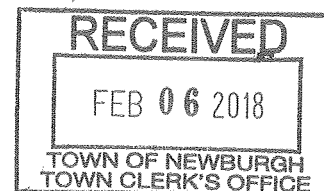


## ZONING BOARD OF APPEALS

MEETING – THURSDAY, JANUARY 25, 2018

(Time Noted – 7:05 PM)



Mr. McKelvey: I'd like to call the meeting of the Zoning Board to order.

Ms. Gennarelli: Attendance Roll Call.

Mr. McKelvey: I'd also like to introduce a new Member of the Board, Peter Olympia. He's going to observe tonight because he...he has not gotten the package or visited the sites. Okay Betty.

Ms. Gennarelli: 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. The Board will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off and when speaking, speak directly into the microphone as it is being recorded.

Pledge of Allegiance to the Flag led by Peter Olympia

(Time Noted – 7:07 PM)

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## REORGANIZATION MEETING

Ms. Gennarelli: And tonight we're having a reorganization meeting. We need a motion to appoint someone as Vice Chairman.

Mr. Levin: I make a motion to nominate John McKelvey as Vice Chairman.

Mr. Scalzo: I second.

Ms. Gennarelli: Okay, we'll have a Roll Call.

- Darrell Bell: Yes
- Richard Levin: Yes
- John Masten: Yes
- Peter Olympia: Yes
- Darrin Scalzo: Yes
- John McKelvey: Abstain

Ms. Gennarelli: Okay, congratulations John.

PRESENT ARE:

- DARRELL BELL
- RICHARD LEVIN
- JOHN MASTEN
- JOHN MC KELVEY
- PETER OLYMPIA
- DARRIN SCALZO

ABSENT:

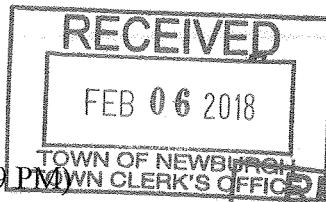
- JAMES MANLEY

ALSO PRESENT:

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

(Time Noted – 7:09 PM)

*BS* 2/6/18

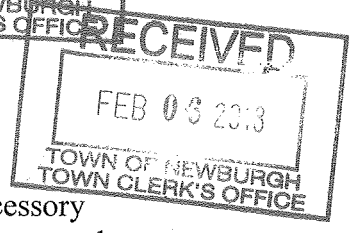


ZBA MEETING - JANUARY 25, 2018

(Time Noted - 7:09 PM)

STANLEY & CYNTHIA THOMAS

212 SUNSET COVE ROAD, NBGH  
(51-5-48) R-1 ZONE



Applicant is seeking area variances for the maximum allowed square footage of accessory structures, the maximum lot surface coverage and no accessory building shall be closer to the fronting street than the front of the main building and shall be set back 5 feet from side / rear lot lines to remove and enlarge an existing accessory building to 18' x 24'.

Mr. Gennarelli: The first applicant before the Board this evening is Stanley and Cynthia Thomas, 212 Sunset Cove Road, Newburgh seeking area variances for the maximum allowed square footage of accessory structures, the maximum lot surface coverage and no accessory building shall be closer to the fronting street than the front of the main building and shall be set back 5 feet from side / rear lot lines to remove and enlarge an existing accessory building to 18' x 24'. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, January 17<sup>th</sup> and The Orange County Post on Friday, January 19<sup>th</sup>. This applicant sent out forty-three letters. All the mailings, publications and postings are in order.

Mr. McKelvey: Good evening. Would you state your name and address for the record?

Mr. Thomas: Good evening gentlemen, my name is Stanley Thomas, my wife is here, we live at 212 Sunset Cove Road, Newburgh. Thanks for taking the time to go visit our property and see the request. First I'd like to say that my wife and I make this our home and this isn't about flipping the property. We've been here since '86 and we plan to stay here. As you're all aware Orange Lake was built as a summer home community at the turn of the century. Our home was built in 1920. As a result the lot is small and in close proximity to other lots and built as close to the lake with large front yards which is the back of the house. This is essentially why our request violates (Inaudible) Code. We'd ask you to consider the legacy of the existing garage was built two point two feet from the property line on what is considered our front lawn in 1920 of course. It is currently in disrepair and any solution requires us to come before you. Our intent to slightly move the structure is in consideration of our desire to keep and not harm the approximate one hundred foot plus Norway spruce that has grown actually in contact with the current garage and has moved it upward and forward about twelve and eighteen inches. The move to the interior of the property would not violate any Code other than being on the front yard which I've already addressed and we feel that the way that we would build this in this location fits into the character not only of our property but the neighborhood.

Mr. McKelvey: Any questions from the Board?

Mr. Masten: I have nothing.

Mr. Levin: I have a question but it was answered by somebody before we started. There is no scale on this that you gave us.

Mr. Thomas: It's a quarter inch is twenty feet I believe...that was the plat...it's from the plat.

Mr. Levin: Jerry said it's...did you say the size was correct?

Ms. Gennarelli: It was Joe Mattina.

Mr. McKelvey: Joe.

Mr. Levin: Oh, it was Joe Mattina that said...

Mr. Thomas: The sizes are to scale.

Mr. Levin: They are to scale? Okay.

Mr. Scalzo: It's a twenty scale, Rich.

Mr. Levin: Okay.

Ms. Gennarelli: Thank you Darrin.

Mr. Canfield: (Inaudible) ...accurate.

Mr. Scalzo: Actually, I'm scaling the forty-three foot dimension and it's right on.

Mr. Canfield: It's right on, okay.

Mr. Scalzo: Yes.

Mr. McKelvey: I think Joe re-checked it too.

Ms. Gennarelli: Joe checked it today.

Mr. McKelvey: Yeah.

Mr. Levin: I will admit that other garage looks scary.

Mr. Thomas: I actually have my tractor against it so it doesn't fall over when the wind hits it.

Mr. McKelvey: You...on this new garage are you going to...the new accessory building...

Mr. Thomas: I made it a storage shed because if we did a garage we'd have to do a concrete floor with five foot footers and that most certainly kill the tree. So we're going from a garage to a storage shed and moving it slightly to not affect that kind of magnificent tree.

Mr. McKelvey: It shows in the drawing that...one of the drawings I saw with a deck on the back what's that for?

Mr. Thomas: It's inlaid. It's like a sitting deck underneath the roof line.

Mr. Levin: Yeah, it's covered.

Mr. Thomas: It's not on the back it's part of it...it's actually just inset, it's just for sitting.

Mr. Levin: Okay.

Mr. McKelvey: Any other questions from the Board?

No response.

Mr. McKelvey: If not, I'll open it up to the public if there's anybody that would like to speak. Go ahead, come up...

Mr. Hughes: Just a question...

Mr. McKelvey: ...come up to the microphone...

Ms. Gennarelli: I'm sorry; you have to come to the microphone, sir.

Mr. McKelvey: ...it's being recorded.

Mr. Donovan: State your name for the record.

Ms. Gennarelli: Please state your name for the record.

Mr. Hughes: I am Animal Hughes I live in Middle Hope. Counsel, being that Mr. Olympia said he will abstain because of the circumstances and you only have five Board Members it may behoove you to tell these applicants they may want to wait for a more full Board for a real decision.

Mr. Donovan: Thank you. What Mr. Hughes is referring to is this is a seven Member Board; you need four affirmative votes for any application to pass this evening. You have six Members present, five Members will be voting, you and every other applicant will need four out of five. The Board typically offers you the ability to defer a vote due to a lack of full complement of the Board Members. We'll repeat that again with the final application this evening because I understand Mr. Scalzo will recusing himself so that application will need a four out of four. You would need four out of five. Your choice...you don't have to decide right now but you have to decide shortly.

Mr. Hughes: Thank you for listening to what I had to say.

(Inaudible Audience Member)

Mr. McKelvey: At the end...when we go through all the applicants tonight we'll...we'll ask you to go to the hall, everybody to go outside and we'll confer for any legal actions with the a...our attorney.

Mr. Donovan: At that time, we'll reconvene and potentially vote, they have sixty-two days to make a decision but it would be at that time unless you wanted to decide that you would have your final opportunity to say please don't vote this evening.

Ms. Gennarelli: That would mean holding it over to February...right...22<sup>nd</sup>.

(Inaudible Audience Member)

Ms. Gennarelli: We have a new Board Member tonight...

Mr. McKelvey: We have a new Board Member.

Ms. Gennarelli: ...and he is observing so he won't be voting tonight.

Mr. McKelvey: How close is this to the house?

Mr. Thomas: I'd have to refer to the...it's approximately fifteen feet.

Mr. McKelvey: Okay.

Mr. Scalzo: It will be further away from the house than the existing garage.

Mr. McKelvey: Yeah, that's...that's what I wanted to know.

(Inaudible Audience Member)

Ms. Gennarelli: I'm sorry; if you're going to speak you have to come up to the microphone.

Mr. Thomas: It has to move forward and to the side to get away from that tree at all.

Mr. McKelvey: And the side yard?

Mr. Thomas: Excuse me?

Mr. McKelvey: How far on the side yard?

Mr. Thomas: It's currently built two point two feet from edge of the property...the back of the...I'm going to try and move it in as far as...as I can allow. It...it will be a little bit more on the back. It will be a little bit more than that but not...not five feet.

Mr. McKelvey: Thank you. Any other questions from the Board?

Mr. Bell: So when I look at this picture you're looking to come in what direction? Forward this way?

Mr. Thomas: The back will swing in towards the interior to the trees.

Mr. Bell: To the trees...okay.

Mr. McKelvey: Hearing no more questions from the Board I'll look for a motion.

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

Mr. Masten: I'll second it.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: I'm sorry, am I supposed to ask Peter or just have him abstained for every one of these or we just...

Mr. Donovan: He's a...as I understand it, fully appointed and sworn...

Ms. Gennarelli: Right.

Mr. Donovan: ...I'm sorry, sworn in Board Member...so, yes.

Ms. Gennarelli: Yes? Okay.

Mr. Donovan: If you want to vote to close the Public Hearing you can do that...

Ms. Gennarelli: Okay.

Mr. Donovan: ...as to you're announcing that you're not going to vote on the applications for the purpose of the Public Hearing.

Ms. Gennarelli: Okay but include him in the vote, okay.

Peter Olympia: Yes.

Ms. Gennarelli: Yes, okay, thank you. Okay we're going to go on to the next one, one second.

Mr. McKelvey: Okay.

Ms. Gennarelli: Alright, one sec John got a lot of things to do here.

(Time Noted - 7:17 PM)

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ZBA MEETING - JANUARY 25, 2018 (Resumption for decision: 8:28 PM)

STANLEY & CYNTHIA THOMAS      212 SUNSET COVE ROAD, NBGH  
(51-5-48) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory structures, the maximum lot surface coverage and no accessory building shall be closer to the fronting street than the front of the main building and shall be set back 5 feet from side / rear lot lines to remove and enlarge an existing accessory building to 18' x 24'.

Mr. McKelvey: The Board is going to resume its meeting for the vote on two of the items. Betty.

Ms. Gennarelli: Okay, one second John, I've got to do everything here tonight. Alright, the first one is Stanley and Cynthia Thomas, 212 Sunset Cove Road, area variances for the maximum allowed square footage of accessory structures, the maximum lot surface coverage and no accessory building shall be closer to the fronting street than the front of the main building and shall be set back 5 feet from side / rear lot lines to remove and enlarge an existing accessory building to build a new one to 18' x 24'. And we have the questions to go through...

Mr. McKelvey: Yes.

Ms. Gennarelli: Would you like me to read the questions?

Mr. McKelvey: Yes, please.

Ms. Gennarelli: Alright. Whether the benefit can be achieved by other means feasible to the applicant?



Mr. Scalzo: They could repair the existing building there but I don't think that that would be safe to actually do so I don't really think it would be feasible.

Mr. Bell: I don't think so (Inaudible).

Ms. Gennarelli: If there an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Masten: No.

Mr. McKelvey: No I don't think so.

Mr. Scalzo: No I don't think there's a change in the neighborhood.

Mr. Bell: Unless it stays the same.

Mr. Masten: It will be an improvement.

Ms. Gennarelli: Whether the request is substantial?

Mr. Levin: No.

Mr. Bell: No.

Mr. Scalzo: No.

Ms. Gennarelli: Whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. Olympia: No.

Mr. Scalzo: It does not appear so.

Ms. Gennarelli: And whether the alleged difficulty is self-created? Which is relevant but not determinative.

Mr. Bell: No it's just aged.

Mr. McKelvey: Do we have a motion for approval?

Mr. Masten: I'll make a motion we approve the application.

Mr. Bell: I'll second that motion.

Mr. Donovan: Before you vote just for the record Betty so that it's reflected in the minutes this is a Type II Action under SEQR.

Mr. McKelvey: Yes.

Ms. Gennarelli: Type II Action under SEQR, yes, okay. We have a motion and a second. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

Ms. Gennarelli: Abstain?

Mr. Donovan: You're entitled to vote if you want. You talked about Abstaining from voting. I said you could vote on closing the Hearing...

Ms. Gennarelli: I apologize, I'm confused.

Mr. Donovan: ...open or close of the Hearing.

Mr. Olympia: Which do you want me to do? If I'm entitled to vote I will vote.

Mr. Donovan: Okay, absolutely you're entitled to vote.

Ms. Gennarelli: Okay, yeah, okay.

Mr. Donovan: You are sworn in.

Ms. Gennarelli: All right, thank you.

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The motion is carried. It was approved.

PRESENT ARE:

DARRELL BELL  
RICHARD LEVIN  
JOHN MASTEN

JOHN MC KELVEY  
PETER OLYMPIA  
DARRIN SCALZO

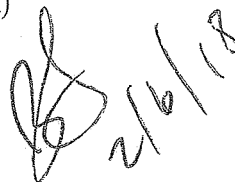
ABSENT:

JAMES MANLEY

ALSO PRESENT:

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

(Time Noted – 8:31 PM)

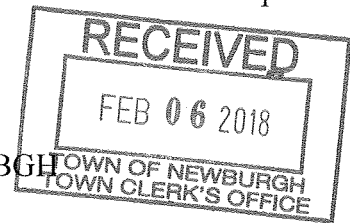
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ZBA MEETING – JANUARY 25, 2018

(Time Noted – 7:17 PM)

TIER 3 PROPERTIES LLC.

13 ELMHURST AVENUE, NEWBURGH  
(53-1-7.1) R-1 ZONE



Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to construct a deck (8 x 24) on the dwelling (corner lot).

Ms. Gennarelli: Alright the next application is Tier 3 Properties LLC., 13 Elmhurst Avenue, Newburgh and they're seeking an area variance for increasing the degree of non-conformity of the front yard setback to construct a deck (8 x 24) on the dwelling and they have a corner lot. And this applicant sent out thirty-four letters. All the mailings, publications and postings are in order and if you could introduce yourself for the record.

Mr. Puckett: Good evening Jason Puckett, 62 Highland Avenue in Walden, I'm co-owner of Tier 3 Properties with the same address.

Mr. Farrell: Good evening Robert Farrell, 106 Stanley Place, Highland, New York and I am partners with Jason Puckett.

Mr. McKelvey: Please state what you want.

Mr. Puckett: Well we...Tier 3 is requesting an area variance to a...due to the fact that the property is on a corner lot and it is considered to have two front yards. On the Elmhurst front yard it's approximately one hundred and fifty feet so we clearly meet the setback for Elmhurst but Charles Street the...pretty much the whole...almost the whole entire house doesn't meet the setbacks for the fifty feet. The proposed porch that we're asking is only going to encroach around three feet closer to the road than the existing footprint of the porch and the steps.

Mr. McKelvey: When was the house built?

Mr. Puckett: The house was built in 1920.

Mr. McKelvey: Yeah that's (Inaudible). Any questions?

Mr. Puckett: I just wanted to say one thing, in order to repair the existing porch due to the fact that it doesn't meet the setbacks we would have to come to the Board in...in any event no matter what we're going to do to the porch so to make it more characteristic for the neighborhood and the property we...we felt that building a 8 x 24 porch with the stairs facing Elmhurst, centered on the house, would make the house more in line with the character of the property and the neighborhood.

Mr. McKelvey: I can understand it. That porch that's there now is crumbling anyhow. Any questions from the Board?

Mr. Masten: No.

Mr. Scalzo: No, just as a...as a matter of record just for you to respond to me, the proposed porch that you're putting on there...porch, stairs, anything will be no closer to the right-of-way at Charles Street than the existing house corners, correct?

Mr. Puckett: That is correct. It would be approximately eight feet in...

Mr. Scalzo: Correct.

Mr. Puckett: ...from the edge of the house.

Mr. Scalzo: Thank you.

Mr. McKelvey: Hearing no more questions from the Board is there anyone here that would like to state from the Public?

No response.

Mr. McKelvey: If not, I'll ask for a motion.

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

Mr. Bell: I second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Okay, the Public Hearing is closed. They'll come back to vote.

(Time Noted - 7:21 PM)

ZBA MEETING - JANUARY 25, 2018 (Resumption for decision: 8:31 PM)

TIER 3 PROPERTIES LLC.

13 ELMHURST AVENUE, NBGH  
(53-1-7.1) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to construct a deck (8 x 24) on the dwelling (corner lot).

Ms. Gennarelli: Okay and then we have Tier 3 Properties LLC., 13 Elmhurst Avenue, Newburgh, seeking an area variance for increasing the degree of non-conformity of the front yard setback to construct a deck (8 x 24) on the dwelling...it's corner unit. And we'll go through the questions. Whether the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Scalzo: Pre-existing, non-conforming, no.

Ms. Gennarelli: If there is an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: No, not even close.

Ms. Gennarelli: Whether the request is substantial?

Mr. Masten: No.

Mr. McKelvey: No.

Mr. Levin: No, not at all.

Ms. Gennarelli: Whether the request will have adverse physical or environmental effects?

Mr. Levin: No

Mr. Olympia: No.

Mr. McKelvey: No.

Mr. Masten: No.

Ms. Gennarelli: And then whether the alleged difficulty is self-created which is relevant but not determinative.

Mr. McKelvey: This is a Type II.

Mr. Donovan: Yes, it's a Type II Action, correct.

Ms. Gennarelli: This is a Type II Action under SEQR.

Mr. McKelvey: Roll call.

Mr. Donovan: Someone make a motion, please.

Mr. Bell: I'll make a motion we approve.

Ms. Gennarelli: We have a first, do we have a second?

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: The motion is carried.

Ms. Gennarelli: And it's approved.

PRESENT ARE:

DARRELL BELL  
RICHARD LEVIN  
JOHN MASTEN  
JOHN MC KELVEY  
PETER OLYMPIA  
DARRIN SCALZO


ABSENT:

JAMES MANLEY

ALSO PRESENT:

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

(Time Noted – 8:33 PM)

 2/6/18

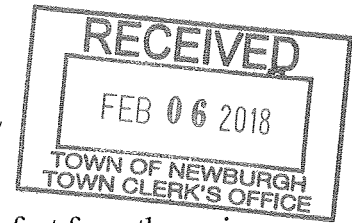


ZBA MEETING – JANUARY 25, 2018

(Time Noted – 7:21 PM)

WILLIAM MIELE

6 TARA LANE, WALLKILL  
(2-2-16.2) R/R ZONE



Applicant is seeking area variances (A) for accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building (24 x 50 x 16'9 pole barn).

Ms. Gennarelli: The next applicant is William Miele, 6 Tara Lane, Wallkill and he is seeking (A) area variance for an accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) an area variances or area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building (24 x 50 x 16'9 pole barn) and this applicant sent out twenty-five letters. All the mailings, publications and postings are in order. If you could please just introduce yourself for the record.

Mr. Miele: William Miele, 6 Tara Lane, Wallkill, NY.

Mr. McKelvey: State what you're looking for.

Mr. Miele: An area for a 24 x 50 pole barn and to keep a prior erected a...carport.

Mr. McKelvey: Any questions from the Board?

Mr. Levin: Is...is that it? I thought there was a future storage shed that's on here.

Mr. Scalzo: Well I believe that's what he's referring to as a pole barn.

Mr. Masten: Yeah.

Mr. Miele: May I approach and look?

Mr. Scalzo: Your...your...yeah, yeah...your architect, Mr. Sears, a...calls it a future storage shed.

Mr. Miele: Well it's going to be an accessory building. That's where it's supposed to...hopefully it's going to go up.

Mr. Levin: Well you talk about the two car garage...

Mr. Donovan: So Mr. Miele if you're going to do us a favor, it's being recorded, if you can just go back to the microphone?

Mr. Miele: Sure.

Mr. Levin: We're not talking about the carport right now.

Mr. Miele: About the accessory building I just pointed out.

Mr. Scalzo: The carport is to remain, correct?

Mr. Miele: To remain, yes.

Mr. Scalzo: Yeah, that your architect certified that it is a...substantially acceptable according to the Building Department's requirements is that correct, Jerry?

Mr. Canfield: (Inaudible)

Ms. Gennarelli: Mr. Canfield said yes.

Mr. Canfield: Thank you Betty.

Ms. Gennarelli: No microphone.

Mr. McKelvey: You've got that mic all to yourself tonight Jerry.

Mr. Donovan: Without a microphone Jerry can I ask you a question though? So in terms of the carport is there...is there a Fire Code separation that's required in addition to the Zoning requirements?

Mr. Canfield: Let me get this microphone.

Ms. Gennarelli: Thank you.

Mr. Canfield: The ten foot separation is predicated on the Fire Code that's why it's there. I trust that answers your question.

Mr. Donovan: I...I think you said I was right.

Mr. Canfield: Yes, you are.

Mr. Donovan: Okay, that's all I really wanted to hear.

Mr. Canfield: I would never disagree with Counsel.

Mr. Levin: I have an obvious question. Why didn't you come before the planning (Zoning) board?

Mr. Miele: Well it's not combustible and it's a...I didn't think it needed it; honestly...it was put up years ago. It's a non-combustible carport, it's secure, I didn't realize I needed a Permit for it.

Mr. McKelvey: Typically everything you put on your property...

Mr. Miele: Well I...

Mr. McKelvey: ...you put on your property needs a Permit.

Mr. Miele: ...I...I found that out, yeah. Now I know.

Mr. Levin: Now you plan to keep eight cars in your...?

Mr. Miele: We're not eight cars, no...I have a...I have restored in the past classic automobiles and I'd like to store them properly rather than on the...you know, out in the property covered up and I have a couple of motorcycles as well that are restored. I'd like to store them properly. I have some antiques and stuff...other things, lawn equipment I'd like to also keep in there.

Mr. McKelvey: How many vehicles?

Mr. Miele: I have four a...vehicles with two will...will be in...in that and two will be in my a...my garage at the house you know, it's attached to the house.

Mr. Olympia: Will you be doing non-owner repairs?

Mr. Miele: Oh no, negative, I don't do any a...no. Everything I do is...is for myself. I not a business person, I don't farm any equipment out, any work...no. I'm a retired Detective from Manhattan and I do security work and that's a hobby of mine.

Mr. Scalzo: I just a question regarding the pole barn. What's the overall height of the barn?

Mr. Miele: It's ten feet but the peak height is 16'7". There's a built...there's a built...a...  
(Inaudible)

Mr. Scalzo: That's where I was a...

Mr. Miele: ...so it's...it's twenty-four by fifty which is twelve hundred square feet and it's a ten foot building they...they're calling it but it's a 16'7" peak height...

Mr. Scalzo: Okay.

Mr. Miele: ...the overall height of the building is not 16'7" it's...just the peak that's 16'7". I don't know how they go with the peak height. I'm not a builder. I don't know. I know the building height is sixteen feet seven inches.

Mr. Scalzo: Jerry, do you want to help out with that one?

Mr. Miele: Yeah, I don't...

Mr. Scalzo: That sounds like it's sixteen (sixteen feet, nine) feet to me.

Mr. Canfield: The highest point of the building is sixteen (sixteen feet, nine) feet whether it be the peak or the ridge whatever...that's the building.

Mr. Miele: I wasn't aware of that so...

Mr. Scalzo: And our maximum accessory building height is fifteen, correct?

Mr. Canfield: Fifteen.

Mr. Scalzo: Sixteen, nine, okay I got you, so we're looking for a one foot, nine inch variance, eleven percent...eleven point six, six percent.

Mr. Levin: Why in this paper it says vehicle storage for eight when it's existing...existing four?

Mr. Miele: That's what I...I don't know; I couldn't fit eight vehicles in that building. I don't know. I have no idea.

Mr. McKelvey: Where did the eight vehicles come from?

Mr. Levin: It says eight right here.

Mr. McKelvey: Yeah.

Mr. Miele: I have no idea. I don't have eight vehicles to put in that building.

Mr. Levin: You could fit eight vehicles though in the future.

Mr. Donovan: Well I think...and we've had this on-going conversation for a number of years. I think Mr. Mattina's calculation is...if you build a structure of a certain size he does an analysis of how many vehicles you could fit inside then I'm...Jerry I'm looking at you not that you want to answer for Mr. Mattina...but that's my recollection. He then does an analysis of how many vehicles could fit inside that accessory structure, correct?

Mr. Canfield: Yes, that's exactly right. Should the Board choose to approve there's been conditions a...as far as compliance with a maximum of four vehicles but you're right that's how we derive how many vehicles can fit in the building.

Mr. Donovan: Mr. Miele, do you know how many you would want to have?

Mr. Miele: I own four vehicles. I own four classic vehicles (inaudible) I don't plan on purchasing any more. These four I'm looking to keep in an area that I can...keep them preserved as well as a

few motorcycles as well. I mean, I don't...I don't plan on buying any. I don't want to be storing any more. I'm done with cars...

Mr. Donovan: Right, I'm not trying to give you a hard time.

Mr. Miele: It's a hobby.

Mr. Donovan: I'm just trying to make sure that the Board understands what your request is. I think Mr. Mattina has indicated on the sheet that comes to the Board you could have eight. If you say to us you'd like to have four then we know that it's four and that would be a condition of the approval, assuming that the Board got that far.

Mr. McKelvey: We could put a condition that it's only four.

Mr. Donovan: Unless you're asking for a different number. I don't mean to put words in your mouth.

Mr. Miele: I have four classic vehicles that I store. I have a vehicle I drive to work and I have a vehicle that I...the truck that I use for my daily activities around the house that stay in the driveway and in my garage of the house.

Mr. McKelvey: And it would be alright if we put a stipulation on the...

Mr. Levin: Maximum can be four...

Mr. McKelvey: ...the maximum can be four.

Mr. Donovan: Four...four in...in the accessory structure (Inaudible)...

Mr. McKelvey: Inaudible.

Mr. Miele: Inaudible...be kept...kept in that accessory structure? Four?

Mr. Donovan: Yeah.

Mr. Miele: Yeah I can...absolutely four.

Mr. McKelvey: Okay.

Mr. Miele: I mean I have a two-car garage at the house, I have a driveway, I mean...I mean you're telling me I can't own more than four vehicles? I'm kind of confused.

Mr. Donovan: I'm not telling you anything other than what the Code says...

Mr. Miele: You're saying the structure itself can't hold more than four vehicles?

Mr. McKelvey: That's what he says.

Mr. Donovan: Without a variance.

Mr. McKelvey: Without a variance.

Mr. Miele: Now vehicles meaning cars or motorcycles? Because in that structure will be four cars and a few motorcycles that I restored. I mean it's a hobby of mine. It's like I'm up here trying to store things I've restored...I've...I've kept from the past, the 60's, 50's, 70's and that's like...it's unbelievable I gotta...I just can't keep these things preserved?

Mr. McKelvey: Would four vehicles and a couple of motorcycles, would that be okay, Jerry?

Mr. Canfield: I think the definition of a vehicle is what comes in to play here. Not to prolong this but to...I guess you'd have to look at VAT or if our Zoning Code 185-3 a...defines vehicle and the reason for that being is a motorcycle classified a vehicle?

Mr. Miele: Then there's going to be more than four vehicles and I...I have a few motorcycles that will be restored as well. I...I...I mean I'm not just here to lie to you; I'm going to be honest with you I restore these...these vehicles motorcycles and cars and I'm looking to store them. I'm looking to keep them on my property and store them. As it is now I'm...I'm paying storage fees that are just unreasonable for me.

Mr. McKelvey: We don't make the Codes though.

Mr. Donovan: Just to understand no one is trying to give you a hard time. We're trying to...

Mr. Miele: No, no I...

Mr. Donovan: ...we're trying to understand because if you say listen I'm not going to have any more than four and you walk out and you have six...

Mr. Miele: I...I'm trying...

Mr. Donovan: ...and then you get violated then you'll be upset.

Mr. Miele: ...that's what I'm trying to avoid...and when...no...I got...I got you know...

Mr. Donovan: Jerry, I don't see a definition of vehicle in the Code.

Mr. Bell: I don't see it either.

Mr. Canfield: And in the absence of the...the definition in our Zoning Code we'd have to refer to the Motor Vehicle definition of a vehicle. It's splitting hairs but if we're hung up on this (inaudible) ...

Mr. Donovan: And just to belabor this even further, my recollection of Mr. Mattina's analysis of this is that the limitation is within the accessory structure and there perhaps is no limitation of vehicles outside of the structure. Am I correct?

Mr. Canfield: Let me research that...before I answer.

Mr. Donovan: That's an on-going conversation that I've had with Mr. Mattina over...

Mr. Canfield: Yes.

Mr. Donovan: ...a period of time.

Mr. Canfield: Give me a second perhaps I can give you a section of the Code that we can cite.

Ms. Gennarelli: John, I don't know if you remember the Orange County report has not come back yet also.

Mr. McKelvey: Yes. That's right, we did...the Orange County report didn't come back and they have thirty days to send it to us so we wouldn't be able to vote on this tonight anyhow.

Mr. Miele: So you're saying like the accessory building can only store four vehicles but...my two car garage of the house I can...

Mr. Scalzo: Yeah, if...if your motorcycles were in that garage and you put four cars in the accessory structure then...I guess we'd be...

Mr. McKelvey: Then you're alright.

Mr. Scalzo: ...okay.

Mr. Miele: Well then...then we're...we're good.

Mr. Levin: But then he has to store the truck someplace.

Mr. McKelvey: Yeah.

Mr. Miele: I don't garage that vehicle (Inaudible).

Mr. McKelvey: Well that's what I was going to mention because you got the two car garage in the house where you could store... In the meantime, is there anybody from the public that would like to say something?

No response.

Mr. Canfield: The definition or actually the...the point of reference that we're making is out of the Bulk Use Tables keeping in mind that this is an RR District. Under Column A, accessory

uses, number two, private garage or carport for not more than four vehicles so I did notice on Mr. Mattina's citing number four Bulk Table storage Schedule 1 allows four vehicles maximum storage per lot but as I read this table it says private garage or carport for not more than four vehicles. I'm not certain that lot is accurate. I'm inclined to believe a...I agree with you that it's per building, per carport and storage...storage building as that says.

Mr. Donovan: Okay but in any event the Board can't close the Public Hearing and vote tonight in any event we still do not have the 239 report.

Mr. Levin: I'll make a motion that...

Mr. McKelvey: It's up to the Board if you want to make a motion to close the Hearing.

Mr. Donovan: No, no, no you can't close the Hearing because we didn't get the report.

Ms. Gennarelli: John, John is there anybody in the audience that wants to talk? Did we do that yet?

Mr. McKelvey: We want to...we want to hold it over...

Mr. Bell: He did.

Ms. Gennarelli: Dave, he did? I am not sure...

Mr. Donovan: He did, yeah.

Mr. Scalzo: Dave...Dave...

Mr. Donovan: Yes.

Mr. Scalzo: ...we're still not allowed to...we can't close? I can understand that we can't vote but could we close the Public Hearing?

Mr. Donovan: Well I guess in theory you could close the Hearing but I've never a...what if the County came back with a substantive comment...?

Mr. Scalzo: I understand, okay.

Mr. McKelvey: So could we have a motion to...?

Mr. Scalzo: I'll make a motion that the Public Hearing remains open.

Mr. Masten: I'll second

Mr. Donovan: And just until the February meeting whatever date that is...



Ms. Gennarelli: February 22<sup>nd</sup>.

Mr. McKelvey: February 22<sup>nd</sup>.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

PRESENT ARE:

DARRELL BELL  
RICHARD LEVIN  
JOHN MASTEN  
JOHN MC KELVEY  
PETER OLYMPIA  
DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

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

(Time Noted - 7:35 PM)

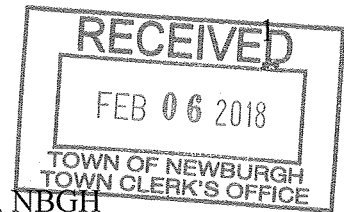
*BJ 2/6/18*

ZBA MEETING – JANUARY 25, 2018

(Time Noted – 7:35 PM)

FRANK DARRIGO REVOCABLE TRUST

84 LAKESIDE ROAD, NBGH  
(86-1-96) R-1 ZONE



Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone)

Ms. Gennarelli: The next application is Frank Darrigo Revocable Trust, 84 Lakeside Road in Newburgh and this is a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential District an R-1 Zone.

Mr. Scalzo: Mr. McKelvey, I'm will be recusing myself from this action.

Mr. McKelvey: Okay.

Ms. Gennarelli: This applicant sent out one hundred and three letters. All the mailings, publications and postings are in order. Sir, do you have a proxy?

Mr. Bloom: I...I didn't submit one in advance, no, I do not.

Ms. Gennarelli: I don't have a proxy for you.

Mr. Bloom: All right a...may I make an application Mr. Chairman for a...permission to sign the proxy at or subsequent to the meeting?

Mr. Donovan: That's a matter of the Board's consent. It's the practice of the Board to have a proxy.

Ms. Gennarelli: We have one for Mr. Lease.

Mr. Donovan: I don't want to interrupt the proxy, it's not as if though Mr. Bloom is an unknown quantity, I don't think he was driving by tonight, decided to volunteer his time but I leave that up to the Board.

Mr. Levin: Inaudible.

Mr. McKelvey: What's the Board want to do?

Mr. Levin: Can we waive a proxy without a...a vote?

Mr. Donovan: Well I...see it's a matter of policy that the Board requires before someone speaks on behalf of an applicant that they are authorized by the applicant to do that and that generally is a...not generally...it's a good policy. We have a situation now where you know, as they say you know, hard law or hard cases make bad law or something like that but I mean...it's not like Mr. Bloom is...is doing this for free, it's not like he...his client doesn't know he's here so I

just...there, there sometimes it's a matter of common sense. If the Board wants to stick to your policy you can stick to your policy. If you want to hear Mr. Bloom on behalf of the applicant I can certainly understand that and would have no objection to that but that's a matter for the Board.

Mr. Bloom: May I be heard a...Mr. Chairman on the...

Mr. Donovan: I don't think they've decided yet, Dan.

Mr. Bloom: If I may say something please rather than cause consternation on the Board I will a...voluntarily and with the permission of Mr. Lease withdraw from making a presentation on his behalf and with the Board's permission I will simply sit here and monitor. I was going to turn the meeting over quite unusually anyway to my client because of his in-depth knowledge of the subject matter and I was just going to make introductory remarks so I appreciate the Board's rules and it's not my intention to violate those rules. I appreciate your respect and a...with your permission Mr. Chairman I'll turn it over to Mr. Lease.

Mr. Lease: Good evening, my name is Jeff Lease and I'm representing the Darrigo Trust for the application of a use variance for a solar farm on the existing Darrigo sixty acres on Lakeside Road. The reason for this application is that the solar rules in the Town of Newburgh though well written are only being applied to the industrial zone and a...the...we feel that the Darrigo farm is uniquely qualified to hold the solar farm because of certain conditions and those conditions are...are for variance. A...I'll go in order of a...what I also wanted to say is that this...this is only an...a use variance, there is no other variance for setback or height or anything else. It's just simply use. In all other respects, this application will comport to the a...the Code as written a...in...in...in the rules. It's...it's only in that it...it's a...in an R-1...what's being proposed in an R-1 Zone. It first instance in which the question of hardship comes up is...is a...this is in...on part of this property...I just want to point out...

Ms. Gennarelli: You can take the microphone with you please.

Mr. Lease: Oh, (Inaudible), yes on part of this property this is the...this is the existing farm as it is and I'll bring this Board up later but this is the...this is the proposal with the solar array on it. The...the sixty acre parcel here is in...in total and there's and eight point eight six portion of it in which the Darrigo's have had a a...a retired hazardous waste site on the corner of the property and they've worked hard over many years to a...remediate that site and to cap it. That site has certain a...effect on the balance of the property particularly when it comes to residential. The...the eight point eight six acre may not be used for residential. It may be used with conditions from the DEC for commercial use but never for residential a...and we feel that one of the biggest aspects of this as part of the total in terms of the development as an R-1 is that the future homebuyers would have to be notified of the presence of this former hazardous retired waste site there and this would substantially and negatively affect the value. The hardship in this particular case is unique. The Darrigo's ran this a...waste site legally during the '40's and '50's, it a...it was stopped and then tested by the DEC and a...after much testing in the '90's they determined that there was some heavy metals that were a...deposited there that should not have been. They didn't have testing in the '40's and '50's for it and that they made a report...a

proposal to get a...to remediate the heavy metals at this site. The main thing about the solar farm here on this site is that it keeps the farm more farm-like than the R-1 would...would make it. The R-1 because of the topography and the...the need for internal roads because it has so little frontage on this sixty acre parcel it would require an enormous amount of...of land clearing and road building in order to access a...the property as an R-1. As a use as a solar farm if you can see the fields as they are here the proposal is to use not all of the sixty acres but part of the sixty acres and use the fields as they are and particularly expand the upper field a...which is at the back corner of the property. Just to be clear, this is Lakeside Road over here, this is Ice Time and this is Amber Fields and this is I-84. So in a sense when the question comes up will the modification significantly alter the neighborhood we feel that as use as a solar farm it will be more consistent than transferring it over into single family homes. A...and finally the fourth condition was the...was the proposed...was the condition self-made the dumpsite a...as illegality was not self-created a...after its closure in '85 and with the testing the contaminants were found there on...on site unbeknownst to the Darrigo family. A...what I would just want to describe is that this proposal is currently a...as shown is a four megawatt, it's been approved at least at this location by Central...Central Hudson. It has not gone to the design phase. It at that point an engineer would have to lay the whole thing out and Central Hudson has to weigh in as to the exact design of it. Panels get turned slightly differently and a...the...in the way that it connects currently, the connection site that Central Hudson has proposed is a...either on Lakeside Road or over to a...Meadow Hill Road and it is a...they are two a...two megawatt a...solar systems which is pretty much the standard size which is...which is being promoted right now. A...the panels themselves are about seven feet high and a...we had a town hall meeting in which we a...met the neighbors that were all this evening for tonight's variance meeting and we had that in a...the end of June and tried to determine what was important to the neighbors in terms of this proposal and if this would be acceptable and we got largely positive a...responses. And a...one of the...one of the things was that I...I just wanted to...you've seen the photographs that I...I've a...had with the application what I wanted to show was the solar panels themselves which I guess I don't have, okay. Well the...the solar panels are seven feet...seven feet high and...and three feet at...at the low edge. I'm sorry I didn't have that drawing a...the...the letter from a...the DEC was included in the package. I have a...a letter...I asked for letters of recommendation from my neighbors and I got but one from the Kneisers who live at the entrance and a...I also have a letter here from the accountants for the Darrigo trust which has been notarized in which to date the existing use of the farm has never turned a profit that has resulted in a distribution to the beneficiaries and so I'd like to...I have some copies as well. How do I present a letter to the Board? Do I just give it you or...? To Betty? Right.

Ms. Gennarelli: Do you have copies?

Mr. Lease: Yeah, I do, I think I have eight copies.

Ms. Gennarelli: Thanks.

Mr. Lease: Additionally as part of this I want to know that how I was introduced to this property is that I was...I was contacted by the Darrigo family to try to do something with the property and a...we have been trying to either sell or lease the property for the past two years and a...unsuccessfully a...and I have a letter here briefly outlining a...the history of...of that. In terms

of finding another farm use or finding someone who would take the property over as an R-1 and a...Betty I have originals, there all originals in there and eight copies I think as well.

Ms. Gennarelli: Okay, okay great, thank you. The top one is the original?

Mr. Lease: They are all originals, I...I signed them all in that particular case.

Ms. Gennarelli: Oh.

Mr. Lease: The other one was notarized. The...the reason...this is a...this is a unique opportunity within the Town of Newburgh for a...solar because the applications for a solar within the Central Hudson are now closed and everyone that has a position within Central Hudson is going before the planning board. The Town of Newburgh was unusual in that it adopted a Code which was very similar to what New Windsor and a...some other...other townships adopted particularly a...Warwick but they placed entirely in the Industrial Zone. I...New Windsor already has one approved project and has another one on...on board and I think, with all due respect, I think it was a bit of a mistake to limit to the Industrial Zone. The Industrial Zone is the airport and the Danskammer Roseton power plant. There are no privately owned pieces of property of ten acres or more that you can purchase on the airport property or at the...at the Roseton plant. It was...it was well done but it was poorly placed in the Industrial Zone because it...it...it a stop it...it...it...it's a non-starter so if there's going to be solar at all in the Town of Newburgh and there may not be at all but if there is this seemed to me to be an ideal site. The first thing that has to happen with a solar site is it has to be near a substation and there is only one substation that I know of in the Town of Newburgh. This one is being hooked to a sub...substation in Montgomery. It has to be within about mile and a half otherwise it gets too expensive to bring the power down and this gets hooked to a substation which is near 747 Drive on a...on 17K and it also has a unique quality because 17K has double three phase a...power coming down the line which is very important a...to getting the power to the a...to the substation. That substation a...provides power to the...most of the Town of Newburgh, Route 300, the airport and a...the Town of Montgomery. One of the reasons is the state is very much behind a...solar power right now is this...this allows a...Central Hudson not increase the size of the lines for...to the substation when we have peak power demand and right now Coldenham is one of those substations that may need an increase. Those increase means increase cost to the lines and what the state is hoping is that these individual a...a...sources of power need the substation begin to micro grid the power supply as opposed to having it come from one giant supplier, in the case of Indian Point or...or a...power from Canada from hydroelectric. And this power will feed to the Coldenham substation and in the case of a brownout or peak demand the peak demand happens to coincide exactly when these panels will get sunlight the most that is the summer months a...between a...two o'clock and five o'clock and they actually want to turn the panels to maximize their impact at three o'clock a...so that they can...they can offset the...the peak power. Not building a new line to the Coldenham station will mean a...lower a...utility cost in terms of line upgrades exactly, I think, what the Town a...is...is trying to avoid right now in...in terms of Central Hudson request in...in terms of increasing costs. And it also will protect the Town in terms of a...power outages in that it will be able to supply backup power as long as the sun is in the sky and that's one of the reasons why they'd like to see a lot of little power stations in the future as opposed to these big single stations which we've had in the past. They are concerned

about extreme weather. They're concerned about acts of terrorism. In this particular case the Darrigo farm has so little frontage on a...on the roads it...the R-1 one acre zoning make...can work if you have a lot of frontage but over the years the Darrigo farm has...has lost most of its frontage and with 84 coming through and a wet area down here by Lakeside Road a...it...it's impossible to develop without putting a lot of excessive and costly internal roads. What's being proposed is not your Lakeside Road really cannot be seen from a...Meadow Hill. It's really the back part of the property and if you walked it you could see that. It's way, way, way up on the hill. The appearance is low impact a...the...and I think probably the nicest aspect is this is the Darrigo's get to keep the property. They are not selling the property, they're renting it. They are renting it for twenty-five years and after twenty-five years the whole installation a...if...if that's what happens will get removed from the site. There are no buildings, there are no a...a...new lines on the street, there are no lines on the property; everything will be underground on the property. The only thing that happens is that the...the fields will have to be mowed every month underneath the panels and a...they'll have to be cleaned and maintained. That's my presentation.

Mr. McKelvey: It's not going to be fenced?

Mr. Lease: It has to be fenced.

Mr. McKelvey: It has to be.

Mr. Lease: It has to be fenced. This proposal follows your Code exactly in every single respect except for the zone. According to your zone you have to provide a fence I think it's eight feet tall and the other thing that we...we heard from the town hall meeting is that the...generally the a...set back that was required was fifty feet and we made a hundred feet. We have more than enough property so we can provide a hundred foot of landscaped tree buffer and then fifty feet a...the panels begin from that but again the panels are their highpoint only this high.

Mr. McKelvey: Would it be visible from Lakeside Road?

Mr. Lease: No, they won't be. It's so far away from Lakeside Road. As you can see Lakeside is over here. The closest neighborhood that comes to it would be Amber Fields. And Amber Fields gives a kind of an indication of what would you would need in order to develop this it...as an R-1. So the tree line here that is drawn here is...is a...is fifty feet and the panels are set back another fifty feet off of the property line. It's a unique project. It's...it's a unique opportunity I think for the Town. It's a unique opportunity for the Darrigo's. It's not what was normally intended for this property in terms of an R-1 but I think it's an elegant solution that solves a number of different problems. And the Darrigo's have been farming this property quite frankly before zoning so that's third generation. They don't want to see the property sold, cut up and lost. They've been farming their...their selves and the idea here is that as they used to grow hay and alfalfa and tomatoes and broccoli on this property, the area has grown up now that they can't afford to hold on to the property and still farm it in the traditional way. This solution here is a kind of farming that pays them a rental but allows them to pay taxes and keep the area as green as possible.

Mr. McKelvey: Any questions from the Board?

Mr. Levin: Are there any sight lines from Amber Field that you looked at or in here, how...how they could see this from their homes?

Mr. Lease: Yes, actually in your package I took one of the photographs from the field looking directly at Amber Fields. It's the one that's the...it's the narrowest and it's a photograph taken...it was...it was taken right here and looks right here. This homeowner here is probably the closest right there and one of your....those are not the photos...I took...I took sight photos in the package that said four sight photos.

Mr. Bell: Inaudible.

Mr. Lease: And I believe I...I noted it as well. May I just show you that? Right, these two right here. This is the contaminated waste site looking at Amber Fields, the very last photograph, the very last two photographs show the thinnest that is what a fifty foot buffer looks like looking at Amber Fields. That's me, at high summer, standing right about here looking right there, looking at that one house because that neighbor showed up at the town...at the a...town hall meeting that we had. A...I...I...Dan can't speak but may I ask him to...a...his opinion if...if I missed anything we've talked about what we were going to present tonight? May I confer with him for just a moment?

Mr. McKelvey: Sure.

Mr. Lease: If I sound a little impassioned about this...this is...this is a...what amounts two years' worth of work going back and forth with Central Hudson and trying to figure this out. The drawing you have is the same drawings that are here this is just colored.

Mr. Levin: Jeff, I don't mean to be a spoiler here but this is high summer...

Mr. Lease: Yes.

Mr. Levin: ...I think it would be a better picture in high winter.

Mr. Lease: Yes, it would be, it would be. I did...I did go up there and you can just make out the a...the roofline of that...of that one house.

Mr. Levin: We could not walk up there because there was too much snow.

Mr. Lease: Yeah, there's a lot of snow up there. But that is...that is the worst case scenario there. In many other cases along the setbacks are as much as three or four hundred feet away from the property line because of wetness, because it just does...because of topography it just doesn't make sense. And all of this will be part of the, I think, the planning board review. My only ask...question here is can I put this use on this property? I can't get to the next stage with the engineer and Central Hudson until I have a usable site. All of the rules and regulations regarding setback and screening and fences is I think, all for...for the planning board. What I'm asking for is use here at the use that I think will serve the Town, will serve the Darrigo's and actually keep

the neighborhood as much in keeping with the way it is right now. The point that I made to many of the neighbors is...is that if you start to deforest and de-wood this property 84 and the airport are going to become very noisy. I...you're going to be able to see and hear 84 and the airport from Meadow Hill Road. You can at Amber Fields. I mean, you only need to go on that part of Amber Fields the road noise continuously. Now I don't think that this proposal will be as deforested as this over here but in order to make this eighty foot slope from the barns to the top of the hill at six percent slope you need a one thousand two hundred foot road. One thousand, two hundred feet is the entire length of the property along Amber Fields so we're talking about a lot of earth moving in order to get up there. Why not just keep the property the way it is and put...put this kind of new crop on the property? That's my proposal.

Mr. McKelvey: Any further questions from the Board? Anyone from the public like to speak? Please come to the mic.

Mr. Cackowski: Good evening my name is Steve Cackowski, I live at 100 Lakeside Road. My wife Carol Davidowsky-Cackowski also live-resides with me. We own three pieces of property along Lakeside. We have ownership of the adjacent property across from the current entrance. What I would like to say is the wife and I have no issue with the solar farm being there. My wife is third generation owning the property and she can tell me stories and tell you stories if you like of the Darrigo's and her father sitting at the kitchen table enjoying coffees and etc. I think that thanking the land use from A1 residential and changing for the use of a solar farm would be for thinking...forward thinking. What we have to do is we need to think and become stewards of the environment having the Darrigo farm develop as a solar field would help in many ways. It will give us non-destructive a...electricity and if the area was to be developed for homeownership you would have more of a carbon footprint with the cars of the residents and all of the heating systems than if you would for the solar farm. I'm asking the Board to think of the future and I believe that solar farms is a way to go and a...I hope that you can consider changing the land use to allow a solar farm there. My wife and I very well would recommend solar farms so if you would please be forward thinking, please think of the environment. Thank you for your time.

Mr. McKelvey: The land use would have to be changed by the Town Board. We couldn't tell them to do it. You'd have to go to them.

Mr. Cackowski: Yes, I'll...I'll stand corrected, I may have misspoke. I'm asking the Board for a change of land use. Is that proper?

Mr. Donovan: I think you're asking...you're speaking in support of the use variance...

Mr. Cackowski: Yes.

Mr. Donovan: Not to put words in your mouth.

Ms. Gennarelli: The gentleman in the back if you could come up.

Mr. McKelvey: The gentleman in the back.



Mr. Casey: Hi, how are you? My name is Ken Casey, I live at 301 Teal Court, my question to you...I have map here like that sent out to me and I could be wrong on this. With the old way, you know, before they do any of this solar power stuff it looked like the houses had more property and when they put the solar in it looks like they lost property. Maybe I'm wrong on that but it looks that way to me.

Mr. Lease: Can I answer?

Mr. McKelvey: Come to the mic.

Mr. Lease: Okay.

Mr. Casey: Let me show you something, may be I'm wrong and if I'm wrong, I'm wrong but...

Mr. Lease: Mr. Casey, hi, Jeff Lease, hi.

Mr. Casey: Question here... (Inaudible)

Mr. McKelvey: Address this to the Board please.

Ms. Gennarelli: Excuse me.

Mr. McKelvey: Address it to the Board.

Mr. Casey: Oh, I'm sorry, I'm sorry...

Mr. Lease: Yes.

Mr. Casey: ...excuse me, I...I didn't know, alright...

Mr. Lease: Can we talk to the big map it's the same thing?

Mr. Casey: Oh, okay, sure.

Mr. Bell: Take the mic.

Board Members: Take the mic.

Mr. Lease: So that way everybody can understand because the map that you have is the same as this one.

Mr. Casey: Yeah, right.

Mr. Lease: Alright.

Mr. Casey: See how this is before you...alright...that's with the solar thing there...

Mr. Lease: Yeah.

Mr. Casey: See with this before it's...

Mr. McKelvey: Can you stand aside so we can see it?

Mr. Casey: ...before you take this it looked like it had more property...

Ms. Gennarelli: Excuse me, sir.

Mr. Lease: They want to...they want to see what...

Mr. Masten: Stand aside.

Mr. McKelvey: Stand aside.

Mr. Lease: ...you're pointing...

Mr. Masten: Stand to the side.

Mr. Bell: Get to the side over here. Excuse me.

Mr. Casey: Right here is Amber Fields, all here, now with the...with the solar power it looks like people are losing property. Now maybe I'm wrong on that but it looks that way to me.

Mr. Lease: Sir, Mr. Casey, this here is the edge of the Darrigo property so it's...it's...the property line remains the same...

Mr. Casey: Oh, okay. I didn't know it looked like you were losing property there.

Mr. Lease: No, no, no, no, no it's the same, you know they're...these two are two different drawings if...they might be off just slightly but the property line is the same it doesn't move at all.

Mr. Casey: Alright so the people don't lose any property?

Mr. Lease: No sir.

Mr. Casey: Okay, alright, thank you.

Mr. Lease: Yeah, yeah.

Mr. Casey: Thank you. Sorry about that (Inaudible)

Mr. Levin: Can I ask you where you live in relationship to this?

Mr. Casey: Pardon me sir?

Mr. Levin: Can I ask you where you live...?

Mr. McKelvey: Where you live in relation...

Mr. Casey: Can I approach there?

Mr. McKelvey: Yes, yes.

Mr. Casey: What...

Mr. Lease: Right here, Mr. Casey lives right up here.

Mr. Casey: Yeah right up in that...right up in that area there.

Mr. McKelvey: He wants to see...can he see right here on this map?

Mr. Casey: No I live right here on the corner. Yes I do.

(Inaudible)

Mr. McKelvey: Show him over here.

Mr. Casey: Oh, okay, thank you.

Mr. Casey approached Mr. Levin and the Board

Mr. Casey: Alright, let me get this here (Inaudible)...

Mr. Donovan: Do you live in Amber Fields?

Mr. Casey: Yes, yes, yes I do. I live...I live right here right on the corner there.

Mr. Levin: You live there.

Mr. Casey: Yeah.

Mr. Levin: Okay, thank you.

Mr. Casey: You're welcome. That I just wanted to...it looked like they were losing...I just wanted to ask.

Mr. McKelvey: Okay.

Mr. Casey: Sorry about the inconvenience.

Mr. McKelvey: Thank you.

Mr. Casey: Alright, thank you.

Mr. McKelvey: Anyone else?

Ms. Gennarelli: The gentleman in the back if you could come up to the microphone.

Mr. Hughes: Animal Hughes, Middle Hope, New York. I think we're on the wrong base here on everything. Mr. Lease are you a realtor?

Mr. Lease: Yes sir and an architect.

Mr. Hughes: And what?

Mr. Lease: An architect as well.

Mr. Hughes: You're a licensed architect?

Mr. Lease: I am.

Mr. Hughes: I see.

Mr. Lease: I'm a registered architect, excuse me, I'm a registered architect not a practicing one.

Mr. Hughes: So you don't have a current license you're not practicing.

Mr. Lease: No sir I do not.

Mr. Hughes: Okay. So I don't know how he is bringing this to the Board to begin with but that's another legal issue. We'll over look that for the fact of this discussion. I'm very familiar with the property the Darrigo's, my family, their family goes back for a hundred years or more. To look to the future like the one gentleman suggested is the key here and I believe that what is necessary to make this project happen is a Zoning change and the Town Board should certainly have the forbearance and the foresight to see that that's the way to go. Number one, a use variance in the State of New York is almost impossible to get. You should know that and Mr. Bloom should know that as well. The conditions that have to be met in order to attain a use variance are this far away from being impossible. So I think we're chasing our tail here. I think what needs to be done and there is a Member of the Town Board in the room at present is to approach the Town Board to use their good judgement and make a Zoning change here for this particular property and do it that way and I urge the Board to progress and approve this project in spite of all the craziness that's going on here with the people that are presenting it. Thanks for listening to what I had to say.

Mr. McKelvey: You're welcome.

Mr. Lease: May...may I speak?

Ms. Gennarelli: You can get the microphone again, thank you.

Mr. Lease: Yes. I would like to completely agree with Mr. Hughes on this point. We...I wanted to change the zoning within the Town and we had some problems and it was decided that that was not the right way to do things. And I don't want to get into the details of the...Mr. Manley (Scott) can fill you in. I went to a Council meeting to try to get that changed and we were denied. A...because we realized after the fact that the zoning though well written was placed in a zone where it wouldn't have enable solar so I agree with you Mr. Hughes but we tried, we couldn't get it done that way.

Mr. Hughes: Somebody made a mistake.

Mr. Lease: Yeah, well, I'm not here to do that. I just want to try to get this one project a...approved for variance so...

Mr. McKelvey: Could you give us a reason why they wouldn't change it...Mr. Manley (Scott)?

Mr. Manley (Scott): I believe he came and gave a presentation at the workshop...

Mr. Lease: Yes.

Mr. Manley (Scott): ...and you never followed up on after that. There was no follow-up.

Mr. Lease: No a...

Mr. McKelvey: Jerry would you give the microphone...

Ms. Gennarelli: Sorry, you have to speak into the microphone anybody that's going to talk please...

Mr. Lease: ...oh I'm sorry, I don't know what confidences I'm breeching. There was a prior application to this Board for a variance for a solar farm. That applicant then decided to, I believe, sue the Town...or was in the process of suing the Town. They felt, the Council, that if they changed the...the law that it would open up the Town to a lawsuit with respect to the prior applicant that had been turned down. And so I was asked rather than try to change the law which is what we had originally wanted to do is to go before the same Board and try to show conditions of...not try, show conditions that were unique to this property that made it a unique choice for a change of use, the solar use.

Mr. Hughes: It's me again. I don't want to get into it on the open floor there's...you know, I respect everybody in the room and everybody has an angle on this thing and an intention. Let's look at what's best for everybody. Let's look at what we need to do and I think what Mr. Darrigo needs to do is to approach the Town Board again and lay it out on it, let it spell it out. A use

variance is almost impossible to get. I don't know how this Board could approve a use variance but this Board could recommend to the Town Board that a zoning change would be appropriate to seal the deal here.

Ms. Gennarelli: Anybody else?

Mr. Lease: May I say one last thing?

Mr. Donovan: Well if you don't mind before you do so...well actually, I'm sorry, go ahead.

Mr. Lease: You know one thing I didn't bring up is the fact that of Mr. Bloom has told me because he can't...he's not speaking tonight but he was going to mention that if the property were subdivided into an R-1 subdivision that everyone who would a...purchase a piece of property there would have to be notified that it was contiguous and part of a former hazardous retired waste site and that would in fact, detrimentally and substantially detrimentally affect the net value for the...for the subdivision. Even though there is a possibility of getting Town water at expense to each one of the lots the fact that the groundwater in the...on the property or near the property might be near a contaminated hazardous waste site would...would make not only the sale of the property but even potentially the financing of the homes on those properties difficult to impossible.

Mr. Donovan: To the point I wanted to make before and Mr. Lease kind of alluded to this in his presentation is that in granting a use variance the Board has four factors that it has to consider. As distinct from an area variance where there's five factors that are balanced and the Board weighs those five factors; in a use variance you have to satisfy each and every of the four factors. If you do not satisfy any one of them the use variance has to be denied. The first factor which I want to talk to is that you have to demonstrate that you cannot realize a reasonable economic return as show by competent financial evidence or what the law calls or case law calls...dollars and cents proof. In connection with that tonight we do have a letter from an accountant a...which indicates that there's never been distributions, the property has been operated at a deficit, its current state is unsustainable and that's fine but I'm going to tell you it's not good enough. The case that you spoke of before was the case that may have...was in litigation at one point in time, that litigation was successfully concluded, successfully from my point of view, the Board's point of view in that the Board's determination to deny that use variance was upheld. It's being appealed. Whether they'll perfect their appeal I don't know but they filed a notice of appeal. And in that case, we talked about that this first factor was of paramount importance, the court discussed and we argued and the court agreed that there needed to be an appraisal of the property, there needed to be an explanation of the carrying costs of the property, there needed to be an explanation of what the financial arrangement was with the solar company. Whatever that company may be that's providing that use on the property and without that information there couldn't be a determination. This Board found that there could not be a determination whether or not there was a lack of reasonable return to the existing state of the property because there wasn't dollars and cents proof. And I just went that...the letter from the accountant is not good enough for you.

Mr. Lease: Okay.

Mr. Donovan: And I'm only so smart because we just did this a couple of months ago.

Ms. Gennarelli: John, I have the Orange County report. Would you like me to read that into the record now?

Mr. McKelvey: Yes.

Ms. Gennarelli: Okay. We have the report back from the Orange County Department of Planning and their comments are: The Planning Department has reviewed the submitted materials regarding the appeal for a use variance and has found no evidence that intermunicipal or countywide impacts would result from its approval. County Planning recommends that the Board act on this variance request only if the applicant satisfies the unnecessary hardship standard, as defined by New York State law. The courts of New York hold that the unnecessary hardship standard is satisfied by competent proof of each of the following: 1) the land in question cannot yield a reasonable return, in dollars and cents, if used for any use permitted in the zone, 2) the use to be authorized by the variance will not alter the essential character of the locality, 3) the hardship is unique to the parcel and not general throughout the zoning district, and 4) the hardship is not self-created. We look forward to reviewing this project when submitted by the Planning Board. Should the ZBA wish to address the underlying issue, they could recommend as part of any action on this matter that the Town Board review §185-83 of the Town Code and determine whether other zones in the Town may be appropriate for solar installations. And this was signed January 22, 2018, David Church and the County Recommendation is Local Determination.

Mr. McKelvey: Thank you.

Ms. Gennarelli: You're welcome.

Mr. McKelvey: Does any Member of the Board have any more to ask?

Mr. Levin: I don't.

Mr. Masten: No.

Mr. Levin: I wonder if you want to take time and try and get the information for us...that it's not helping you get a use variance.

Mr. Lease: Yes, yes I would. I would like to keep the meeting open then, yes, for that preparation.

Mr. McKelvey: Is the Board in favor of keeping the meeting open or the Hearing open?

Mr. Levin: I'll make a motion to keep the Hearing open.

Mr. Masten: I'll second it.

Mr. Donovan: Just to be clear, the intention of the Board you have to continue to a date certain. Is that the February meeting, is that your intention?

Mr. Levin: Yes.

Mr. McKelvey: The February meeting.

Ms. Gennarelli: February 22<sup>nd</sup>. Okay, roll call.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yes

Mr. McKelvey: The Board would now like to meet and see if there is anything legal with our attorney. So in order to save time we'd ask you to go out in the hall, we'll call you back.

PRESENT ARE:

- DARRELL BELL
- RICHARD LEVIN
- JOHN MASTEN
- JOHN MC KELVEY
- PETER OLYMPIA
- DARRIN SCALZO - RECUSED

ABSENT:

- JAMES MANLEY

ALSO PRESENT:

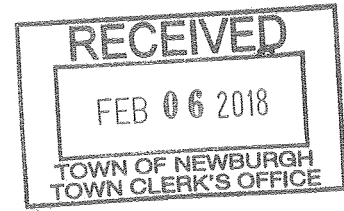
- DAVID A. DONOVAN, ESQ.
- BETTY GENNARELLI, ZBA SECRETARY
- GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:20 PM)

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ZBA MEETING – JANUARY 25, 2018



END OF MEETING

(Time Noted – 8:33 PM)

Mr. McKelvey: Okay, has everyone had a chance to read the minutes? Do we have a motion to approve them?

Mr. Levin: I'll make a motion to approve the minutes.

Mr. McKelvey: Motion made by Mr. Levin. Do we have a second?

Mr. Masten: Second.

Ms. Gennarelli: Everybody in favor say Aye?

Aye - All except Mr. Olympia

Mr. Olympia: I abstain.

Mr. McKelvey: Motion to adjourn?

Mr. Masten: I'll make a motion.

Mr. Bell: Second.

Mr. McKelvey: All in favor say Aye?

Aye All

Mr. McKelvey: The meeting is adjourned.

Ms. Gennarelli: The meeting is over see you February 22<sup>nd</sup>.

PRESENT ARE:

DARRELL BELL  
RICHARD LEVIN  
JOHN MASTEN  
JOHN MC KELVEY  
PETER OLYMPIA  
DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

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

(Time Noted – 8:36 PM)

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2/6/18