Community. This reconsideration is based upon newly submitted information.

Mr. Manley: As we make our way, item number seven on the agenda this evening is DRA Fidelco Newburgh, LLC. located at 68 Stewart Avenue in Newburgh requesting an interpretation reconsideration of the request for an interpretation and the issuance of a special permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh Rental Community. This reconsideration is based upon newly submitted information. Ms. Gennarelli…

Ms. Gennarelli: Yes?

Mr. Manley: …are the mailings in order?

Ms. Gennarelli: Yes, this applicant sent out fifty-eight letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. At this point I’d ask the applicant or the applicant’s representative to step forward and state your name for the record please.

Mr. Cappello: Good evening, my name is John Cappello, I’m an attorney with Jacobowitz & Gubitz, this is I’m here on behalf of the applicant. I also have from DRA, George Carfagno and Michael Blum who are representing and may speak to answer some questions. We are back here a…to ask for to reconsider an interpretation and we’ve provided a little more background and response to the questions if the Board recalls we were here back in November and what we’re looking to do is…we have a site, our client DRA is approved for a hundred sixty eight a…rental project, Summit Lane that is built up and almost rented. We now have a site plan approval from the planning board to build a second section of that on adjoining property that would be a twenty-nine more units, a single family home that you granted an area variance for at the last meeting and twenty-eight multi-family units. So it will be an integrated a…multi-family a…rental development. It’s very successful and we anticipate that this a…addition will also be successful. Now the property that was purchased a…has certain structures on it. It was a…owned and operated by the Newburgh Jewish Community Center and they operated in this building that you see up here a daycare center and offices a…with a footprint of about twenty-nine hundred square feet. Also located on the facility are two a…farm buildings that were used for storage that total up thirty-nine hundred square feet. What my clients would like to do is they will as part of the development of the twenty-eight, twenty-nine new rental units, obviously they are not going to keep the barns they would like to knock down the barns that were used for storage and convert this building which is fully functional, a decent attractive building with a…fix up a little bit to provide an amenity for solely for the residents of the community to a…a…to store some facilities common in a rental or a…condos to have a facilities where folks who need a little extra storage a…can have it. It’s a great amenity to be able to have and I can tell you I was telling George and…and Mike outside I have a cousin who has a…lived in a single family home in Niagara Falls, my home town all his life with his family, his two children have moved and live in New Jersey now. So he’s one of the few people he retired to New Jersey and they bought a condo and I was there at Christmastime and talking to him and he say, you know we love the place, has a gym right across, you know recreational facilities and everything. He said, you know, the one thing and I didn’t prompt him, he said the one thing I wish I has was an attic. And this essentially will serve as a shared attic or a basement for the tenants of the facility and only the tenants of the facility to be able to put holiday decorations a…put their bikes in the winter a, you know, various items that they don’t have to get every day that they can put in here and it provides a decent amenity. A…now when looking…

Mr. Manley: I…I don’t mean to interrupt but I think what the Board would like to get this evening is we have…

Mr. Cappello: Yes.

Mr. Manley: …a pretty good handle…

Mr. Cappello: Okay.

Mr. Manley: …on the scope of the project especially it is to most of us pretty fresh from our last bout with this. I think what we really want to focus on that the Board would like to really get the crux on is what specifically do you have to share with the Board or your…your case as to what is different from the last time versus this time.

Mr. Cappello: Yes.

Mr. Manley: Because we really need to focus…

Mr. Cappello: Yes.

Mr. Manley: …on…on that.

Mr. Cappello: And that’s what I’m getting to but first I wanted to…to let you know that this is a…a benign and a beneficial use. A…what we’re here today is in looking in the Code we did come up with some new information but I want to back up and provide an additional argument to you as well. Because in New York law, you know, we’re not asking for a var…variance here, we’re asking for an interpretation so it’s a little bit different standard than a…a variance where you have to meet criteria. When you’re asking for an interpretation your job as the ZBA is to take any ambiguity and it must be construed in favor of the property owner and I’ll read from a…a Court of Appeals case which says exactly that. Since zoning regulations that are…are a derogation of the common law they must strictly…be strictly must be strictly construed against a municipality which has enacted and seeks to enforce them. Any ambiguity in the language used in such regulations must, use the word must again, be resolved in favor of the property owner.

Mr. Manley: Can you share what case is that?

Mr. Cappello: That’s Allen v. Adami, 39 N.Y.2d 275 it’s a Court of Appeals case, it’s been cited hundreds of times for that proposition in New York law.

Mr. Manley: Thank you.

Mr. Cappello: I can give you this page if you want.

Mr. Manley: That would be wonderful. Why thank you. Mrs. Gennarelli…Ms. Gennarelli if you would a...notate for the record that counsel has provided us a copy with that document which we’ll enter into the record.

Ms. Gennarelli: Okay.

Mr. Cappello: Now the first argument I would present to the Board is contained in my February 17, 2016 letter and that relates to the fact that whether or not this use of a common area for storage is an accessory use at all because your Code is a little bit a…conflicts itself in that area because the Code defines accessory use as a use recognized in Article IV schedule of district regulations as clearly incidental to a principal use whether permitted by right or special condition and permitted only in conjunction with the principal use identified. Now when you look at multi-family houses…housing though and you look at your accessory use table for the R-3 zone district for multi-family housing is permitted the only accessory uses that would be permitted are a private garage or carport for not more than four vehicles, keeping of dogs or cats, off street parking, separate living quarters within a permitted structure for purposes employed on the premises, satellite earth stations in accordance with Section 184-40 and home occupations. Items such as tennis courts, swimming pools which are listed accessory uses for single-family homes and listed in other areas in the Town are not permitted with a multi-family development. So a tennis court, a swimming pool, a recreation center, a club house all these uses are in just about every multi-family development not only within this Town, within this region, within this State and within this nation would not be permitted if you look at this Code and you strictly read that definition as I think your zoning code officer did when he looked at the a…use of this facility and it is a little unique to put it in a separate facility but it is common in multi-family developments either in a basement they have lockers or storage space or in a addition in the same building to have a storage space. Due to site constraints here, due to the fact that there’s a perfectly usable building the applicants have decided why not use the building that we have instead of excavating a…basements and everything so… How do we get to the use well if you look at the use table when it defines multi-family developments they’re permitted pursuant to…it says that the supplementary regula…regulations applications to multiple dwellings or townhouse Section 185, it’s pursuant to Section 185-25. When you look at 185-25 a…Section 125-A says is entitled ownership it says the Code requires that the entire site occupied by the multiple dwelling or townhouse development and related accessory uses shall be maintained in a singular or group ownership or common control throughout the life of development. So beyond the accessory use table the multi-family developments within the Code provisions them self permit related accessory uses. I would argue this is a related accessory use because storage is an accessory use in related either accessory or part of the development itself. So that’s why storage is permitted and I believe this was in the basement of the building even though it’s not listed as a separate accessory use we probably wouldn’t be here because the Code Enforcement Officer wouldn’t have thought twice of it. But if we extended a couple of the a…large buildings where…where the units are located and have storage facilities we probably wouldn’t be here. Yet the clubhouse that is built for the a…units had a room or a couple rooms in the clubhouse that had accessory storage I doubt we would be here because the Code Enforcement Officer would be more familiar with it because all those are related accessory uses to multi-family a…developments so…

Mr. Donovan: John, can I just interrupt for a second?

Mr. Cappello: Sure.

Mr. Donovan: Is it your argument that they’re not accessory uses but part and parcel of the principal use? Is that essentially…?

Mr. Cappello: Part of the principal use as defined in Section 125 which put related accessory uses with them because if you didn’t define it as part of the principal use then I don’t think you would be able to have swimming pools, tennis courts, club houses, recreation centers within a multi-family development because none of those uses are listed as a specific accessory use for multi-family dwellings in your…in your zoning table yet they all exist and your Code in 125 specifically references a…

Mr. Levin: Isn’t there a swimming pool and tennis court right next to the house?

Mr. Cappello: A…there…there is but we’re putting recre…yeah, we…we have recreation here that we are going to be put in that the Code Enforcement Officer and the planning board a…approved and the Code Enforcement Officer didn’t say we needed a…a variance and that’s my point. Just about every multi-family development either has a tennis court or a swimming but I don’t think we have a swimming pool in this…

Audience Member: No there is.

Mr. Cappello: There is a swimming pool.

Audience Member: Yeah, yeah, yeah.

Mr. Cappello: So a…just about every one either has a swimming pool or a tennis court or a building with recreation, you know, facilities or a club house or a meeting room and to have, you know, parties. If you look at your list of permitted accessory uses none of those are listed as being permitted with multi-family dwelling units. So I believe this is in that category, this is something that is related to the use, it will be used only for the tenants. Nobody will be able to rent this out, they won’t be able to access it, it will only be for people who live within that rental community to put a few things in and I don’t know if it will be part of the rental unit or they can rent it separately but it will certainly…it’s not big enough for anything other than that. But it’s, you know, something nice to offer them a…so I believe if…if you look there is a legitimate argument construing any ambiguity into our favor that your Code for multi-family dwellings, pursuant to 125, allows related accessory uses as part of the definition of multi-family dwellings, you know, it…itself otherwise every multi-family dwelling complex in the Town is probably in violation of your zoning law. So that’s argument number one that it’s not an accessory use whatsoever. Argument number two is part of what we presented to the last meeting what I have a little more information in that is the provisions in your Code that relate to the use of the site and not in the continuing of non-conforming uses. This site a…was a single-family house with a barn and tennis court and a swimming pool. In the 1990’s, I think 1991 an application was made to convert it to a daycare center. This was before the Newburgh JCC owned it. A…the Town at that point was considering amending the zoning to allow daycare centers as a permitted use but at that time you had a house, a single-family house, the barns, the tennis courts and a…and a (Inaudible) the tennis courts a…the barns obviously were permitted as an accessory use to a single-family, house is part of agriculture. When the applicant was moving to convert this…the prior owners were moving to convert it to a daycare center in 1991 the Town was considering the zoning but they moved it…they needed to go quicker than the Town was going so in 1991 they were granted a use variance to convert the single family to a daycare center. No mention of the a…barn buildings, barns are used to put stuff in, no mention of that in the a…in the use variance and I included a copies in my resubmission so you have the copies of the ZBA determination. In 1992 the Town did then adopt their Zoning Ordinance and in the zoning, new zoning changes they allowed a…daycare centers as a permitted a…a permitted use. Now at that time and currently they did not allow storage of any kind as a permitted accessory use in the zoning table pursuant to…pursuant to or accessory to a daycare center. So in 1992 when that zoning amendment was adopted these barns became non-conforming uses because they weren’t a permitted accessory use with what…with what was a permitted daycare center and at that point, I think at the November meeting the Board was asking well was…there was a landscape person in there was that legal. Well the evidence we show is that these were existing in 1992 I think you can tell by looking at them that they’ve been there since prior to 1992. The only thing you do with barns is you put stuff in them so they would have to have been storage. They existed in a…on this property and have been used in one way or another since that time. And also what I provided evidence to you is when the Newburgh JCC bought this and converted it their daycare center and offices there was a letter written to a…Mr. Canfield a…by…engineer a…

Mr. Donovan: Jim Raab.

Mr. Cappello: Jim Raab.

Mr. Donovan: Not…not an engineer.

Mr. Cappello: What’s that?

Mr. Donovan: Not an engineer just for the record.

Mr. Cappello: Oh, okay. Doce, he was with Doce. And he had met with Mr. Ewasutyn, the planning board chair and a…Mr. Canfield to discuss the use of this site. He provided a sketch of the site showing the facility here, showing the barns as barn buildings and sheds and at that point he wrote a letter to the board saying this is confirming my conversations with you that these facilities that as they exist converting this to the Newburgh JCC Daycare Center would not require site plan approval. Pursuant to that the JCC occupied the building, received Certificates of Occupancy that there were no zoning violations. These buildings still existed, these buildings were used for storage, they were always used for storage. We also provided you a…during that time with refinancing that potential purchase of that there were several times a request was made to Code Compliance whether there are any zoning violations on the property and these barns were in…everybody knew they were there, and yet every time the letter concluded that there were no violations on the property which is consistent with the fact that these pre a…pre-existed in 1992 zoning change and therefore a…were conforming.

Mr. Manley: Well, that…that I’m going to actually disagree with a…and we may have to agree to disagree but in Mr. Canfield’s letter which you provided a copy of December 17th of 2013. There is a caveat to his statement and you give part of the statement as actually being correct as yes, he does state in searching our records we find no other open violations against the property. No inspection no…this is the key, no inspection of the premises has been performed and the statement regarding our records should not be relied upon as meaning no violations in fact exist.

Mr. Cappello: That’s the one letter but did you read the letter then from Jim Raab showing everything that was on the property including those barns the JCC got a C.O….

Mr. Manley: I’m going to hold…

Mr. Cappello: … to occupy this building.

Mr. Manley: I’m going to probably hold more weight in what our own Code Compliance...lists.

Mr. Cappello: And your Code Compliance Officer with that letter in the record issued a Certificate of Occupancy for this building. A Certificate of Occupancy wouldn’t have been issued if it required site plan or if the buildings were illegal. So that is evidence, once again you have to construe in favor of the property owner not look to find reasons to deny it. This building got a C.O., this building a letter was written to your department saying these barns exist there, it was held they did not have to go to site plan approval because they wouldn’t have gotten a C.O. if Mr. Canfield determined they had to go to site plan approval. He had the map in front of him that showed the barns. The C.O. was issued for that. That’s evidence that what was on this property and never got a violation from 1992 to present was a pre-existing, non-conforming use otherwise that C.O. could not have been issued.

Mr. Manley: Well I…I personally inspected the property. I was out myself and personally checked the property, there was a violation. There was a landscaping company operating out of that property with no Certificate of Occupancy with no planning board approval so in…in looking at that when you say there was no violation…

Mr. Cappello: But what were they operating?

Mr. Manley: …indeed, they were operating a landscaping business. They had equipment located there; they had trucks parked back there…

Mr. Cappello: They stored stuff in the building…

Mr. Manley: …they had tractors…

Mr. Cappello: …which is (Inaudible)…

Mr. Manley: …but illegally. Well the…

Mr. Cappello: How can you say they are illegal if there wasn’t a violation given up these buildings that used from storage why wouldn’t they be legal…?

Mr. Manley: …because that…

Mr. Cappello: …for that landscape person to put…

Mr. Manley: …I don’t see anything in the…I don’t see anything in the record that says a landscaping business can operate out of that location.

Mr. Cappello: Well…if the landscaping business was storing stuff in a building that they were allowed to store and my understanding is in consideration of that they kept the…the a…the property if whether it was the JCC’s equipment or that equipment if they were operating a business they would have been violating it. They were storing stuff in buildings that have a traditionally been used for storage it wouldn’t have been a violation that’s why they weren’t violated.

Mr. McKelvey: They were…they were running a business though.

Mr. Cappello: Then maybe the Code Enforcement Officer could have violated them for that portion of the business but they stuff that was in the building in the storage in barns that these barns…these barns were legal…

Mr. Levin: Have they told you that the Jewish Community Center stored items in there?

Mr. Cappello: What was…?

Mr. Levin: Are you saying that they did?

Mr. Cappello: I don’t know who stored items but barns are there…

Mr. Levin: Because I…

Mr. Cappello: …barns are used only for…

Mr. Levin: …I stored most everything that came out of that center in my building. There was nothing that they didn’t ask me to do that I didn’t take.

Mr. Cappello: But my point is that these buildings existed in 1992 when the zoning changed, they existed as…they were non-conforming buildings at that time. The only thing you could do to them is store them. They weren’t taken down so whether there was anything in their buildings that existed for storage…

Mr. Donovan: So…so John, if I…but if I look at the letter written by Jim Raab and I look at all of Jerry Canfield’s letters am I going to find anywhere in any of those letters that says that those buildings were used for storage?

Mr. Cappello: No, they’re barns what do you use a barn for? That’s…I mean, they’re barns, I was conver…they were converting it to a…a daycare center, they show barns there. They said you don’t have to go…they didn’t have to go for site plan approval. If those barns were illegal they would have had to go for site plan approval. I can’t approve a negative and go back and prove it plus those buildings were never violated.

Mr. Manley: You provided us…you provided us with copious amounts of information and in none of that information do we have perhaps an affidavit that states that yes, we stored stuff there. There was stuff stored there. Looking at those buildings they…they are in quite disrepair…

Mr. Cappello: (Inaudible)

Mr. Manley: I frankly probably wouldn’t store anything in them based on the disrepair that they’re in.

Mr. Cappello: But they’re there and they’re non-conforming. Do we agree to that? They’re non-conforming? Those buildings were pre-existing, they were there before the zoning and there’s nothing in the zoning as of 1992 that permitted them?

Mr. Manley: Those…those barns look like they’ve been there for ages, yes?

Mr. Cappello: So they were pre-existing non-conforming barns so we had…when the clients purchased it…they had three thousand square feet of non-conforming buildings on this site. Whether they’re used for storage, whether they’re not used for storage these buildings are non-conforming on the site. Whatever they were used for they weren’t used for a daycare center they’re non-conforming. There’s nothing in your Code that says these buildings are permitted accessory use to a daycare center therefore they were allowed to continue there because they’re pre-existing, non-conforming. Whether they stored stuff in there, whether they…whatever they did there those buildings are non-conforming so my point is under your Code what we’re doing now is we are taking these non-conforming buildings down. So you had a site that had a twenty-nine hundred square foot conforming daycare center and three thousand plus square feet of non-conforming buildings. Non-conforming uses...whatever they were used for it wasn’t a daycare center, it wasn’t permitted, they were permitted to stay there because they were pre-existing. Now at the end of the day what we propose is a twenty-nine unit conforming multi-family development and that multi-family development will have twenty-nine hundred square feet of areas for storage a…as part of the multi-family development…as accessory to the multi-family development I would argue pursuant to my earlier argument that this is an access…this is permitted as either a related accessory use as per the definition of multi-family development in 185-25. It’s either permitted as that or at the end of the day this twenty-eight unit with this accessory use that maybe is not listed as an accessory use but still is a common accessory use is more conforming that the twenty-nine hundred square foot daycare center and those non-conforming barn buildings whatever they were used for so therefore this Board does have the authority either to one to issue an interpretation that it’s permitted as part of the accessory use or say we’re issuing a Special Permit that this use with this use as accessory storage although it’s not listed as accessory storage it’s still a more conforming use of the site than the prior use of the site for the JCC with the non-conforming barn buildings. It sets a precedence, I think, in interpreta…interpreting and taking any ambiguity to construed in favor of the property owner, this is a rational a…decision, any conditions the Board would want to place on any interpretation that this is used solely you know, for the residents that’s perfectly fine. We would be willing to do that but at the end of the resolve I’m going to go all the way back to my original statement and why I started with that…at the end of the day you have two options here that are rational, that I think that would be supported by your law to allow something that is actually a very nice amenity that will benefit people and that won’t set a bad precedent because I don’t think that you’re going to see this precedence much where you have non-conforming buildings and something here that is related to the use and is arguably part of the use so I think there’s a lot here that you can differentiate this that you can let a decent use a…proceed, make this a little better development without setting a precedence that would a…come back to bite you because I understand your concern.

Mr. Manley: Does the Board have any questions for the applicant or the applicant’s attorney?

Mr. Masten: I’ve got something to say Jim. You said they’re going to take those existing barns down.

Mr. Cappello: Right.

Mr. Masten: Now in the future is there any chance that they’re going to build something in those places?

Mr. Cappello: No, no we have a…we…well we’re…we’re building a twenty-eight…I mean we’ve used up this property. This is going to be…eventually this will…this is going to be developed soon, we have site plan approval. This will be combined with this and this will be a one unified multi-family development and no additional storage. Just that building since it exists since it’s a nice amenity they…they would use for storage but no nothing at the…you wouldn’t be able to put anything…they might switch a tennis court with…you know something else but…

Mr. Manley: Why wouldn’t they look to a…separate the property out, rent the house out, sell the house?

Mr. Cappello: Because a…I mean it just wouldn’t…this house is a unit is part of the a…development but this…all this land was used as density for, you know, for the development it was set out as a unified development. Cutting this off just would a…I think there may even be a…some detention in there it just wouldn’t make sense to cut that and it may make to make a cut out…

Mr. Manley: Why not redo…why not redo the house and rent it out? You have such a nice property which I’ve been to the…the properties are very well built, they’re very well maintained, a…actually I hate…I hate to say it but by turning it into storage may detract from the…the property versus fixing it up and…and redoing it and maybe renting it as…make two more units out of it for rentals versus…

Mr. Cappello: The unit…

Mr. Manley: …I throw that question out because can something else be done with the property as opposed to storage?

Mr. Cappello: Well this is the…anything else other than storage which is related to this would then require subdividing or require a use variance because it’s not permitted within context of a…a multi-family dwelling and…and frankly converting this into two dwellings or something giving, you know, current Building Code standards probably would be very difficult to do a…the density calculations were, you know, based upon the…the entire land so it’s just not in the applicants a…you know, to…to do that but you know as far as storage when you say looks the looks on the outside will be the…the same. It will be maintained I mean you’ve…you’ve driven through this, you know, they’re not going to maintain this in a manner that’s going to detract. They would maintain it in a manner that would be just as attractive would make it especially since it’s you know…

Mr. Manley: The other question is why not keep the…if the barns are pre-existing non-conforming…keep them? Let them use that for storage.

Mr. Scalzo: I believe the front of your new development would preclude you from using them.

Mr. Cappello: Yeah, the barns are located and plus they’re…they’re dilapidated, this is an attractive a, you know, attractive building and you know, this is what the applicant thinks they can do and is the most marketable and most sellable meets…meets their needs, I mean, that aren’t an ugly not ugly but barn building I think to someone who wants to take the wood they’re…they a…they will be taking them down but this is, you know, this is their vision and we believe their vision is accommodated by the Code. Once again, we’re not asking for a variance here so we don’t have to show we can do something else. This is what they want to do and I think we have a legitimate argument that…

Mr. Manley: But any interpretation by this Board carries for the future.

Mr. Cappello: Yes.

Mr. Manley: So this Board not only has to look at, you know, we have to look at the intent of the Code as written by the…as written by the...

Mr. Cappello: Right.

Mr. Manley: … Town Board. Just as the Supreme Court looks at, you know, case law with respect to constitutional law this Board has to kind of look at what was the intent or what did the Town Board when they enacted it, and I understand what you’re saying and certainly that will weigh, you know, in the…in our decision with what you mentioned before but, you know, certainly what this Board doesn’t want to do is legislate the Town Board…with the…the intent of the Town Board…

Mr. Cappello: (Inaudible)

Mr. Manley: …our job is not to re-write the Code.

Mr. Cappello: No, we’re not asking you to rewrite the Code but what we’re telling you is that that the Town Board did something in the Code that again is as ambiguous or can be construed in two different ways the law requires…

Mr. Manley: Has the…

Mr. Cappello: …that the law requires that…

Mr. Donovan: Can I just interrupt?

Mr. Cappello: (Inaudible) must (Inaudible) of the property owner…

Mr. Donovan: John you…

Mr. Cappello: …your Town thinks accessory storage to a…a multi-family development sets a bad precedence the Town could adopt a local law that says no storage or mul and then there’s no question, it’s not ambiguous and then there’s no question. It’s not ambiguous. I would tell these guys when they ask me no you can’t do it, it says no.

Mr. Donovan: We’re…we’re in the R-3 Zone, right?

Mr. Cappello: Right.

Mr. Donovan: The R-3 Zone so I’m looking at the…just relative to your first a…argument I’m looking at the permitted accessory uses if I’m reading this correctly it indicates that swimming pools and tennis courts are permitted accessory uses.

Mr. Cappello: Not with C-2 which is the multi-fam…or C whatever.

Mr. Donovan: Yeah, I don’t really…you know what I’m not understanding that numbering sequence under Accessory Uses because I…they all don’t seem to jive.

Mr. Cappello: But it does say permitted with C you know…

Mr. Donovan: And…and it’s been referenced in 185-43 which says they’re permitted in all districts.

Mr. Cappello: Yeah but off the…

Mr. Donovan: If I’m reading it right John.

Mr. Cappello: Yeah. Which one are you talking about there?

Mr. Donovan: So I’m talking about…I’m in…I’m in Use group A, Column A, accessory uses, number 3…

Mr. Cappello: Right, then it says permitted with C-1 thru 3 and C-1 thru 5 a multi-family dwellings are…

Mr. Donovan: But I was just looking back to 185-43 it says they’re permitted in all districts.

Mr. Manley: So there may be a discrepancy between spreadsheet and the written Code, yes?

Mr. Donovan: Well, you know, it’s C-1…

Mr. Cappello: It says C-1 thru 5; multi-family dwellings are D-1.

Mr. Donovan: D-1.

Mr. Cappello: So it’s not permitted with D-1.

Mr. Donovan: I don’t see a C-5. Well I’m saying, I not understanding, I’m not…that’s my question.

Mr. Cappello: But I mean certainly I think this is what the Code Enforcement Officer has here that says storage isn’t permitted as a listed accessory use and…and there is D-3, you know D-1 is if you look at keeping of 5 total dogs it says C-1 thru 3 and D-1 thru 7 so…

Mr. Donovan: Yeah, okay.

Mr. Cappello: …the D’s there are listed D’s but it’s not listed anything for you know a tennis or swimming pool but when you look at multi-family and it (Inaudible) says multi-family dwellings in accordance with 185-25 so in 185-25 where it talks about recreation where it talks about related accessory uses and that would be the justification to say if it’s a related accessory use to a multi-family development it’s permitted pursuant Section 185-25 obviously with planning board approval to review the architectural and go through the whole review but that’s the argument I would make that it is…it is a permitted use, I think it’s irrational and I think certainly the fact you’re looking at it and you can’t figure it out makes it ambiguous and therefore you know it would be construed in favor of the property owner. And if the Town wanted to change it you report it to the Town and you say change it but I don’t go back to my original I don’t see why you would want to this isn’t a…you know, a…a mining operation or anything (Inaudible) it’s a…a building we want to convert so people can put their bikes and have a nice…you know, have a nice little amenity. I don’t know how to…it’s…it’s a rationale to provide you to allow a use that it can be beneficial to this rental community a…to occur.

Mr. Manley: You know the way I look at it is I’m looking at it as a use variance versus I mean, that’s where…that’s where I’m leaning towards is…is a use variance versus a a Special Use Permit or an Interpretation because there is a…there is a…there is a mechanism to address this and that would be in the form of a use variance versus an interpretation.

Mr. Cappello: Well I have an application in for a…a use variance I mean I don’t necessarily agree with you I think it’s in giving it the…a liberal interpretation that you’re required to I think this fits within you know that definition. You know I’ve made my position to the court you know…

Mr. Manley: You have.

Mr. Cappello: …an I thank you for your time, if you had any more questions I’d be happy to answer your questions.

Mr. Manley: Well at…at this point I’d like to, I’m not sure that there’s anybody here but I’m going to open it to the a…we did have some public comment…

Mr. Cappello: Right, right.

Mr. Manley: …at the last and I’m not sure if anybody is…is here this evening but I’d like to open it up. Are there any comments from the public? Is there anybody here that would like to address this particular application?

Mr. Feder: Yeah, Bill Feder, Rockwood Drive. How many, how many residential units are on the property?

Mr. Cappello: Twenty-nine.

Mr. Feder: And how many square foot of livable space in the house?

Mr. Cappello: I would…it meets the Code we went through the plans already.

Mr. Feder: It would be less than two thousand I would assume it’s a pretty old house?

Mr. Cappello: Oh that is…? Oh, in this house?

Mr. Donovan: He means in the house.

Mr. Cappello: Oh, I’m sorry.

Mr. Feder: How many…how many square…?

Mr. Cappello: Twenty-nine seventy-four.

Mr. Feder: So you could offer each…each person a hundred square feet in the…and a place if 10 x 10 storage unit, at a maximum efficiency?

Mr. Scalzo: Well, if you consider hallways probably less than that.

Mr. Cappello: I think it comes out to maybe forty…forty, that’s about it.

Mr. Feder: Okay, you already had a design person looking at it?

Mr. Cappello: Just a schematic concept.

Mr. Feder: Right, okay, thank you. Thank you.

Mr. Manley: You’re welcome. Is there anyone else from the public that has any questions with regard to this application?

No response.

Mr. Manley: At this point, do any of the other Board Members have any questions? I know Mr. McKelvey you…?

Mr. McKelvey: At time I remember there was horses on the property.

Mr. Manley: So those may have been horse barns.

Mr. Masten: Yes.

Mr. Cappello: Yeah, when it was a house before it was a daycare center.

Mr. McKelvey: Well I think it…it…there was something to do with horses when it switched over to the Jewish Community Center.

Mr. Manley: So those then would have been horse barns.

Mr. Masten: Yes, yes they were.

Mr. Cappello: Still non-conforming structures.

Mr. Scalzo: A…I might be really reaching here but from previous meeting does anyone recall us asking for a layout…a proposed layout of the inside…

Mr. Masten: No.

Mr. Scalzo: …of the storage. No?

Mr. Masten: No, I don’t remember anything Darrin.

Mr. Scalzo: Alright, I…as this gentleman had just asked the question…

Mr. Donovan: For this building Darrin or for the…?

Mr. Masten: Either one of those.

Mr. Scalzo: For the storage, for the proposed storage facility.

Mr. Cappello: I mean we…we have one…I wasn’t, you know, asked. I think a…

Mr. Scalzo: No, I couldn’t recall.

Audience Member

Ms. Gennarelli: I’m sorry you are going to the microphone.

Mr. Cappello: For the record that’s Mike Blum…

Mr. Manley: I believe Mr. Maher did at the last meeting, yes.

Mr. McKelvey: You have to go to the mic.

Mr. Blum: Sorry.

Mr. Masten: To the mic.

Mr. Scalzo: Or you can take it to him.

Ms. Gennarelli: Thank you.

Mr. Blum: I think at the last meeting somebody on the Board asked how many cubicles we would have and I think we said around forty cubicles.

Mr. Manley: Thank you. Are there any other comments, questions from the Board Members? Mr. Cappello would you like to add anything further before we…

Mr. Cappello: No, I...

Mr. Manley: …move to close?

Mr. Cappello: …think I made my point a…you know, several times. I do acknowledge that there is one Member not here and the last time it was a three-three vote. I don’t know if…if I swayed but if the Board I…

Mr. Donovan: This is not a discussion that we’ve had but I…I think we’re going to have the discussion. You know, typically it’s a seven Member board of which there are presently six Members appointed and sitting. Any a…application needs four affirmative votes which means you need four out of five Members tonight. It’s been the Board’s practice in the past to advise the public or not the public….the applicants that if they wanted to defer a vote until there was a…you know, we only one other Member though so we’re not going to…to my knowledge we’re not going to have seven time soon?

Mr. Manley: Not…it…it’s going to be a couple of months.

Mr. Levin: That’s the gentleman back there that you ask.

Mr. Manley: It will probably be a couple of months.

Mr. Donovan: So I don’t know what the Board’s inclination…in the past when we’ve had a full complement of seven…

Mr. Manley: We can’t guarantee that next month somebody may not be out or sick or…

Mr. Cappello: I’d just ask the Board in deliberating if it looks like it’s…

Mr. Scalzo: I don’t…I don’t know that we can answer that…

Mr. Cappello: …if you could put it over for a meeting we would…we would a…you know, appreciate that consideration so we could a…

Mr. Manley: We could certainly approach that a…

Mr. Donovan: I…I think what we can’t do John, is tell you how the vote is going to come out because no one…no one knows that...except the person with the Ouija board perhaps but…

Mr. Cappello: Right.

Mr. Donovan: …no one knows that so if you’re inclined to think and I mean, we all know how the votes went last time and if they stayed the same we know what the result would be. So if you wanted to say to the Board I extend the time and I ask you not to take action tonight the Board could that’s up to the Board but I mean that’s what we’ve done in the past.

Mr. Manley: I mean, if we close the Public Hearing we have sixty-two days to…to make a determination. If we leave the Public Hearing open then it just continues to next month provided that everybody is here…

Mr. Cappello: I don’t think I have any info…any more information I could possibly give you. I’m trying to say…you know, that…this argument I…I…you know, I thank you I…I made it I…if I could get a wink or something I would apprec…I will leave it up the Board that you know, we’ve a…raised the issue of (Inaudible). If the clients have anything to add I would request that you close the Public Hearing.

Mr. Manley: Okay, at this point I would look for a motion to close the Public Hearing for this evening.

Mr. Scalzo: I’ll make a motion we close the Public Hearing.

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: At this point I’d like to thank everyone. The Board is going to proceed and take a short adjournment so that we can confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait out in the hallway and then we’ll call you in very shortly.

(Time Noted - 9:26 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 10:16 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

(97-1-47.2) R-3 ZONE

Applicant is requesting reconsideration of the request for an interpretation and the issuance of a special permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh Rental Community. This reconsideration is based upon newly submitted information.

Mr. Manley: The next application that the Board is going to discuss is DRA Fidelco Newburgh, LLC., 68 Stewart Avenue in Newburgh. It is a Type II Action under SEQR. And this is a request for an interpretation for reconsideration of the request for an interpretation and issuance of a Special Permit in accordance with Section 185-19-A-3 to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh Rental Community. This reconsideration is based upon newly submitted information before the Board. This is obviously not an area variance so there’s no discussion with respect to our tests but we do need to discuss the information that was presented by counsel. Specifically we need to focus on the new information that was submitted and how it relates to the…to the property and what the feeling is with respect to the Board to offer an interpretation either consistent with the attorney’s submission or that the current Code stands as…as written. Not to put Mr. Scalzo so we’ll…I’ll open it up to anybody on the Board that would like to start the comment.

Mr. McKelvey: I only think…

Mr. Donovan: Well if I could try to maybe…maybe frame the interpretation as…I mean as I understand the request it’s…it’s in two components. Right? The…the first is that the storage is part and parcel of the…of the primary use, essentially. And (Inaudible) the second component is it’s a continuation of a non-conforming use so it’s prior permitted non-conforming use albeit in a different structure. You’re going to take that essentially same volume, for lack of a better word, of…of non-conforming storage and put it into a different structure on the lot. Those are the two components of the argument? If I…?

Mr. Cappello: (Inaudible)

Ms. Gennarelli: I’m sorry. You have to go to a microphone if you are going to speak.

Mr. Cappello: Let me just frame that, the second argument to say a non-conforming component in a conforming component and now there will be a smaller non-conforming component than previously, whether it was storage or horses or whatever but the non...non-conforming component that would exist after the project is done is less than the non-conforming component that exists today.

Mr. Manley: I, you know, I…I’ve reviewed the…I don’t mind starting, I’ve reviewed the a…submittals and you know, I don’t think there’s really anything that’s been introduced to really show storage and specifically that’s why I asked the question with regard to were there any…did the applicant have any affidavits or anything to show that a…it was used for…you know, that they were specifically used for storage. So I…I’m inclined not to really see the interpretation in the way that the a…the applicant has presented it. In fact, the documents and the applicant even stated that there was nothing inferred in the letters that it was used for storage. I…I went through it and it…it’s…doesn’t show that.

Mr. McKelvey: We don’t know what was stored in the barns.

Mr. Levin: I feel differently. I feel that counsel made his point and that the a…buildings were used as storage from one…from one time or another, even if it’s a horse it’s storage and a…I do feel differently than you do. I still like you though.

Mr. Manley: You still like me? Okay. I won’t take it personally. That’s why there’s different minds and different bodies.

Mr. Levin: Yes, you’re right.

Mr. Manley: We all have different conclusions.

Mr. Scalzo: I recall how I voted on this the last time and I…I just…I don’t feel as though I’m compelled to…to change the way I’m looking at it.

Mr. Manley: So what you’re saying Mr. Scalzo is that the items that were submitted and that you review did not change your…or didn’t offer anything to…to sway your opinion.

Mr. Scalzo: It did not.

Mr. Manley: Okay. Mr. Masten do you have…?

Mr. Masten: I didn’t see any real changes Jim and also there was no specific diagram of how…how they are going to be laid out in each of those buildings for storage. You should have some kind of configuration of what, how and how big these storage units should be.

Mr. Manley: Does anybody else have anything to add? Now at this point, the Board would either have to make a motion a…deny the interpretation or a motion in the affirmative of accepting the applicant’s interpretation so do we have a motion for either?

Mr. Levin: Jim, can we give them the opportunity to hold off until a meeting or…?

Mr. Scalzo: Well actually Richard, you could actually make a motion to Reserve judge…a Reserve Decision that’s…

Mr. Manley: You know, that…that could be done with respect to…to, I mean the applicant was given that option prior to the start of the a…of the voting.

Mr. Cappello: (Inaudible)

Ms. Gennarelli: Can you please go to the microphone again?

Mr. Cappello: I…I would request that…that option now that the Board a…hold this over and reconsider and then the reconsideration with the new Member there is another component that you’re counsel to the argument. You’re focusing on the storage but the issue of…accessory storage being a component of the building that the Board hasn’t discussed and I would like to reserve it and have the full Board discuss that issue as well. I would ask that the Board hold over the use variance as well.

Mr. Manley: What is the Board’s…? We need a…if the Board wishes to Reserve Decision on this we would need a motion from the a…Board to Reserve Decision.

Mr. Levin: I’ll make the motion to Reserve the Decision.

Mr. Manley: We would need to have a second to that motion.

Mr. Levin: We need a second.

Mr. McKelvey: I’ll second it.

Mr. Manley: We have a motion and a second to Reserve Decision on this application.

Mr. McKelvey: He wants to Reserve both of them.

Mr. Manley: We’ll get to that one.

Mr. McKelvey: Okay.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: No

Mr. Manley: So the Decision is reserved until our next meeting. This will be on our meeting for March the 24th at 7PM. In addition we’re going to need the next item which is the use variance for DRA Fidelco Newburgh, LLC, at 68 Stewart Avenue in Newburgh. We Reserved Decision on that one that was coming up for a vote this evening, if the applicant wishes to postpone and give this Board the a…the okay to move that to the next meeting which would be March 24th we would just need a verbal a…

Mr. Cappello: (Inaudible)

Mr. Donovan: At the microphone and just indicate that you extend any timeframes since we are beyond the sixty-two days relative to that application.

Mr. Cappello: Yes, we do agree. Thank you.

Mr. Manley: Thank you. So the Reserve Decision for the use variance would carry over to our next meeting of March the 24th at 7PM. At this point that concludes…

Ms. Gennarelli: Do you have to vote on that?

Mr. Manley: I don’t think we have to vote because the decision has already been reserved.

Ms. Gennarelli: Oh, okay.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 10:28 PM)

ZBA MEETING – FEBRUARY 25, 2016 (Resumption for decision: 10:24 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

(97-1-47.2) R-3 ZONE

Applicant is requesting a use variance to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. The use variance is only required if the request for an Interpretation under Section 185-19-A-(3) is denied by the Zoning Board.

Mr. Manley: So the Decision is reserved until our next meeting. This will be on our meeting for March the 24th at 7PM. In addition we’re going to need the next item which is the use variance for DRA Fidelco Newburgh, LLC, at 68 Stewart Avenue in Newburgh. We Reserved Decision on that one that was coming up for a vote this evening, if the applicant wishes to postpone and give this Board the a…the okay to move that to the next meeting which would be March 24th we would just need a verbal a…

Mr. Cappello: (Inaudible)

Mr. Donovan: At the microphone and just indicate that you extend any timeframes since we are beyond the sixty-two days relative to that application.

Mr. Cappello: Yes, we do agree. Thank you.

Mr. Manley: Thank you. So the Reserve Decision for the use variance would carry over to our next meeting of March the 24th at 7PM. At this point that concludes…

Ms. Gennarelli: Do you have to vote on that?

Mr. Manley: I don’t think we have to vote because the decision has already been reserved.

Ms. Gennarelli: Oh, okay.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 10:26 PM)

ZBA MEETING – FEBRUARY 25, 2016

END OF MEETING (Time Noted – 10:25 PM)

Mr. Manley: At this point that concludes our meeting for this evening we do have to take care of some housekeeping items. At this point…Board, everybody had had a chance to review their minutes, do we have a motion to approve the minutes?

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

Mr. Masten: I’ll second it.

Mr. Manley: All those in favor say Aye?

Aye - All

Mr. Manley: Opposed?

No response

Mr. Manley: Motion carried and at this point, I would like to ask for a motion to close the meeting.

Mr. Masten: I’ll make a motion.

Mr. McKelvey: Second.

Mr. Manley: I have a motion and a second, all in favor say?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The motion is carried. The meeting is closed.

PRESENT ARE:

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 10:28 PM)