ZONING BOARD OF APPEALS

MEETING – APRIL 28, 2016

(Time Noted – 7:02 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 and will try to render a decision on all applications 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 silent or turn the cell phone off and when speaking, speak directly into the microphone as it is being recorded. Ms. Gennarelli could I the Roll call please?

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Gerald Canfield

(Time Noted – 7:05 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 7:05 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: Before starting with the first item on tonight’s agenda I want to bring something forward on the agenda. If there is anybody here for the Don and Tammy Murphy variance at 299 Lakeside Road in Newburgh there have been some developments with regard to this application. I am going to read a letter from the Murphys and then I’ll let you know what the Board’s response to the letter was.

The letter is dated April 18; it was received by the Zoning Board on April 22, 2016.

To whom it may concern: We are currently scheduled to continue with our hearing on Thursday, April 28th. However, at this time we’re still in a position of considering our options before moving forward with a newly revised house proposal. After meeting with the Orange Lake Community (Committee) on April 11th, I’m now considering all options before deciding on a solution that would seemingly be agreeable to everyone. There are many moving parts to this decision with a significant amount of time and money having already been invested. At this time, we would ask the Town to consider a postponement of our hearing until further notice as to our readiness. What is the maximum amount of time allowed by the Town for the hearing to remain open and be rescheduled for a future date? Thank you for consideration. Sincerely, Don Murphy.

At the request of myself a letter was transmitted to Mr. Murphy advising him that the Board could keep this open indefinitely and that we would keep the Hearing open until our meeting in May at which point the Board would either need to receive updated plans or a withdrawal of the application until such time as Mr. Murphy was able to present a full packet to the Town or if neither those two conditions were met the Board would be forced to close the Public Hearing and vote on the variance as presented with the latest plans. So that’s where we stand at this point so the Public Hearing for this evening will be moved till our May meeting. Again the residents will not be re-noticed because it would be just a continuation of the Public Hearing to see if Mr. Murphy provides us with any further plans or exactly what his plans are from that point forward and unfortunately we don’t have any other information to provide the public at this time. I would recommend also just checking our website prior to the meeting because any correspondence or anything that’s provided by the applicant would be placed on the website for your review so that is all we have on the a…on the Murphy case.

Mr. McKelvey: If they come back…going to come they’d be the agenda.

Mr. Manley: Correct. They will be on the agenda if they do get removed off the agenda you’ll see that they are not on the agenda. Just so if you know if Mr. Murphy does withdraw his application he’ll have to resubmit everything which at that point you would then be re-noticed of any future Hearing that this Board has with respect to the application. So the only thing I would recommend is just, you know, keep up to date. You’re also welcome to call the Zoning Board office to find out but if he does withdraw the application that will also be on the website so you’ll know that the application was withdrawn. At this point do I have a motion from the Board to adjourn Mr. Murphy until our May…

Ms. Gennarelli: 26th.

Mr. Manley: …26th meeting?

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: I appreciate the public coming out and certainly apologize for inconvenience this evening.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:09 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 7:09 PM)

ZEF GJURASHAJ (VALON & VATAN LLC.) 34 PLANK ROAD, NBGH

 (V & V STEAKHOUSE) (84-2-1.1) B ZONE

Applicant is requesting area variances for signage - (A) free-standing sign closer than 15 ft. to street lines (Plank Road & Stone Street); (B) maximum amount of allowed signage & closer than 15 ft. to street line - (bull statue 8’x6’).

Mr. Manley: The next item on the agenda this evening is Valon & Vatan LLC. (V & V Steakhouse) they’re requesting an area variance for signage for a free-standing sign closer than 15 ft. to street lines (Plank Road & Stone Street) and also the maximum amount of allowed signage and sign closer than 15 ft. to street line (Plank Road) for a bull statue 8’ x 6’.

Ms. Gennarelli: Okay, I just have to read about the notices. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, April 20th and The Sentinel on Friday, April 22nd. This applicant sent out sixty-three letters. All the mailings, publications and postings are in order. Thank you.

Mr. Manley: Thank you.

Mr. Brown: Hello, my name is Charles Brown I’m the engineer for the applicant Zef and I have a hard time pronouncing his last name…Jef…

Mr. Gjurashaj: Gjurashaj.

Mr. Brown: …Gjurashaj. We’re here for some signs for the V & V Steakhouse Restaurant which is on the corner of North Plank Road (Plank Road) and Stone Street. There’s a free-standing sign proposed that’s roughly twelve foot from the edge of pavement of Stone Street that’s eleven feet from the property line, the Code requires fifteen feet. It’s a little less than five feet from the property line facing North Plank Road (Plank Road) but a…the sign is only about six feet high so it’s a…it’s not going to be very imposing. We have a very wide right-of-way along North Plank Road (Plank Road) it’s actually a…almost thirty feet from the edge of pavement on North Plank Road (Plank Road). Behind that there’s a very large maple tree that we didn’t want to cut down so we were running out of…of places to put the sign where it would be visible a…from both directions of North Plank Road (Plank Road). A…again it’s…it’s a free-standing sign it’s only about…the top of it’s only about six foot off the ground so it’s not going to be out of character with the neighborhood. It’s not going to…no environmental impact on it a…and that’s it on that one. The other sign which is actually not a sign in my opinion it’s a…a statue of a bull. It’s kind of like the bull that’s down on Wall Street only much smaller it’s six by eight. A…the Building Department considers that a sign because they do it kicks us over the square footage so based upon that we’re looking for a variance for the square footage so that he can put that bull on a platform there. And that thing is also less than the fifteen feet from the property line in the front but again we have a very big setback off the street there. The D.O.T. has a very wide right of way at that point so we’re…we’re again more than a…well over fifteen feet from…from the edge of pavement of a…North Plank Road (Plank Road). Thank you.

Mr. Manley: Does the Board have any questions for the applicant?

Mr. Maher: Hey Dave, what…what dictates the statue?

Mr. Donovan: Well if you look at the…the definition of a sign…any letter, word, model, reproduction, banner, pennant, insignia, trade flag, device or representation used as or which is in the nature of advertisement, attraction or directive so I think representation used as an attraction or a directive I…I think the bull falls within that…I do. How do you measure the square foot of a statue, I mean do you…?

Mr. Brown: We actually…we actually squared it off I mean it’s…you know, each side we didn’t do it in three dimensions. I didn’t do a, you know, volume calculation on this…

Mr. Donovan: Okay.

Mr. Brown: …because we don’t actually have the bull there yet. There will be no writing on it though and…and again we didn’t realize that that was, you know, considered a sign a…when he you know, went and purchased it. He…he did already purchase it, it hasn’t been brought on to the site yet though.

Mr. Manley: You do remember the horse on 9W right?

Mr. Brown: Yes.

Mr. Maher: Was that a…was that a sign?

Mr. Manley: No, no it was moved to Lake George somewhere up there…

Mr. Maher: It’s actually…it’s actually four miles from my house.

Mr. Manley: Is it?

Mr. Maher: Yeah.

Mr. Brown: Was that considered a sign?

Mr. Manley: I don’t know it was never tested.

Mr. Brown: I do remember the horse though. The horse was actually bigger than the bull.

Mr. Manley: The horse of many colors.

Mr. Scalzo: Changed often.

Mr. Brown: It was white if I remember right.

Mr. Maher: Yes, it was white.

Mr. Manley: Still is. If the Board doesn’t have any questions I’ll open it up for any questions or comments from the public with regard to this application.

No response.

Mr. Manley: At this point, I’m going to add that we received comments from the Orange County Department of Planning and their comments were for Local Determination and that was actually for the sign variance as well as the bull variance. If there’s no other questions from the public or from the Board I’ll ask for motion to close this Public Hearing?

Mr. Brown: Excuse me; did you receive a letter from the adjoining property owner?

Mr. Manley: Oh, I did. Would you like me to read that?

Mr. Brown: A…sure.

Mr. Manley: Okay.

Zoning Board of Appeals, dated April 18, 2016. As owner of property contiguous to the property for which the variance is sought I would like to make it known that I have no objections to Mr. Gjurashaj’s sign as proposed. I would ask that all consideration be given to granting the variances and allowing V & V Steakhouse to open as soon as possible. Should you have any questions feel free to contact me. Sincerely Thomas Costa, owner of the North Plank Road Tavern, 30 Plank Road, Newburgh.

Mr. Donovan: So Charlie, just for curiosity if there was a letter in opposition would you have asked for that to have been read?

Mr. Brown: No.

Audience Member speaking.

Mr. Manley: Yes, sir?

(Inaudible)

Ms. Gennarelli: Can you come up to the microphone, please? And I’m sorry what was your name?

Mr. Fremont: My name is Joel Fremont, I own 26 Plank Road. Tom Costa is my neighbor. I am totally for the bull. Alright? I think it’s going to bring a big plus to the neighborhood. Zef has done a very good job. This was…this building was an eyesore and now it’s going to be a huge plus for anybody, you know, it’s going to bring the value of the property in the neighborhood higher. I don’t see why this would be turned down, you know, there is no point. I’d like to have a request. The road is not North Plank Road. Years ago it was changed to Plank Road. The sign on…on the road has never been changed. It stayed North Plank Road and everybody is going to call up because of that you know. They’re looking for Plank Road and it say North Plank Road on the road. I have been to the…to the Town so many times and nothing has been changed, you know…

Mr. Manley: But unfortunately that…

Mr. Fremont: …but they never changed the signs.

Mr. Manley: …that request is something unfortunately out of this Board’s control. We just handle variances which are what this Board has control over…

Mr. Fremont: Right.

Mr. Manley: …we unfortunately don’t have any control of signage…

Mr. Fremont: Alright.

Mr. Manley: …with respect to street signs.

Mr. Fremont: I went everywhere to the Town, all the promises, no change.

Mr. Manley: I would certainly recommend going to the Supervisor’s Office…

Mr. Fremont: Yeah, I did that.

Mr. Manley: …and…and checking with them…

Mr. Fremont: I did that.

Mr. Manley: I mean it is a…

Mr. Fremont: Yeah.

Mr. Manley: …an issue that you really have to check with…with the Town and I mean that road is a shared road between the City and the Town of Newburgh…

Mr. Fremont: Yes it is.

Mr. Manley: …because one side is the Town of Newburgh and the other side is the City.

Mr. Fremont: But still 911 changed the name… alright? So now really this is Plank Road it’s not North Plank Road anymore so the sign should be changed…

Mr. Manley: Right.

Mr. Fremont: …because everybody is looking for Plank Road and it’s North Plank Road you know, everybody is stuck, you know. Cause he comes to the Board it’s a great idea, you know, I don’t see a problem…

Mr. Manley: Okay, very good, well thank you for your comments.

Mr. Fremont: Thank you.

Mr. Manley: Are there any other comments from the public or any questions for the applicant?

No response.

Mr. Manley: Okay at this point I would ask the Board for a motion to close the Public Hearing.

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

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Brown: Thank you.

 (Time Noted - 7:17 PM)

ZBA MEETING – APRIL 28, 2016 (Resumption for decision: 9:04 PM)

ZEF GJURASHAJ (VALON & VATAN LLC.) 34 PLANK ROAD, NBGH

 (V & V STEAKHOUSE) (84-2-1.1) B ZONE

Applicant is requesting area variances for signage - (A) free-standing sign closer than 15 ft. to street lines (Plank Road & Stone Street); (B) maximum amount of allowed signage & closer than 15 ft. to street line - (bull statue 8’ x 6’).

Mr. Manley: The Board has returned. In the matter of the application for Valon & Vatan LLC. requesting an area variance for signage for the free-standing sign closer than 15 ft. and the maximum amount of allowed signage to erect a bull statue 8’ x 6’. This is an Unlisted Action under SEQR, if the Board’s decision is to approve it will require a Negative Declaration. And looking at the criteria for an area variance does the Board feel that the benefit can be achieved by other means feasible to the applicant? Or do they feel that it cannot?

Mr. Scalzo: I think it’s great that they wanted to save the tree therefore they didn’t move it back.

Mr. Manley: So there is another…?

Mr. Scalzo: Yeah, there is another way…

Mr. Manley: …feasible way but it requires removal of the…

Mr. Scalzo: …however…

Mr. Manley: …matured tree.

Mr. Scalzo: That’s correct.

Mr. Manley: So the spot where it’s at would be more appropriate?

Mr. Scalzo: I would agree.

Mr. McKelvey: Yes.

Mr. Manley: Does any request for the signage create any undesirable change in the neighborhood or character or detriment to any nearby properties?

Mr. McKelvey: Not really.

Mr. Maher: The neighbors testified they…they had no problem with it.

Mr. Manley: Is the applicant’s request substantial in nature? Does the Board feel it is substantial?

Mr. Scalzo: My opinion is no.

Mr. Masten: No.

Mr. McKelvey: No.

Mr. Maher: No.

Mr. Manley: Will it have any adverse physical or environmental effects?

Mr. Maher: None whatsoever.

Mr. McKelvey: There’s a restaurant right next door.

Mr. Manley: And is the alleged difficulty self-created? It’s something that the Board needs to consider but in the balancing of everything it…it can…it’s not one of the factors that preclude it but it is something that…it is a self-created issue but I don’t feel that the self-created nature outweighs the other items…in my opinion.

Mr. Maher: No, I would agree. I mean obviously placement of signage their choice but based on location and the area they have to work with they’re limited.

Mr. McKelvey: The statue is alright. It’s not going to be right on the highway.

Mr. Manley: Well they’re not selling tickets to ride the bull.

Mr. McKelvey: No.

Mr. Maher: That would be different then right Jerry? That would be a different Permit right?

Mr. Donovan: That’s opening night Charlie’s going to be on the bull.

Mr. Brown: (Inaudible)

Ms. Gennarelli: I’m coming to take pictures.

Mr. Brown: (Inaudible)

Mr. Manley: Do we have a motion at all for any type of Negative Declaration?

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

Mr. Masten: I’ll second it.

Mr. Scalzo: I’ll make a motion for the Negative Declaration?

Mr. McKelvey: Oh, I’m sorry.

Mr. Manley: Okay Darrin that’s might be a good start.

Mr. Scalzo: That’s a great start.

Mr. Manley: Do we have a second on the Negative Declaration?

Mr. Maher: Second.

Mr. Manley: Second is Mike.

Ms. Gennarelli: Okay. Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. McKelvey: Now I’ll make my motion to approve.

Mr. Scalzo: I'll second that motion.

Ms. Gennarelli: Okay, roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: Good night.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:07 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 7:17 PM)

DANIEL & CHRISTY MANN 37 EAST ROAD, WALLKILL

 (2-2-22.1) R/R ZONE

Applicant is requesting an area variance for Lot #2 for the front yard setback of an existing single-family dwelling for a proposed two-lot subdivision before the planning board.

Mr. Manley: The next item on tonight’s agenda is Daniel and Christy Mann, 37 East Road in Wallkill, seeking an area variance for Lot #2 for the front yard setback of an existing single family dwelling for a proposed two-lot subdivision before the planning board.

Ms. Gennarelli: This applicant sent out forty letters. All the mailings and publications I…I’m not sure about the postings…

Mr. Manley: Okay, I’ll ask the a…

Ms. Gennarelli: Mr. Masten said that…

Mr. Manley: …the representative. How are you this evening?

Mr. Stridiron: Very good. How are you?

Mr. Manley: Good.

Ms. Gennarelli: Can you introduce yourself for the record please?

Mr. Stridiron: My name is Darren Stridiron I’m the a…representative for Daniel and Christy Mann at 37 East Road. I’m a licensed land surveyor and a…here tonight for an area variance for Lot #2 for a front yard setback. Currently have a property line that runs through the middle of the road for the two-lot subdivision the Town will be provided a right-of-way taking. Because of the taking and position of the new property line, the right-of-way line the distance to the front setback, the front porch would be thirty-seven point three feet and the house has been there for a very long time. It is consistent with a lot of the older houses that are on the road and the current owner is not proposing any changes to the house. This is purely a variance that is needed because of the right-of-way taking.

Mr. Manley: Okay Darren we do have a question. One of the Board Members was out to the site recently and the posting that’s required that has to be up indicating that there’s a Public Hearing with regard to the application was actually down. The actual post was there but the actual signage was down. There’s no way of knowing how long it’s been down but…

Mr. Stridiron: I was by there…about five days ago and it was still there. I’m not too sure maybe we had that storm that came through a couple…

Mr. Scalzo: I visited the site Monday it was down.

Mr. Stridiron: Okay. We had that storm come through I think on Sunday? I’m not too sure what day that was…I think it was Friday of last week.

Mr. Canfield: (Inaudible)

Ms. Gennarelli: Tuesday?

Mr. Canfield: Tuesday the storm came through.

Mr. Stridiron: We had one…okay.

Mr. McKelvey: That sign should be up until after the Hearing, everything is done.

Mr. Scalzo: Unfortunately there is a maintenance requirement of the posting, posted and maintained is the way it reads.

Ms. Gennarelli: Darrin, pull your microphone in please.

Mr. Scalzo: Sorry, throw the sign up at me.

Ms. Gennarelli: I didn’t bring the sign.

Mr. Scalzo: What I had said is the requirement is to post and maintain.

Ms. Gennarelli: Oh, thank you.

Mr. Stridiron: The…the Manns live at the property I’m not too sure if they’re here tonight but I’m not too sure if…if they know when the sign either was removed or…?

Mr. Manley: Dave (John Masten), what day were you there?

Mr. Masten: Five after five this afternoon.

Mr. Manley: Okay and it still was not there.

Mr. Masten: The post was there…the stick.

Mr. Stridiron: I stapled it I think four or five times.

Mr. Maher: Kids?

Mr. Stridiron: I’m not sure it was far enough away from the road it wouldn’t be hit with a vehicle or anything like that so…

Mr. Scalzo: No, no the post was standing straight up.

Mr. Maher: No I was there this afternoon also and I actually looked around. I drove past twice to see if it had blown off. I didn’t see it at all. I looked around (inaudible).

Mr. Stridiron: The (inaudible) probably carried it away.

Mr. Donovan: Well here’s what the Code says, the posted Notice must be maintained and updated with amended information if there is any until after the Public Hearing is closed. An applicant shall not be deemed to have violated to maintain the Notice if the Notice was removed or destroyed by an unrelated party or natural force and replaced within a reasonable period of time. So that’s fairly vague so I guess the question is, do we have any objective information as when it was last seen or when it was last not seen so I may Dave (John Masten) you’re saying it wasn’t there today?

Mr. Masten: I didn’t see it at five after five.

Mr. Manley: And Darrin was there on Monday so…

Mr. Scalzo: There on Monday yes.

Ms. Gennarelli: And when were you there Mike?

Mr. Maher: I was there this afternoon.

Ms. Gennarelli: This afternoon, okay.

Mr. Maher: What have we done in the past, Dave?

Mr. Donovan: In the past when…I think I only recall this having one time…one other time?

Ms. Gennarelli: Yeah.

Mr. Donovan: And we had to re-notice the Hearing. Did we adjourn the Hearing or just re-notice Betty?

Ms. Gennarelli: We didn’t adjourn the Hearing…

Mr. Donovan: We re-noticed?

Ms. Gennarelli: No, we held it over to the next month so they could do the proper posting.

Mr. Donovan: But not mailings? Just the proper posting?

Ms. Gennarelli: Just the…just the posting.

Mr. Donovan: Okay.

Mr. Stridiron: Consider that…considering that the post is still there I…this…

Ms. Gennarelli: The sign is not.

Mr. McKelvey: The sign.

Mr. Stridiron: I know, the…I…I think it would be pretty obvious that somebody took it off.

Mr. Donovan: Well I…I mean I think…I think the thing is must be maintained and updated with amended information so we know from Monday through Thursday…it…it appears that it was not there a…I’m not, you know, you try to have some common sense and a rule of reasonableness I’m…I’m not comfortable indicating that that period of time if it was just perhaps today a…but someone had seen it there Tuesday but…but what we have in front of the Board is at least Friday, Saturday, Sunday, Monday, Tues, Wednesday, Thursday?

Mr. Manley: Right.

Mr. Scalzo: Well I don’t know about prior to the weekend I was only there this week.

Mr. Donovan: Did you say last…?

Mr. Scalzo: Monday, three days ago.

Mr. Donovan: Oh this Monday as opposed to Monday before.

Mr. Scalzo: Yes, correct.

Mr. Manley: This is the issue is that we have the Board can go ahead and vote on it without making an issue of this but if someone from the public were to make issue of it and actually Article 78 it our decision could be overturned because there wasn’t a proper posting. Just like if the mailings don’t go out like they’re supposed to you know, that gives fodder for any attorney or anybody from the public challenging the Board’s decision. So, you know, part of it is to protect the applicant as well as protecting the public.

Mr. Stridiron: I understand that. Is there any…is there any a…letters opposing? It…I mean it’s a simple…we’re not doing anything to the property other than subdividing it in the future and there is a Public Hearing at that point.

Mr. Manley: Let’s just…I want to see if there’s anybody…is there anybody here from the public with regard to this application? So we have, you know, quite a few people here that, you know, are here a…on this application and…and that is something that’s required, you know, for posting so we can go ahead with the Public Hearing but…

Mr. McKelvey: We can’t vote.

Mr. Manley: …probably the decision, you know I can’t speak for the whole Board but a…the Board may want to, you know, wait thirty days until our next meeting to actually vote on it so that that can be posted again for thirty days.

Mr. Stridiron: Would we have to wait for the decision before we go back to the planning board?

Mr. McKelvey: Yes.

Mr. Manley: So well at this point I think we should move forward with your presentation, we’ll hear from the public cause they’re here this evening and then we’ll move forward from there. Does the Board have any questions with regard to this application?

Mr. Scalzo: I think it’s really pretty straight forward.

Mr. McKelvey: Yeah.

Mr. Scalzo: You know when you dedicate area to the a…to the Town for a right-of-way purposes these things happen. We’ve seen it plenty of times.

Mr. Manley: Okay at this point there are members from the public that are here with regard to this application I would ask that if you would like to comment or ask any questions that you come to the microphone when you’re acknowledged by the Chair and state your name and address for the record and then move forward with your question and we’ll try to answer your question for you. So is there anyone here that would like to comment? Yes, maam.

Ms. Gennarelli: Please come to the microphone.

Mr. Manley: Good evening.

Ms. Collins: Hello. How are you?

Mr. Manley: Good.

Ms. Collins: Sherry Collins, 4 Shaker Court…

Mr. McKelvey: You can tilt that down.

Ms. Collins: …4 Shaker Court, I’m right next to this property, my backyard meets their backyard. Really, I feel so dumb; I really don’t quite understand the whole deal. At first we were alarmed on my block that they were trying to put a road in behind my house but apparently that’s not the case and you’re not going to build houses back to our yard…

Mr. Stridiron: Not at all.

Ms. Collins: …on Shaker Court?

Mr. Stridiron: The…no, the…the new dwelling would be coming directly off of East Road…

Ms. Collins: Yeah.

Mr. Stridiron: …and it would be one…one dwelling to the west of the…

Ms. Collins: They would just have driveways like the rest of the home?

Mr. Stridiron: Just one driveway, one new driveway, one new house.

Ms. Collins: Not between my house and would it be closer to the pond, is that right?

Mr. Stridiron: It’s a…I mean it’s closer to Tiffany Lane but there’s no access off of Tiffany Lane.

Ms. Collins: Closer to Tiffany than Shaker (Inaudible)?

Mr. Stridiron: Yes.

Ms. Collins: Okay great just for the record I…I might be blind. I…I am a mom of three, I work two jobs, I pass that property on the average of six times a day and I’ve never noticed the sign and maybe again it’s a dangerous road, I’m driving maybe I’m just not looking for signs but I haven’t noticed it. I did get the letter of course I’m here. Our concern was again more houses, septic, we have the well in the backyard you know, it…it…another driveway it’s just a scary, difficult road. East Road, there’s oftentimes accidents and if it snows getting up that little incline if we have to slowdown we’ll probably be getting towed because the a…it’s hard to get up that little incline with snow. But it’s just a thought, again I have three kids just got their license and it scares me, more traffic there but I mean I know houses will be built but that’s our concern. The pond, there’s migratory birds but this building will not affect that.

Mr. Stridiron: Not at all.

Ms. Collins: So the sewage, the septic, you know, things like that about the building but you say it’s further away than I thought maybe so great. That’s all of my concerns.

Mr. Manley: And just so you know the…the new lot that’s being created is a little over two acres, it’s two point zero one acres. The main parcel that is being kept…

Ms. Collins: The home that’s there.

Mr. Manley: …that’s there is eight point five four acres…

Ms. Collins: Yeah.

Mr. Manley: …so that will…that will remain. The only reason that the applicant is actually here is because they’re subdividing the property. The existing house is pre-existing and it doesn’t conform to current zoning because current zoning requires that that old house be moved further back. But because it presently exists there’s no way for them to move it back.

Ms. Collins: Right, right, right.

Mr. Manley: So they have to get a variance to be able to keep the old house there in order…

Ms. Collins: Yeah.

Mr. Manley: …to subdivide the property.

Ms. Collins: Yeah.

Mr. Manley: In…in a nutshell that’s what they’re trying to do. I’d be happy to share my copy with the residents that you can look at where the new house is going to be…

Ms. Collins: Okay.

Mr. Manley: …and where the old house is.

(Ms. Collins approached the Board; Mr. Manley gave her the plans.)

Mr. Manley: Just watch your step there you can keep this.

Ms. Collins: Really? Thank you.

Mr. Manley: Okay? And in this way the neighbors will see exactly what’s happening with the property.

Ms. Collins: Okay, thank you.

Mr. Manley: You’re welcome. Yes sir.

Mr. Roben: My name is George Roben, I live at 22 Tiffany Lane, so that’s…I’m assuming that my boundary is actually right next to where you’re going to be building? 22 Tiffany Lane.

Mr. Stridiron: Roben?

Mr. Roben: Yes, R-O-B-E-N.

Mr. Stridiron: It’s on the backyard side, yes.

Mr. Roben: Right so yeah, it’s on my side yard with the…to the back of the property in other words?

Mr. Stridiron: Yes it is.

Mr. Roben: Right so, I’m just trying to, you know, trying get my bearings, where is the house going to be built exactly?

Mr. Stridiron: There’s a stonewall at the property line…

Mr. Roben: Right, yeah, I understand that that right-of-way sort of speak, that stonewall…

Mr. Stridiron: It’s a…it’s a drainage easement.

Mr. Roben: Oh, that’s what that is, okay.

Mr. Stridiron: Yes, the house is proposed to be a hundred and five feet from the property line.

Mr. Roben: A hundred and five feet?

Mr. Stridiron: Yes. There’s no septic in that area so they could leave a…a decent amount of trees in between if we had to cause the a…the well is actually going be on the other side yard so…

Mr. Roben: Okay.

Mr. Stridiron: At the time they do site plan at the planning board is when they would show exactly all the grading and all the details on…on the lot but a…there’s still going to be a large amount of trees in between as far as a buffer.

Mr. Roben: And not that I know…I don’t know but how big the house or anything is going to be nothing, you know…

Mr. Stridiron: We…we just show at this point…

Mr. Roben: …preliminary stuff we don’t…we don’t know what’s going on yet what…what type of house it’s going to be.

Mr. Stridiron: Well actually the proposed building when it comes time for a Building Permit that’s when the actual architectural designs…

Mr. Roben: Okay.

Mr. Stridiron: …get submitted but for the purposes of planning a fifty by thirty is…is a standard house that’s shown.

Mr. Roben: Okay, now providing that this goes forward, equipment that’s going to be used to do all this where is that going to be stationed in other words? Is…is it going to be like…in other words we don’t want equipment to start parking on Tiffany Lane…

Mr. Stridiron: No.

Mr. Roben: …things like that.

Mr. Stridiron: There’s no access off of Tiffany Lane to this property.

Mr. Roben: Okay, all right.

Mr. Stridiron: So everything would have to come off of East Road with a construction entrance, silt fence, the whole nine yards.

Mr. Roben: Okay, so you’re saying that there will be no vehicles parked on Tiffany Lane you know, just for hearsay because they’re there for only a few minutes or whatever just…just to you know, they want to get out of the way.

Mr. Stridiron: There’s no access from this property over Tiffany Lane. It’s actually in the original filed map for Tiffany Lane so…

Mr. Roben: No, what…what I’m talking about is like I understand that the driveway is on East Road but what I’m saying is like when vehicles start coming with equipment or loads of material that they’re not going to be using Tiffany Lane as a…as a station…as a…you know, they…

Mr. Maher: Well, yeah I understand, he’s just presenting the actually application as far as what they’re looking for.

Mr. Roben: Okay.

Mr. Maher: Obviously I don’t believe he is going to be involved in the building aspect of it that’s a question of the homeowner or who they sell it to…

Mr. Roben: All right.

Mr. Stridiron: But that’s something to put a note on the plan…

Mr. Maher: Right.

Mr. Stridiron: …so that it’s entirely out there that the builder is not supposed to use Tiffany Lane for any kind of moving of equipment, storage of any dumpsters…

Mr. Maher: Right, right, right. Okay.

Mr. McKelvey: If…if it’s approved that could be put in there.

Mr. Stridiron: Well...

Mr. McKelvey: With a…if it’s approved from us.

Mr. Scalzo: There’s a a stonewall that is the property line between Tiffany Lane and the subject parcel…

Mr. Stridiron: Yes.

Mr. Scalzo: …unless there is plans to remove that which you really can’t…a…there would be no access even if they were to try to drive through the stone wall.

Mr. Roben: No, no what I’m…not even…

Mr. Maher: (Inaudible) his concern is coming off East Road parking on the road. (Inaudible)

Mr. Roben: Using our…in other words using our road as you know, just…

Mr. Stridiron: It’s a private road.

Mr. Roben: Right.

Mr. Stridiron: It’s not a public road.

Mr. Roben: Okay, well only because you know we’ve seen it happen in the past where you know, maintenance guys you know, lawn maintenance you know, they use our road because obviously like the lady said before it is a dangerous road, East Road, and you know, they want to…and we understand that part but again…

Mr. Stridiron: I parked there when I did the survey.

Mr. Roben: Yeah, well because…stuff like that…that’s my…

Mr. Stridiron: Because I didn’t have…I didn’t have a construction entrance to pull into…

Mr. Roben: Okay.

Mr. Stridiron: …at that point.

Mr. Roben: Right.

Mr. Stridiron: Parking on East Road would be…

Mr. Roben: Yeah.

Mr. Stridiron: …a death wish.

Mr. Roben: You’re right so that’s…that’s my concern in other words, you know.

Mr. Manley: What you can do to is that particular issue is unfortunately outside of our scope because our Board is just charged with the variance portion of the application. What I would recommend you do is…just like the Zoning Board has a website so does the planning board. You can pull up the minutes to their meeting with respect to this application, you know, read over it and you can issue a…concerns and comments in writing to the planning board. Shoot them off a quick letter, what your concerns are with regard to that application and they will address that at the planning board level. Because they may or may not have a Public Hearing because this is a a…it’s just a two-lot subdivision, so it’s not required that they have a hearing but you still have a right to comment on the application. And you know you bring up some…some good points and they’re worth you know, making a, you know, a quick letter to the planning board.

Mr. McKelvey: Their application would be on the…the agenda.

Mr. Manley: Right.

Mr. Roben: Okay, well, yeah, I’m only bring that up because my neighbor here also because he actually owns that part that’s next to the stonewall.

Mr. Stridiron: Yes.

Mr. Roben: So that’s a piece of his property there too so that’s another concern that again you guys aren’t going to be parking there I’m assuming but that’s why we’re you know we’re bring that also so I guess that’s it then really until further notice that we get or anything like that. Thank you.

Mr. Manley: Okay, thank you. Do we have any other comments from the public or questions? Good evening.

Mr. Fetter: Bill Fetter, Rockwood Drive, I thought maybe some guidance for the applicant as to what will satisfy you’re a…need for documentation that the sign was there. One picture a week? One a day? One every three or four days? What…what will he need so he doesn’t have to do it again?

Mr. Manley: Normally the applicant fills out an Affidavit that indicates that the sign has been kept there for the…the period of time that it’s required. What the Zoning Board does is we make spot checks so you know, more than likely what will happen is over the next thirty days somebody will go out to make sure that the sign has been posted for the period of time that it needs to be and if it hasn’t been then it will be communicated to them to…to rectify it.

Mr. Fetter: Okay, thanks.

Mr. Manley: Thank you. Are there any other questions or concerns with regard to this application? Do we have any…?

Mr. Scalzo: Jim.

Mr. Manley: Yes, sir? Your name?

Mr. Way: My name is Bill Way, I live on 15 Tiffany. My only concern is that a driveway out to East Road is…that’s really a dangerous spot. The water trucks take a…they have to pick up a lot of speed coming back from Marlboro area to get…to get up that hill so I…I hope that this driveway a…is constructed in such a way that prevent an accident. There’s also school buses that stop here all…right off Tiffany and there’s a lot of children from my neighborhood who go to school there and I’m a…I’m a retired teacher and I get a little concerned where the school buses stop and the speed of the road. A…those water trucks are speeding when they…they have to in order to hit that hill in order to get up it. So I…I…I don’t know if this has anything to do with your…

Mr. Donovan: Yeah, maybe just for clarification purposes, the…most of the issues that the neighbors are raising tonight are…are planning board issues.

Mr. Way: Right.

Mr. Donovan: Because they…you’re concerned about the new lot, the new driveway, where those cars will park, what’s going to happen when the house is under construction. The sole issue that’s…that’s before this Board tonight is whether or not the house can stay where it is, the existing house…

Mr. Way: I don’t have any problem with that.

Mr. Donovan: The existing house because it’s too close to the…to close to the street A and B with the dedication it’s even more too close to the street. So that…that’s what this is about.

Mr. Way: Okay, yeah, all right. So we… like you said…

Mr. Donovan: But that’s not to say you can’t get up and say what’s important to you.

Mr. Way: Well I just wanted to put a little buzz in his ear to to that, you need to be very careful with that road because that’s a very dangerous road, East Road, it may look like a back road, a country road but there…there’s some pretty fast traffic on that road.

Mr. Stridiron: We did put the proposed driveway directly across from the existing driveway…

Mr. Way: Off the yellow house across the street?

Mr. Stridiron: Yes, and also we did a site distance study to find out where exactly we could put the driveway so…I did check that. I mean definitely the area that’s of concern is looking left, cars are coming west…so…

Mr. Way: That’s right, not east.

Mr. Stridiron: …we…we could have put the driveway closer to the east side of the lot but to give more time to react to a car coming down that hill and then trying to speed up to get up there we moved it farther west.

Mr. Manley: How many feet when you say you moved it?

Mr. Stridiron: Oh, it’s…this is a a fifty scale drawing so we moved it a…probably about seventy-five feet.

Mr. Manley: Okay so you…you gave the…a potential new home owner seventy-five more feet to react on traffic coming west.

Mr. Stridiron: Yes.

Mr. Manley: Okay. Does that help give you a little bit more…?

Mr. Way: Yes, yes, I mean it’s just…it’s just a very dangerous area. Mostly it’s the water trucks trying to get up that hill. I mean they’re…they go up that hill a lot.

Mr. Manley: I forget, the speed limit is what forty on there?

Mr. Way: Forty and a…if you find many people doing forty…most people are doing fifty or...

Mr. Manley: No doubt.

Mr. Way: Yeah so I guess I’m just...I’m really concerned about the school buses and the traffic through there and I understand maybe this is an issue for the Police. I don’t know who takes care of the signs but I know if they dropped the speed limit to thirty those trucks will never make that hill so…but I’m…I’m like just very concerned about the driveway there.

Mr. Manley: But most of the trucks come from the other side of the hill in Marlboro…the water trucks.

Mr. Way: Yeah, they come up, they around that little dip and then they…they pick up speed there and then they go up the hill. The hills got like a forty-five degree angle so…

Mr. Scalzo: Jerry, there are no a…

Mr. Way: Thank you.

Mr. Manley: Thank you.

Mr. Scalzo: …weight restrictions on that East Road are there? I see there’s a forty-eight inch (Inaudible) a…which is (Inaudible) five twenty point two…and also that at the top of that pipe would be at say five twenty-four…I don’t know (Inaudible) thirty inches twenty four?

Mr. Stridiron: The look…it’s…it’s not much although they are going fast over it so if you slow it down maybe it’ll crack.

Mr. Manley: Yes sir?

(Inaudible)

Mr. Manley: Sure.

Mr. Roben: Just to reiterate what my neighbor just spoke a…I do know those actual…the truck drivers he’s talking about because we do…we do business with them and…and he’s right about saying that they do try to pick up speed because of that hill so that…that is a good concern that he brought up a…the speed. Because especially not so much during the summer time because, you know, that’s when they do most of their work but it’s because of the water because it’s water trucks that they’re talking…talking about. Somewhat but they…they also come during the wintertime at…at occasions and when it’s icy and…and it’s one of the last roads to get plowed so it is ice by the time the plows do come through there’s already ice formed on top of the road and so I mean and that’s why again they they try to pick up speed to try to get up. That’s all I wanted to say then just so…to support what he was bringing up. Thank you.

Mr. Manley: Thank you. Does anyone have any more questions, comments for the Board on this application?

No response.

Mr. Manley: Does the Board have any other questions?

No response.

Mr. Manley: I’d like to ask for a motion to close the Public Hearing or actually to either close the Public Hearing or postpone it until next month for a proper posting.

Mr. McKelvey: I think we have to postpone it because of the postings…the sign posting.

Mr. Donovan: Well there’s flexibility in the rules it’s…it’s up to the Board. I mean the issue that you have is this…this amendment to the Law is three years old requiring the posting and this is the second time we’ve had a situation a…now you have a situation where I made you aware of the Laws but it’s four days. Four days before the Hearing we pretty much know the sign wasn’t there. If the Board is inclined to think that it really needs to be there a…and that four days is too long you can do that. If you say that under the circumstances here you…you know we think it’s…it’s okay in the last four days and people were here to talk about the variance then…then you could go ahead. To some degree it would be a precedent though for the next time this happens.

Mr. Maher: Well again, based on…on the severity of the…or the need for the variance…the variance is not a question of…in this particular case is strictly on a…

Mr. McKelvey: No it’s not.

Mr. Maher: …it’s strictly based on a right-of-way issue. There’s no new construction going on.

Mr. Donovan: Yeah, I mean you…you…so on the…on the one hand you know we probably done dozens of these variances over the years none of which have ever been denied because you’re not going to…typically you’re not going to make somebody move a house that’s been there for… How long has the house been there?

Mr. Stridiron: Eighty years.

Audience Members: A hundred years.

Mr. Manley: Hundred years.

Mr. Donovan: Yeah, so…

Mr. McKelvey: I mean and the public came out, the neighbors, you know the…they are aware of what’s going on.

Mr. Manley: The only thing that the Board just has to really has to consider is…is again as minor as it is we’re creating precedent with regard to the posting and if the Board just feels that four days isn’t…isn’t a big deal…

Mr. Maher: I think we have to weigh both sides of…they waste…weigh the length of time that it may or may not be posted and also what type of variance is being requested. Obviously if the variance was pages long and…and it would be a different story this is pretty…

Mr. Manley: Well Dave by setting…by setting…for example, let’s…let’s just throw a hypothetical, in this particular case this variance isn’t really a big deal with regard to the scope. However, if it had been a use variance and we’re talking about something that’s a little bit more…

Mr. Donovan: Right, so there’s an old expression that says, hard cases make bad law, and essentially what that means in this circumstance is that you know, I’m ninety-nine point nine, nine, nine percent sure you are going to grant the variance but is that…is that a reason to say, four days is okay. I mean you could do that and if it comes down and there’s a situation before you could say because of the nature, the complex nature of the variance and maybe in that circumstance no neighbors came and so…you…you decide to hold it over but you know, somebody like Charlie Brown could stand here and say, hey listen, you let this go for four days…my guy is four day, how come you’re saying I have to come back next month. I’m only picking on you Charlie because you’re here.

Mr. Stridiron: Charlie wouldn’t do that to me.

Mr. Scalzo: Yeah, unfortunately you just nailed it Dave. Charlie was the representative for the other applicant.

Mr. Donovan: Charlie was the representative that is correct.

Mr. Stridiron: What…what…I’m sorry what kind of a variance was it for?

Mr. Brown: One and no public showed up so…if that helps your case…

Mr. Donovan: Well it doesn’t help you.

Mr. Stridiron: I’m looking for anything I can at this point.

Mr. Canfield: Jim I don’t know if…would there be any validity in the number of mailings that went out as opposed to the attendance that’s here tonight to help with your decision, whether to move forward or not?

Mr. Manley: Roughly how many letters went out again, Ms. Gennarelli?

Ms. Gennarelli: Forty.

Mr. Manley: And none were returned?

Ms. Gennarelli: Returned? I don’t know. Do you mean that weren’t delivered?

Mr. Manley: Right. Not that…

Mr. McKelvey: That’s a problem too.

Ms. Gennarelli: They usually don’t come back until a month after the Hearing.

Mr. Donovan: Well but I think Jerry’s point is well taken if there was only four Notices mailed out and four people came that may be different as opposed to forty Notices mailed out and a small amount of people came. I mean that this is…to a large degree this is new territory because this…this posting requirement is only three years old. You know…

Audience Member Inaudible

Ms. Collins: My neighbor Mark Rosengarten I’m not sure of the number, the house directly to my left, the next property they a…Mark is a teacher I work with. Anyway he told me plan, he’s the one that reminded me tonight he’s definitely was going to come now his mother was in a car accident I presume that’s why he’s not here just a fact (Inaudible) I don’t know but that’s information.

Mr. Manley: Thank you.

Ms. Collins: Thank you.

Mr. Manley: Well I…as much as I hate to inconvenience the applicant I…I hate to set precedence in…in unchartered territory and we have in the past had it re-noticed again so that it was up again for another case and you know, I’m a big believer in what’s fair for one should be fair for the other as much as it’s an inconvenience. That’s just my…the rest of the Board may differ from where I think with regard to that but you know, I know it’s a very minor variance, it’s…

Mr. McKelvey: Is it…is it a case Dave that we’d have him just put the sign back up?

Mr. Donovan: Well what we did the last time was, we didn’t…we didn’t require any re-noticing, we just put the sign back up.

Mr. McKelvey: Yeah, that’s what I thought.

Mr. Donovan: And, you know, the obligation is on the applicant to maintain the a…the posting.

Mr. Manley: It’s one thing if we don’t notice it but once we notice it…so I guess I’ll ask the Board to we either have a motion to close the Public Hearing or do we have a motion to leave the Public Hearing until next month?

Mr. McKelvey: I’ll make a motion we leave it open until next month.

Mr. Manley: Do we have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: No

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: At this point we are going to leave the Public Hearing open until next month at which point the applicant can get the proper posting back up, we’ll re-verify it and that should be just added to our agenda and we’ll vote on it next month.

Ms. Gennarelli: May 26th and you can come to the office tomorrow to pick up the posting.

Mr. Stridiron: Thank you.

Mr. McKelvey: And tell the owner that it has to be maintained until after the Public Hearing is voted on.

Mr. Manley: And for the public, this will be added to next month’s agenda where we’ll vote on it. We’ll see if there is anybody else that comes out from the public at which time they’ll be able to comment on the application. At that point, the Public Hearing will be closed and the Board will…will vote on the action. Yes, maam?

Audience Member Inaudible

Mr. Manley: No we will not re-notice so you will just have to remember if you want to come out, May 26th, 7PM same place next month.

Mr. McKelvey: And it will be on the website.

Mr. Manley: Thank you.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:51 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 7:51 PM)

ORLANDO OSARIO 6 CLARION COURT, NBGH

 (85-1-13) R-1 ZONE

Applicant is requesting an area variance for the rear yard setback, the combined side yards setback and the maximum lot surface coverage to keep a prior built side/rear yard deck (32 x 30) and an area variance for the maximum lot surface coverage to keep the prior built shed (7 x 7).

Mr. Manley: The next item on tonight’s agenda is Orlando Osario, 6 Clarion Court in Newburgh, seeking an area variance for the rear yard setback, the combined side yards setback and the maximum lot surface coverage to keep a prior built side/rear yard deck (32 x 30) and an area variance for the maximum lot surface coverage to keep the prior built shed (7 x 7).

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

Mr. Manley: Good evening.

Mr. Osario: Good evening Board, my name is Orlando Osario I am the current resident for 6 Clarion Court here in Newburgh. I am requesting an area variance for again a 30 x 32 deck on my property and also a 7 x 7 Rubbermaid shed. This property was recently bought, November of 2015, in purchasing the property there were some issues that needed to be taken care of before I could purchase the property. Fortunately the bank was…allowed to purchase the property with the violations of this deck and the shed. The prior owner’s to this property were in the process of getting a Permit for the deck but unfortunately due to financial situations on their behalf they weren’t able to correct the issue prior to me purchasing…purchasing this house. Currently the deck is behind a privacy fence, you could only see the deck from the rear of the property. The deck is on a slope on the side of the property which the area underneath it is hard to use for anything else but just a grassed area. There is no environmental impact due to the deck. No change to the neighborhood but again the property is fenced in. And the area of…prior to me purchasing the property you know, did a major cleanup of the property, the house was sitting for…I believe, about three years prior to me purchasing it and at this time I just ask the Board for the approval to keep this deck and also the 7 x 7 Rubbermaid shed.

Mr. Manley: Thank you. When was the shed purchased?

Mr. Osario: Again sir, the shed was purchased prior to…to me purchasing the house. So it was the prior owner’s had the shed put up but if I roughly can say the shed was purchased maybe about eight years ago.

Mr. Manley: Okay.

Mr. Osario: Just…just look at the paperwork, all the Permits were put in about a…I’m sorry, about 2013 a little about four years ago the owner paperwork was supposed to being put in.

Mr. Manley: Now I noticed that’s one of those Rubbermaid sheds.

Mr. Osario: Yes sir.

Mr. Manley: So it can be detached? Is that?

Mr. Osario: Yes sir, honestly I took the shed down due to…due to the issue with…with the violation and I was told by the Town just put it up so it took me less than twenty minutes to put it right back up again.

Mr. Manley: What is the possibility that that shed could be moved a little bit, a little further from the property line?

Mr. Osario: It…it could be done, not a problem. I don’t have any issue with moving the shed.

Mr. McKelvey: (Inaudible)

Mr. Manley: Pardon?

Mr. McKelvey: Five feet from the property line.

Mr. Manley: That’s not the issue? Lot coverage right?

Mr. McKelvey: Yeah.

Mr. Maher: Yeah, I mean it just gives a four percent difference. Four percent variance there.

Mr. Manley: What are you currently using the shed for now?

Mr. Osario: Well until I the permission from the Board to keep the shed it’s just there but I would use the shed to keep my lawnmower and my yard tools.

Mr. Manley: And where are you keeping those items now?

Mr. Osario: There on the top of the property on…on…inside the property behind the privacy fence.

Mr. Manley: Exposed to the weather or…?

Mr. Osario: Yes sir it is.

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

No response.

Mr. Manley: Is there anybody here from the public with regard to this application?

No response.

Mr. Manley: Hearing no one I’ll go back to the Board if they have any questions or comments?

Mr. Osario: If it does help I did speak to the neighbors in the area because it is…it is a private road, I did speak to them with regard to the issues with the deck and the shed and they had no problem with it. I was expecting some of them to come but I guess due to the weather and time…

Mr. Maher: So you…so this came up…you knew about it when you bought the house?

Mr. Osario: Yes sir, I did.

Mr. Maher: And you’re trying to fix the problem now?

Mr. Osario: Yes sir.

Mr. Maher: Okay.

Mr. Manley: If the Board has no further questions for the applicant I would look for a motion to close the Public Hearing.

Mr. McKelvey: Is there a County?

Mr. Manley: And Orange County has Local Determination for both variances. If somebody would like to make a motion that would be great.

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

Mr. Scalzo: I’ll second that.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 7:57 PM)

ZBA MEETING – APRIL 28, 2016 (Resumption for decision: 9:06 PM)

ORLANDO OSARIO 6 CLARION COURT, NBGH

 (85-1-13) R-1 ZONE

Applicant is requesting an area variance for the rear yard setback, the combined side yards setback and the maximum lot surface coverage to keep a prior built side/rear yard deck (32 x 30) and an area variance for the maximum lot surface coverage to keep the prior built shed (7 x 7).

Mr. Manley: The next application before the Board this evening is Daniel and Christy Mann, 37 East Road, Wallkill that is being moved until the May 26th meeting.

Ms. Gennarelli: Right.

Mr. Manley: The next application is Orlando Osario, 6 Clarion Court, Newburgh, requesting an area variance for the rear yard setback, the combined side yards setback and the maximum lot surface coverage to keep a prior built side/rear yard deck (32 x 30) and an area variance for the maximum lot surface coverage area to keep the prior built shed (7 x 7). This is a Type II Action under SEQR. So at this point we’ll go through the criteria for the area variance and the balancing test that the Board has to go through in its determination. The first again is whether the benefit can be achieved by other means feasible to the applicant. There is one and that is to remove…

Mr. McKelvey: Remove it right.

Mr. Manley: But in balancing removal versus granting the variance there is an expense factor for the…the home owner, substantial. I will also mention that the applicant did testify that the grading in the backyard is such that without the deck it would prove to really be somewhat unusable area.

Mr. Scalzo: I had walked the property I agree.

Mr. Manley: Does the Board feel that there will be an undesirable change in the neighborhood or character or detriment to nearby properties if this variance were to be granted?

Mr. McKelvey: How is it going to change? It’s already there.

Mr. Maher: Yeah, it’s pre-existing and the majority of the area is hidden by a fence you can’t really see it anyway.

Mr. Manley: I will add there have been no complaints by any of the residents so they obviously haven’t had any issue with it. Is the request substantial in nature?

Mr. Scalzo: I don’t believe so…

Mr. Maher: The surface coverage (Inaudible)…

Mr. Scalzo: …the surface coverage is minor.

Mr. Manley: And it is a smaller lot, the lot is smaller than normal so the request is going to appear to be more substantial based on the fact that the lot is smaller. And of course, smaller lot his lot surface coverage is going to be smaller.

Mr. Scalzo: Correct and also keep in mind the…the lot I believe goes to center line of the road so therefore…

Mr. Masten: Yeah.

Mr. Scalzo: …I mean it further restricts the lot.

Mr. McKelvey: Yeah.

Mr. Maher: The usability.

Mr. Scalzo: Yes.

Mr. Manley: Does the Board feel the request will have adverse physical or environmental effects?

Mr. Maher: No.

Mr. Masten: No.

Mr. McKelvey: No.

Mr. Manley: Whether the alleged difficulty is self-created? In this particular case it’s not really self-created because he…

Mr. Scalzo: No, he bought it that way.

Mr. Manley: …purchased it that way.

Mr. McKelvey: Yeah.

Mr. Masten: It was there.

Mr. Manley: So this would definitely be a matter of hardship. Well the Board has gone through the balancing tests what is the pleasure of the Board?

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

Mr. Masten: I’ll second it.

Mr. Maher: Just…no, are we doing that’s for both?

Mr. Scalzo: Yes.

Mr. Manley: That would…that would cover both...

Mr. McKelvey: Both.

Mr. Manley: …lot surface and unless there was an objection on the part of any of the Board Members. With there being no objection can we have a…

Ms. Gennarelli: Okay, roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Osario: Thank you.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:10 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 7:57 PM)

SHERI & SCOTT DRIVANOS 235 QUAKER STREET, WALLKILL

 (2-1-14) A/R ZONE

Applicant is requesting area variances for the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to build an enclosed addition (13 x 34) to an existing building.

Mr. Manley: The next application before the Board this evening is Sheri and Scott Drivanos, 235 Quaker Street, Wallkill, in an agricultural (agricultural/residential) zone, seeking area variances for the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to build an enclosed addition (13 x 34) to an existing building .

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

Mr. Manley: Prior to (At the) beginning the Public Hearing I’ll read into the record that the Orange County Department of Planning has advised us that it’s Local Determination. And I do have which I’ll read very shortly into the record a letter from the Town of Plattekill. The Town of Plattekill has advised that they have no objection to the applicant’s construction of the addition. With said would you like to introduce yourself to the Board please?

Mr. Drivanos: Yes, my name is Scott Drivanos, I live at 235 Quaker Street, this is my wife…

Ms. Drivanos: Sheri Drivanos.

Mr. Drivanos: …and we’re here for an application for an area variance for an addition to our accessory building of thirteen feet by thirty-four feet off the back of our garage to enclose it to store a…I have some machinery and equipment a tractor, a lawnmower, some snowmobiles and ATVs that I would like to keep covered from weather that are currently in my garage a…which is not being able to be used as a garage anymore so I’m hoping to be able to use this accessory storage for that stuff to be able to get my garage back.

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

No response.

Mr. Manley: I’ll go ahead and a…at this point and read the letter from the Town of Plattekill into the record it’s dated April 5th to the Town of Newburgh Zoning Board of Appeals regarding Scott and Sheri Drivanos area variances. We are in receipt of the material you forwarded to us regarding the area variance request from the above applicant. The Town of Plattekill has no objection to the variance request. Very truly yours, Susan Bold, Zoning Board of Appeals Clerk.

Mr. Donovan: How many cars are you talking…how many vehicles?

Mr. Drivanos: Well the current garage that is there now is for two cars, it’s a two-car garage, it has two doors which is what I would like to use it for. The addition that we’re putting off the back would be the length of the garage a…twelve…twelve feet out from the garage back so it would be basically a twelve foot by thirty-four foot…

Mr. Donovan: But how…how many vehicles are you proposing to have there?

Mr. Drivanos: A…a…in the…the addition there would be no vehicles going in there other than my tractor, lawnmower, equipment, stuff like that so I can get…have use of the two-car garage for my two…for the vehicles.

Mr. Donovan: But part of the variance application is for more than four vehicles because you are only allowed to have storage for four so you’re not going to have more than four vehicles.

Mr. Drivanos: No, there’s not more than…it’s just we two vehicles on the property now and an RV which isn’t going in the garage so…

Mr. Donovan: So what I’ve suggested to the Board in the past, Jerry, if you and your Department are okay with this is that that variance request be withdrawn and then they…they fall back to the regular limit which is four or less and if there’s four or more then it becomes an enforcement issue. Is that…?

Mr. Canfield: We’re okay with that.

Mr. Donovan: Okay.

Mr. Drivanos: What does that…what does that mean for us?

Mr. Maher: Well you…you requested…basically part of the variance is for having more than four vehicles that not being requested now.

Mr. Drivanos: Oh, oh did we just put it down wrong in our application basically?

Mr. Donovan: Well what happens a lot of times is if you…if you have room for more than four it comes to us for more than four so…

Mr. Drivanos: Oh, okay.

Mr. Donovan: …so then I want to know is…are you go six or twenty-six…?

Mr. Drivanos: Yeah, okay.

Mr. Donovan: …but if you’re only going to have four or less then you…

Mr. Drivanos: Right.

Mr. Donovan: …don’t need…you don’t need a variance.

Mr. Drivanos: Okay.

Mr. Donovan: Just understand you can’t have five.

Mr. Drivanos: Okay.

Mr. Maher: Well you can have five you just can’t put them in the garage.

Mr. Drivanos: Put them in the garage.

Mr. Donovan: Well I don’t know.

Mr. Maher: Well…now… (Inaudible)

Mr. Donovan: I don’t want to go back and...

Mr. Maher: I’ll withdraw that comment.

Mr. Donovan: I carry Joe Mattina’s memo with me, I got issues so a…

Mr. Maher: The two pages right?

Mr. Donovan: Yeah, correct.

Mr. Drivanos: Do they consider a vehicle only something that is road legal or…?

Mr. McKelvey: We’re talking about cars (vehicles).

Mr. Drivanos: Just cars okay.

Mr. Manley: Are there any comments from anybody from the public with regard to this application before the Zoning Board?

No response.

Mr. Manley: Are there any more comments from…or questions from the Board?

No response.

Mr. Manley: Hearing none, at this point, I would ask for a motion to close the Public Hearing.

Mr. Manley: Do we have any questions from the Board? Any questions or comments from the public? Do I have a motion to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 8:04 PM)

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ZBA MEETING – APRIL 28, 2016 (Resumption for decision: 9:10 PM)

SHERI & SCOTT DRIVANOS 235 QUAKER STREET, WALLKILL

 (2-1-14) A/R ZONE

Applicant is requesting area variances for the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to build an enclosed addition (13 x 34) to an existing building.

Mr. Manley: On the next item before the Board this evening is Sheri and Scott Drivanos, 235 Quaker Street, Wallkill seeking an area variance for the maximum allowed square footage of the accessory structures and the maximum allowed and they have withdrawn the maximum allowed (4) four vehicle over (4) four vehicle storage to build an enclosed addition (13 x 34) to an existing building. So at this point the only thing the Board is voting on it the 13 x 34 addition. In going through the balancing tests for an area variance does the Board feel whether the benefit that the applicant is looking to reach can be achieved by other means feasible to the applicant?

Mr. Maher: Any…any a…option to increase the…the coverage is going to be an issue for the square footage so there’s really no other way to do it.

Mr. Manley: Do they feel that the request of the variance would result in any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: Well I believe that they maintain the property very well so I imagine what they are going to build would be in kind with what they already have so I think it would be an improvement to the neighborhood.

Mr. Manley: Is the a…request before the applicant substantial in nature?

Mr. Scalzo: I don’t believe so you’ll only be able to see it from one…the rear residence. I don’t think people even see it from the road.

Mr. Masten: No.

Mr. Manley: And whether the request will have any adverse physical or environmental effects? How does the Board…does the Board feel that it will have…? I don’t see it having any adverse physical or environmental effects. There haven’t been any concerns with respects to the neighbors. No one came out in opposition to the increase. And whether the alleged difficulty is self-created? And that one we have to...at least on my part would answer it is self-created but the other factors may lessen its impact.

Mr. McKelvey: We also have Plattekill that said they had no effects.

Mr. Manley: Correct and the County had Local Determination. Again it is a Type II Action under SEQR so it would just require a motion for approval or a motion for disapproval from this Board.

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

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion is carried.

Mr. Drivanos: Thank you.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:14 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 8:04 PM)

COSIMO J. COLANDREA 39 ROUTE 17K, NBGH

 (BUICK GMC) (100-5-37.212 & 22.2) I/B ZONE

Applicant is requesting area variances for the maximum amount of allowed signage and increasing the degree of non-conformity (larger with additional signage) to install signage on the lot.

Mr. Manley: The next application before the Board this evening is Cosimo J. Colandrea, 39 Route 17K in Newburgh. It’s in an I/B Zone. The applicant is requesting area variances for the maximum amount of allowed signage and increasing the degree of non-conformity (larger with additional signage) to install signage on the lot.

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

Mr. Manley: You can pull the mic off of that so that we can get you recorded into the minutes.

Mr. Crossley: Start again?

Mr. Manley: Yes, please.

Mr. Crossley: My name is Doug Crossley, Crossley Associates. We’re contractors in Newburgh. I’m here for Mr. Colandrea and Colandrea’s GMC. Basically Mr. Colandrea is being required by General Motors to increase one free-standing sign on the easterly end of his property. In 2004 this Board granted a variance for the second free-standing sign and basically we’re looking to increase the size of that sign from eight foot six square by two sides to eleven foot six square by two sides. When considering all of the frontage which is on Hermann Avenue and along Route 17K with not only the second free-standing sign that’s further up on the site but also the building signage that we exceed the Code by fifty-six square feet. That in a nutshell we provided pictures and pictures of the signs and everything we propose but the replacement sign is going in exactly where the existing sign is.

Mr. Manley: With regard to this application we received comments from the Orange County Department of Planning and they advise Local Determination. I may add that they also advised us that if we needed help with our sign law they be more than happy to help us with that review.

Mr. Crossley: Again this is…is requirements of General Motors and I think you had a…with all the new branding that all these dealerships are doing I think you’ve already had a couple of requests about increased signage along with those re-branding.

Mr. Manley: The only thing I didn’t see was anything in our packet with regard to that from…a statement from General Motors…I didn’t notice that you supplied anything.

Mr. Crossley: A…I’m sure we can, I mean they…they’ve been driving the bus with this…it’s nothing that Mr. Colandrea would like to do if he had his dithers but we can provide you that clearly.

Mr. Manley: Is there anyone from the public here with regard to the application before us that would like to comment or ask any questions?

No response.

Mr. Manley: Does the Board have any questions for the applicant at this point?

No response.

Mr. Manley: If the Board is satisfied with the submission I would ask for a motion to close the Public Hearing.

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Crossley: Thank you.

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 8:08 PM)

ZBA MEETING – APRIL 28, 2016 (Resumption for decision: 9:14 PM)

COSIMO J. COLANDREA 39 ROUTE 17K, NBGH

 (BUICK GMC) (100-5-37.212 & 22.2) I/B ZONE

Applicant is requesting area variances for the maximum amount of allowed signage and increasing the degree of non-conformity (larger with additional signage) to install signage on the lot.

Mr. Manley: The next application before the Board this evening is Cosimo J. Colandrea, 39 Route 17K, Newburgh seeking an area variance for the maximum amount of allowed signage and increasing the degree of non-conformity (larger with additional signage) to install signage on the lot. This is a Unlisted Action under SEQR which again means that if the Board is inclined to grant the variance they must first vote to declare a Negative Declaration. If they are going to disapprove then that is not necessary, just a motion to disapprove would be needed. In going through the balancing tests for the Board, the first is whether the benefit can be achieved by other means feasible to the applicant? And the applicant…the applicant’s representative testified that this was being required by General Motors that they increase the size of the signs…

Mr. McKelvey: They’re not really asking for that much more either.

Mr. Maher: I believe they are only increasing the size of one sign. Correct?

Mr. Scalzo: Yeah.

Mr. McKelvey: Yeah.

Mr. Manley: Correct.

Mr. Scalzo: One sign fifty-six square feet it’s…it’s very minor.

Mr. Manley: Which is twenty-five square feet…or twenty something square feet per side, correct?

Mr. Maher: Twenty-eight.

Mr. Manley: Thank you.

Mr. Maher: You’re welcome.

Mr. Manley: You’re a math wizard. So that goes back to it not being substantial. Would the Board say that that is not a substantial request?

Mr. McKelvey: I don’t think it is.

Mr. Manley: Does anybody feel that it will be an undesirable change in the neighborhood or character or any detriment to nearby properties?

Mr. Scalzo: Well looking…

Mr. McKelvey: They’re all…they’re all dealers…car dealers there.

Mr. Scalzo: And I saw the name Colandrea on almost every contiguous to that so I don’t think that the…

Mr. Manley: You don’t think the neighbors have…

Mr. Scalzo: I don’t think the neighbors got a problem.

Mr. Manley: And that being the case there were no neighbors here that were in objection to the variance. Whether the alleged difficulty is self-created? It is somewhat self-created. Whether it will have any adverse physical or environmental effects? Does anybody feel that that will be an issue?

Mr. Masten: I don’t think so.

Mr. Scalzo: You know, the question we never asked but…are they...that…that sign is illuminated, when they change these signs do they change the amount of lumens that a…you know, will it be any brighter?

Mr. Maher: Well automatically based on the size of it.

Mr. Scalzo: Yeah.

Mr. Manley: More than likely. I know when I changed my…I just last year changed my sign out, it was like ten years, and they put the new LED bulbs in there and it’s a lot brighter than it was when they had the fluorescents.

Mr. Maher: Jerry, you didn’t hear that.

Mr. Manley: But it’s diffused.

Mr. Scalzo: Is it not from lumens or a (Inaudible)?

Mr. Maher: How much light leaves the property right?

Mr. McKelvey: Yeah.

Mr. Scalzo: It’s got to be based on lumens.

Mr. Canfield: (Inaudible)

Mr. Maher: No.

Mr. Canfield: Yeah, we’re working on a new one so…

Mr. Manley: Outstanding. Mike’s on a lot of these issues or might create more.

Mr. Canfield: (Inaudible)

Mr. Manley: Well based on what the applicant has demonstrated and the balancing tests that we’ve gone through does the Board wish to move either with a Unlisted Negative Declaration or with a denial? So we’d be looking for a motion.

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

Mr. Manley: So we’ve got a motion.

Mr. Scalzo: On the Unlisted Negative Dec I’ll second that.

Mr. Manley: And we have a second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: Well now that somebody has declared a Negative Declaration at this point it would be almost presumptive of me to ask for a motion for approval?

Mr. Masten: I'll make a motion.

Mr. Manley: We have a motion from…

Mr. McKelvey: Second.

Mr. Manley: And we have a second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:19 PM)

ZBA MEETING – APRIL 28, 2016 (Time Noted – 8:08 PM)

DABROSKI BROTHERS INC. 611 ROUTE 32, WALLKILL

 (4-3-4) R/R ZONE

Applicant is requesting an use variances-two use variances for 185-19-A-1 - a non-conforming use shall not be extended or enlarged and 185-19-B - a non-conforming building shall not be modified in any way to keep (A) a prior built addition (12 x 30) built onto an existing storage building and also two use variances for 185-19-A-1 and 185-19-B to keep (B) a prior built office addition (12 x 14) on the premises.

Mr. Manley: Okay we have one other Public Hearing scheduled for this evening it’s Dabroski Brothers Inc., 611 Route 32 in Wallkill, in a Reservoir Residential zone seeking a use variance...two use variances for Section 185-19-A-1 a non-conforming use shall not be extended or enlarge and 185-19-B- a non-conforming building shall not be modified in any way to keep a prior built (12 x 30) addition built onto an existing storage building and also two use variances for 185-19-A-1 and 185-19-B to keep (B) a prior built office addition (12 x 14) on the premises.

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

Mr. Manley: Now I will advise the applicant and anybody that’s here from the public that the Orange County Department of Planning is required to provide us with comments on this application. They were advised, they received our request on April the 5th and when we checked with them today they advised us that they have thirty days to comment and that thirty days is not up yet and it is forthcoming however, this Board cannot vote on this application until such time as those comments are received from the County or the thirty day period has elapsed. So at this point we can proceed with the Public Hearing but we will have to keep the Public Hearing open until next month until we receive those comments and that is a legal require…you know, a legal requirement and one that we do not have any ability to…to waive. So if the applicant is present…good evening.

Mr. Dabroski: Hello, my name is Fred Dabroski. Myself and my brother own the property for twenty-seven years we ran a…we received a variance from the Town of Newburgh to build and operate our fence company a…that was granted ’92 maybe, maybe ’93 and a…once we were able to actually build our storage building and relocate our office building to the site a…in a very short period of time we realized that we did not have enough space and we did not realize nor were we told that we needed to come and ask to make those minor modifications. So they are a little over twenty some years in that location those two buildings that we applied for a Building Permit for a…and I don’t really have much more to say to that. We have the property for sale. We have a sales contract. We closed our business in 2013, been trying to sell it here in the Town for three years a…and a…the…this is kind of what is holding it up right now. We have a very anxious buyer.

Mr. Manley: Now the question that I have Mr. Dabroski is a…you had indicated that you received a use variance in 1992.

Mr. Dabroski: Okay.

Mr. Manley: From this Board is that…that’s…?

Mr. Dabroski: Well from whoever was on the Board.

Mr. Manley: Okay, now the additions that were placed on the buildings that were not part of the original approved buildings in 1992…

Mr. Dabroski: Okay.

Mr. Manley: …when…when were they constructed…when were those additions put on?

Mr. Dabroski: Before 1995.

Mr. Manley: So they were after ’92 but before ’95?

Mr. Dabroski: Right after we…we built and opened.

Mr. Manley: Do you have anything to show that those buildings were built in 1995?

Mr. Dabroski: We did it ourselves so…I don’t have any, you know, receipt from a contractor or anything like that.

Mr. Manley: Okay, do you have any documentation at all or anything to give us a date as to when they were built?

Mr. Dabroski: I don’t. Do not. Not that I recall.

Mr. Manley: Okay.

Mr. Dabroski: The one building is a shed, well actually the two…the office is two sheds that were pushed together and the a…the building that’s behind the storage warehouse was constructed from a patio which was poured to a…a…store concrete but after losing so much money and from the weather a…we felt we needed to put a roof on it which we did.

Mr. Manley: Now in 1992 when you went and built the buildings that were approved did you obtain Building Permits for those?

Mr. Dabroski: We did.

Mr. Manley: Okay, when you decided to make the additions you never thought that you needed a Building Permit or had to at least ask the Town what you needed to do?

Mr. Dabroski: No I did not feel that we needed to do that since the planning board had given us permission and we were granted a Building Permit to a…not only build the one warehouse but also operate. And in order to operate a…we had three people in a space that was sixteen by twenty and it…it was not a practical so within a year we realized that we needed to move another shed over there and attach it to the existing shed and that was the office and we needed to be able to store the a…see everything in our business was done off site at a customer’s home so it wasn’t like we were…we needed more space to be able to provide a…services at that spot. The public came to us for a sale but the crews went out to do the work and we were just really storing stuff and we just needed more space.

Mr. McKelvey: But you needed Permits to build the buildings.

Mr. Dabroski: When we received the variance a…we really didn’t think that to do these two minor changes we would need to come back all over again one year or two years later.

Mr. Donovan: Were these structures that you built used…? Let me ask this, what were they used for?

Mr. Dabroski: The office was used for an office.

Mr. Donovan: For the fence company or…?

Mr. Dabroski: For the fence company for no one else just the fence company and the storage shed was used as storage for a…concrete. It has two overhead doors so that the forklift could bring a whole pallet of concrete inside…

Mr. Donovan: Concrete for what purpose?

Mr. Dabroski: For fence posts.

Mr. Donovan: Okay.

Mr. Dabroski: Bags, I’m sorry.

Mr. Manley: Do you currently have a Certificate of Occupancy for the structures that were approved in 1992?

Mr. Dabroski: No we do not. I have no idea why but we do not. We have a Permit with all…everything signed off but we never…never got a Certificate and we were instructed that it was our job to ask for a Certificate. We assumed that a…the best that…that I remember when everything was done it would have been issued but that wasn’t the case that we were told that that wasn’t the way things worked. But we were told that now not then.

Mr. Manley: Okay. Now there’s also some additional history, you…you sought to expand your use variance in 1998. You came before the Board to request for a U-Haul business.

Mr. Dabroski: Yes, we did.

Mr. Manley: Okay.

Mr. Dabroski: Yes, we did.

Mr. Manley: And a…in 1998 when you requested that U-Haul business the reason why you were before the Board was because you were operating that business without…again the approval of the Town in 1998. So the reason why I’m trying to figure out the date in which these buildings were constructed is because if it was after 1998 my question to you would be…if you…?

Mr. Dabroski: No, they weren’t.

Mr. Manley: …if you received a Violation Notice in 1998 why didn’t you get the other stuff squared away back in ’98 if you had stuff that was not…?

Mr. Dabroski: We…we…again, never realized that that was a problem. The Fire Inspector came every year, checked everything, never said anything to us, an…an appointment or an employee of the Town of Newburgh a…

Mr. Manley: We have to remember a Fire Inspector is just looking for…

Mr. Dabroski: …works for this Town.

Mr. Manley: …is looking for life safety issues.

Mr. Dabroski: Yeah.

Mr. Manley: Is not specifically looking for Zoning violations or…

Mr. Dabroski: Okay.

Mr. Manley: …Zoning issues. That would be the Building Department if they had no reason to, you know, look into it they are not going to. You know, and unfortunately a…the issue appears to be that that these items were built without a Permit, that’s…that’s the issue. And, you know, the old saying is unfortunately ignorance of the law is no excuse so when somebody says I didn’t get a Permit because I wasn’t…I wasn’t told that I needed one well if you didn’t even inquire as to if you needed one a…I use myself as an example. If I ever has a question as to if I need to get a Permit for something the first thing I do is inquire of the Town do I need a Permit for this? I’m going to side my house do I need a Permit? No, you don’t, you’re okay, you can do it without a Permit. I’m putting an addition on my house; I’m going to spend fifty thousand dollars. Would I want to take the chance as an individual to put a…to spend fifty thousand dollars without getting Permits? Probably not so you know that old saying is it…it’s very hard to…to you know claim, I didn’t know when it’s…it’s our duty as a…as a citizen and as a resident to seek out information as to whether or not you need it. It certainly probably would have prevented a lot of headache. So I guess my next question is a…if you can just a…hold on a minute is to ask Mr. Canfield do we have any records or do you have any knowledge of when those additions were built? Do we have anything that shows pre 1998 or post 1998?

Mr. Canfield: Unfortunately Jim I don’t. The Permits were taken out for the original sixteen by twenty modular building and in ’92 for the twenty-four by thirty-two building. That was taken out. For some reason they were…they weren’t closed out, completed. Mr. Dabroski is…is correct most of the inspections were performed but the most important one, the Final Inspection, wasn’t done. So at that time, and again, the Building Department keep in mind was under operation of a whole different group of people and so I might add at that time, the Building Department and the Fire Inspector’s Office were two separate departments so that’s how it’s very simple that Fire Inspector could have done, come and done a a conducted a life, safety inspection with no knowledge of whether there were or were not Permits. That’s part of the reason why we did consolidate the offices to make that sharing of information much easier. If that answers your question?

Mr. Manley: Now traditionally your department doesn’t…the Fire Inspector doesn’t traditionally go out and look for code violations or violations with respect to zoning law. It’s generally not what they…

Mr. Canfield: Not at that time but currently yes, we do and that was part of the reason for the consolidation, to help that cross sharing of information that interdepartmental activity. I also might add too Jim, it was from Mr. Dabroski to come in and to get Permits once they realized they weren’t closed out and they didn’t… I believe it might have been a Title Search that prompted this, that there were not C.O.’s on the building. That’s when they came in to get Permits and the Permits were renewed based that they were issued on what was supposed to be there in ’92. When we did a Final Inspection that’s when we noticed the other structures, you know, that were not compliant. And I got to say also we’re…we’re at somewhat of a disadvantage or confusion based on the language in the 1992 use variance. I think it’s the last clause in it that is what’s throwing us and probably lead Mr. Mattina to make the determination that it was a use variance, basically increasing the degree of non-conformity. The building being there, being deemed as non-conforming, that’s why the use variance was granted a…so now they’ve expanded that. We felt that that was the correct and accurate way to go, we kind of look to the Board’s guidance on this.

Mr. Donovan: Yeah, I’m not…I’m not really sure, let’s…let’s just talk about general principles so if…if an applicant comes in for a use variance to allow them to have a…a business use in a residential zone for example, if the use variance is granted that use is now a permitted use, it’s not a non-conforming use. A non-conforming use is different animal. A non-conforming use is a use that was allowed before a zone change. Either there was no zoning or was allowed in the zoning change. A use variance is different. It becomes a permitted use after the use variance is granted. Now the issue is with an expansion is whether or not that is covered by the use variance a…or whether it is an increase in the use variance, an increase in the intensity of the use requiring a new use variance. So if this…coming back to this situation, if this was if we could determine whether it was merely customary and accessory to the existing business then in my view it wouldn’t need a use variance.

Mr. Manley: Now when did your business close at that location?

Mr. Dabroski: January 2013.

Mr. Manley: Now, time limitation?

Mr. Donovan: Time limitation doesn’t apply to a use variance. It applies to a non-conforming use. If a non-conforming use is discontinued for a period of a year or more it…it dies. A use variance continues unless they come for a different…the property owner comes…and commits the property to a different use but a use variance…and I’ll give you an example. If you drive down Sara Wells Trail, the Bullshead…it’s been closed for years that has a use variance for a restaurant because people have been interested in it and say, has it lost its non-conforming status? The answer is no, it’s because it’s not a non-conforming use it has a use variance. So the use variance lives on until the property is turned out to a different use.

Mr. McKelvey: Do you have any idea who the new owners are going to put there?

Mr. Dabroski: Actually they’re just going to store stuff just like we did.

Mr. Canfield: Well that was going to be my next question then use…the Dabroski Fence Company is no longer in business but it was storage and so to speak a service rendered so if a potential buyer comes and let’s say he has another commodity that he sells and he stores his materials there, very similar in use to what it was is that permissible? And that’s part of our question as well.

Mr. Donovan: You know it’s kind of difficult to answer that because you would need to really almost get a written narrative from the new business owner saying exactly what they are going to do.

Mr. Canfield: To make that determination.

Mr. Donovan: Correct. This, I’m just looking back to the 1992 variance a…there were…

Mr. Manley: They were specific in fencing…

Mr. Donovan: Yeah, the applicants testified they would use this property for storage of fencing equipment and most business would take place off site.

Mr. Dabroski: All business it…except for the customer coming in to us and that was the reason that we had to increase the size of the office.

Mr. Manley: Well the question is going to be is it depends what type of storage, I mean hypothetically if…and I’m…I’m just going to make something up if the person was going to store dynamite there, okay…that’s storage but is that something that should be permitted based on the use, based on the difference between fence storage and dynamite? They’re both storage but one is obviously more hazardous than the other so…I…I would have to say that the use variance would depend on…it would really depend on what it is that they’re…they’re storing.

Mr. Canfield: Right and…and I agree with Dave’s response…

Mr. Donovan: Did you agree with Rob last month or just agree with me, Jerry, right?

Mr. Canfield: Well it’s your turn I’m going agree because Charlie’s here; I want him to hear that. Yeah, that was going to be our…our next question moving forward should this Board approve a…then what? Obviously the applicants told us it’s up for sale. They’re trying to sell it a…so what’s the new tenant? Now do we take up this issue at this point in time or if you should choose to approve it then it becomes an enforcement issue for us to chase down who goes in there and then make that determination.

Mr. Donovan: So if we just play it forward a little bit what…what should happen, let’s assume that that we get past this hurdle, then a new company comes in and they make an application then you have to know, you have to glean from them exactly what their business is and if there’s a question I think you have to deny the application and refer it to the Board.

Mr. Canfield: Then they’ll be back here, okay. I think the applicant…

Mr. Dabroski: Then they’ll be back here, not us.

Mr. Canfield: I think the applicant would need to understand…

Mr. Dabroski: Right, I mean they could be buying it for an investment to flip when the economy gets better.

Mr. Manley: And unfortunately the applicant or the prospective buyer should probably do their due diligence before they buy the property to insure that…

Mr. Dabroski: The attorneys have already discussed the use variance that we currently hold.

Mr. Canfield: Well I think what we’re hearing tonight Mr. Dabroski is that that use of the new applicant would be up to the determination of my Department and based on my determination will result in whether you do or do not have to come back to this Board. Like the Chairman had said if I determine that the use is significantly different than what’s there I have no choice but to render it the use variance and you come back…

Mr. Dabroski: That would be between you and the new buyer.

Mr. Canfield: That’s correct.

Mr. Dabroski: Not between…

Mr. Canfield: That’s correct.

Mr. Dabroski: Okay.

Mr. Canfield: That’s correct. I…I caution you though on selling something that may not be what it’s sold as.

Mr. Dabroski: The attorneys have discussed this.

Mr. Canfield: Okay.

Mr. Dabroski: They have an agreement in writing.

Mr. Canfield: Just as you’re aware of that and…

Mr. Dabroski: Yeah.

Mr. Canfield: …this Board is a…cleared of not making that clear to the applicant.

Mr. McKelvey: Well we’re only acting on his behalf.

Mr. Dabroski: Right.

Mr. Manley: So now it’s back to the matter at hand which is you’re indicating that this is more of a area variance…?

Mr. Donovan: No, I…I…

Mr. Manley: No?

Mr. Donovan: No variance, there’s a potential that it’s no variance. If we…if the determination is that these additions were used for they were consistent with storage of fencing equipment that it would require to meet Building Department Code issues but not zoning issues because it has a use variance. I think you were looking at it as an expansion of a non-conforming use and that…that…that slot, if you will, does not fit this situation because of the use variance. If it was a different use, if that was…if it was not associated with the fencing equipment, if it was a different business then it would be a different issue. Then it would be an application for a use variance but since the use as I understand it was already approved by the 1992 use variance then it wouldn’t require another use variance.

Mr. Manley: Now do the other…do the additions meet all the requirements within the Zoning Code? The only thing that they were here for was just the use variance? It didn’t need any setbacks or…everything else was fine?

Mr. Canfield: No, those were the only zoning issues, correct.

(Inaudible)

Mr. Canfield: The building issues are something of of another color at this time. Once the application was deemed we have the zoning issue it was disapproved and sent here, so. After this moving forward is to continue on with the Building Permit process.

Mr. Dabroski: Which we filed for.

Mr. Canfield: Yes, you did.

Mr. Dabroski: (Inaudible)

Mr. Canfield: Yes, you did.

Mr. McKelvey: It would be nice to know what’s going to go in there.

Mr. Dabroski: When we started our purchase from Mr. Favino who created that small light commercial business park there a…that property we were lead to believe was light commercial and so no variance would have been necessary. But because it took him so long to close, over a year to get his finances in…in shape because he had mortgages on every single lot in there, a…the zoning, I believe, the zoning changed during that process or right after we entered into a sales agreement so that’s why we had to…we were instructed we had to come for a use variance a…that…that’s the best that I remember. That was a while ago, about twenty, twenty-eight, twenty-nine years ago, maybe thirty because we entered into a sales agreement 1990.

Mr. Manley: Well at this point, based on the a…

Mr. Donovan: Unless there’s any public that has any…in my view this does not need a variance. It needs Code Compliance approval certainly but not a variance.

Mr. Dabroski: Does that also mean that you do not need any input from Orange County?

Mr. Manley: Well if we determine that there’s no variance required at this point it’s just going to die because there’s no…there’s no action that this Board would have to take, it would all be, you know, Mr. Canfield…? Correct. Okay. We’re going to see if there’s anybody here from the public that has any questions or comments on the application. Yes maam?

Ms. Gennarelli: Can you come up to the microphone, please and identify yourself.

Ms. Melendez: My name is Evelyn Melendez and I am a resident of Favino Drive. My concern is in the past couple of days I’ve seen some trucks parked in their as if they’re using space in this lot. Mountain Breeze I believe it is, Mountain Breeze trucks have been parking there. It’s been a pattern so my concern was is this the company that’s going to be moving here and take over or what’s the reason that they’re there? Because we weren’t notified that there’s a new company coming and the trucks that we see is Mountain Breeze.

Mr. Manley: About how many trucks are you speaking of?

Ms. Melendez: Three maybe four.

Mr. Manley: And how large are these trucks?

Mr. Melendez: Well there’s two inside the fence a…they look like mid-sized trucks and...

Mr. Manley: Are they tractor trailer trucks or they more like box trucks?

Ms. Melendez: Business…business trucks.

Mr. Manley: Large vans?

Ms. Melendez: Yeah, like large vans and then there’s a truck and it’s been a pattern. They’ve been parked there for the last maybe a week or so. So I’m thinking is this the company that’s going to come and take over. That’s…that’s what I thought.

Mr. Manley: Unfortunately I don’t have an answer to that perhaps Mr. Dabroski can fill us in if he knows anything about these trucks.

Ms. Melendez: Okay.

Mr. Dabroski: (Inaudible)

Ms. Gennarelli: Can you step up to the microphone…can you step up to the microphone, please?

Mr. Dabroski: Sure, sure. Are you referring to the one truck that’s out in the front parking lot?

Ms. Melendez: No there’s three trucks that says Mountain Breeze.

Mr. Dabroski: Oh, okay, there’s a large truck…I had a…a tenant who needed a place to store his trucks because the Town of Cornwall on Hudson told him he couldn’t store them in his yard anymore so he paid me to park them in the fenced in yard a…he doesn’t have the one truck licensed right now although I’ve asked him every single month to please move it. So that’s…that’s maybe one of the trucks. A…and I had six trucks when I operated my business back there a…six trucks, a fork lift, a skid steer a…all kinds of equipment a…cement mixers and…and generators and air compressors. It’s a big fenced in area a…and instead of somebody parking there…there trucks at their home in the Town of Newburgh it’s nice to have a place. That’s how we ended up buying it because we were told we could not operate our business from our home which I’m…I’m kind of glad that that’s what the Town did to us.

Mr. McKelvey: Is this parking of the trucks going to continue?

Mr. Dabroski: Why not? I have no idea but why not?

Mr. Donovan: Well that would be an issue for Code Compliance in the first instance. You got a…

Mr. Dabroski: That’s right.

Mr. Donovan: …you got a use variance for a certain specific use whether it falls within the parameters of that use or not I don’t think anybody can tell you yes or no tonight.

Mr. McKelvey: That’s…that’s the question I was going to ask Jerry. Can they park…?

Mr. Canfield: Well again we’re back to what is it being used for at this time? My suggestion would be is if Mr. Dabroski is no longer owning it then it would be a…an enforcement issue that I’d have to take up with the new owner. If Mr. Dabroski still owns it and those trucks are there and not operating your business there it’s an enforcement issue that I have to take up with you.

Mr. Donovan: Because you know having storage there accessory to your business is different from leasing the parking…leasing the lot out for parking, it’s a different type of use which may or may not be allowed, can’t answer that tonight.

Mr. Canfield: I should ask, is there a problem with just getting rid of them? They’re not your trucks, you’re not there then you still own the property it’s your responsibility to maintain your property. Get rid of them; make them get rid of them.

Mr. Dabroski: We can do that.

Mr. Canfield: Okay and then the issue goes away.

Ms. Menendez: So Mountain Breeze is not the company that’s taking over, they just park?

Mr. Canfield: We don’t know at this time. I don’t know what company is taking over but at this time it’s his property so…

Mr. Manley: The applicant just said it’s somebody that he is leasing space to at this point that’s…

Mr. Dabroski: I’m not even leasing. They’re just…

Mr. Donovan: Oh?

Mr. Dabroski: …parked there.

Mr. Donovan: I’m sorry.

Mr. Manley: Okay.

Mr. Dabroski: It’s a no fund agreement…

Mr. Manley: Got you.

Mr. Dabroski: …no money changing hands.

Mr. Manley: And not the person who is looking at purchasing the property or…?

Mr. Dabroski: I’d rather not say.

Mr. Manley: Okay. All right are there any more questions from the public with regard to the application?

No response.

Mr. Manley: All right, at this point, Counsel?

Mr. Donovan: I would still…I would make a motion to close the Public Hearing and…and then I based on…I’d make a motion to close the Public Hearing first.

Mr. Manley: Okay.

Mr. McKelvey: I’ll make that motion.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Donovan: And then I would provide the opinion that no further action is required by the Board because based upon the information that has been submitted this is the use that was…for which these buildings were made, was associated with the use approved by the use variance in 1992 and therefore Code Compliance approval is required but no…no action is required by this Board.

Mr. Manley: Let the minutes reflect what Counsel said and…

Ms. Gennarelli: They do.

Mr. Manley: And we’ll enter that as part of our decision. At this point, I would like to ask everyone before we proceed the Board will take a short adjournment in order to confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait in the hallway and then we’ll call you in very shortly when we are ready to reconvene.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:37 PM)

ZBA MEETING – APRIL 28, 2016

END OF MEETING (Time Noted – 9:19 PM)

Mr. Manley: At this point has everyone had an opportunity to review the minutes from March?

Mr. McKelvey: Yes.

Mr. Scalzo: Yeah, my only comments to the minutes is…without Dave here it’s a lot shorter.

Mr. Donovan: You know it’s something about that seat…

Mr. Manley: It’s like possessed or something.

Mr. Donovan: That’s right.

Mr. Manley: So do we have a motion for…?

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

Mr. Maher: Second.

Mr. Manley: Trying to figure out what that scratching noise was.

Mr. Canfield: (Inaudible)

Mr. Manley: So we have a motion from…who?

Ms. Gennarelli: I am not sure.

Mr. McKelvey: Me.

Mr. Manley: We have a motion from John.

Mr. Donovan: John.

Ms. Gennarelli: Okay.

Mr. Manley: A second?

Mr. Maher: I seconded.

Mr. Manley: Second from Mike…all in favor Aye?

Aye - All

Mr. Manley: Opposed?

No response.

Mr. Manley: Motion carried. How do you like that?

Ms. Gennarelli: I like it.

Mr. Manley: Is there any other business before the Board? Is there anything I forgot? I normally forget something.

Ms. Gennarelli: No.

Mr. Manley: A motion to adjourn?

Mr. Maher: So moved.

Mr. McKelvey: Second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: That’s a yes I guess for everybody.

Ms. Gennarelli: The meeting is adjourned.

PRESENT ARE:

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:23 PM)