

## ZONING BOARD OF APPEALS

MEETING – JUNE 28, 2018

(Time Noted – 7:05 PM)

Mr. Scalzo: I'd like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for this evening. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and 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 a cell phone to please turn it off or put it on silent and when you're called up to speak, speak directly into the microphones as it is being recorded. Roll call please.

PRESENT ARE:

DARRELL W. BELL  
RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO

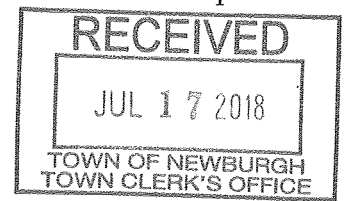
ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by Darrell Bell

(Time Noted – 7:06 PM)

*BB*  
*7/17/18*



ZBA MEETING – JUNE 28, 2018

(Time Noted – 7:06 PM)

DARCI CONNELLY

2 LINDEN DRIVE, NBGH  
(90-3-5) R-1 ZONE

Applicant is seeking area variances for the maximum total allowed square footage by formula (727.88) for accessory buildings to build a 24 x 24 accessory building - two-car garage (has three sheds built without permits on the premises).

Mr. Scalzo: Okay, our first application before the Board this evening is Darci Connelly seeking area variances for the maximum total allowed square footage by the formula from code (727.88 sq. ft.) for accessory buildings to build a 24 x 24 accessory building - two-car garage currently has three sheds built without permits on the premises. Ms. Gennarelli?

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, June 20<sup>th</sup> and The Orange County Post on Friday, June 22<sup>nd</sup>. This applicant sent out sixty-six letters. All the mailings, publications and postings are in order.

Mr. Scalzo: Thank you.

Ms. Gennarelli: You're welcome.

Mr. Scalzo: And before we begin I will let members of the audience know we are obliged by our positions to visit each property prior to coming here to make determinations on it so we have all seen the properties. Thank you very much and if you could introduce yourselves and explain why you're here?

Ms. Connelly: I'm Darci Connelly Dembeck one thing I just wanted to say this is my husband Michael Dembeck and a...they said we have three with no a...a...C.O.'s but I do have one C.O. just...and it's right here.

Mr. Scalzo: Okay, just reading what was in front of me.

Ms. Connelly: I just wanted to make sure and then I'll let him take over cause I...I'm not sure with the rest of it.

Mr. Dembeck: I'm the one behind this whole project. We're putting up a two-car garage basically it's not really a garage it's going to be a storage building because there's no driveway going to it because she just inherited a sports car from mother and we're going to give her the garage underneath the house and we're the place where we're putting the garage in the backyard is pretty much stuck back in the corner. It's not going to a...be really in...in sight of anybody's house of the...the immediate neighbors and we're...we're doing it to match the sheds that are there already. And as far as the sheds that were built without a Permit that's my fault I did it. But I've been a carpenter for thirty-five years and I...I tried to cover all the bases in case they...somebody came to look at it so if you guys want to come and look at them...they're all up

to Code, the footings are all deep enough and that's basically all I got to say is and the garage is going to be for my junk cause we're running out of room.

Mr. Scalzo: Okay a...thank you. At this point I'm going to turn to the a...Members of the Board for any comments they may have. Mr. Bell?

Mr. Bell: So the area that I saw that was staked off that's where...

Mr. Dembeck: Yes sir.

Mr. Bell: ...where the square was that's where you're looking to...

Mr. Dembeck: That's where we want to put it yes sir.

Mr. Bell: Okay, so you're saying that it's not going to be a driveway access so it's not going to be a garage? It's going to be...

Mr. Dembeck: Well it's going...it's going to be a garage but it's not going to be used as...there's going to be no vehicles in there. It's going to be...I have a bunch of antique motorcycles and that's what I'm going to store in there. I have four or five antique motorcycles that I tinker with. They're all street legal motorcycles. We don't ride them in the yard or anything like that and a...so that's...that's what I'm doing. We're going...we're going to make the garage underneath the home...under the house for her little car that she got. We're going to turn it into a she shed (Inaudible).

Mr. Bell: Okay.

Mr. Scalzo: Thank you Mr. Bell. Mr. Olympia?

Mr. Olympia: What kind of car did you inherit?

Mr. Dembeck: A...2006 350Z...convertible.

Mr. Olympia: So my understanding is there's not going to be a driveway...?

Mr. Dembeck: No driveway. That's why I have the building cocked like on an angle cause I'm going to try to create like a little courtyard back because we do throw parties from time to time, you know, but a...there's not going to be any driveway to it.

Mr. Scalzo: Okay, while not a Board Member something that you had said during your testimony you have motorcycles a handful of motorcycles...Dave, would that qualify as far as vehicle storage goes?

Mr. Donovan: Why don't you go through the rest of the Board and I'll take a look.

Mr. Scalzo: Alright I will come back to you Dave. Mr. McKelvey?

Mr. McKelvey: That was going to be my question.

Mr. Scalzo: Yup, he had whispered in my ear Dave, I just passed it on but Mr. McKelvey any additional comments?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: My question is on the drawing you provided for us the garage is larger than the shed it's smaller than the shed on this?

Mr. Dembeck: Excuse me?

Mr. Levin: The garage is smaller than the shed...

Mr. Dembeck: Well square footage wise a...

Mr. Levin: Well it's not drawn to any scale.

Mr. Dembeck: I put the square footage on there that square footage is to scale...that I wrote on...on the...

Mr. Levin: Yeah but we like to see what it is looking to every other piece one there on the property.

Ms. Connelly: (Inaudible)

Mr. Dembeck: Yeah, I didn't know I needed to...a to scale drawing, I didn't know that but that square footage on there is...is actual square footage of each shed.

Mr. Levin: You have the square footage of the garage...

Mr. Dembeck: Yes.

Mr. Levin: ...(Inaudible) it's the right square footage but it's not the right size.

Ms. Connelly: No but it is that was my (Inaudible)

Mr. Dembeck: I mean it's not...that's not drawn to scale, yeah. It's not drawn to scale but the square footage that I wrote on that drawing is the actual square footage.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Well my...my question is that you're building this shed a...for your storage now you're still going to need the other two sheds that weren't built with Permits?

Mr. Dembeck: Yeah, well, yeah because that's where I keep my lawnmower, my rototiller and all that stuff.

Mr. Masten: Yeah.

Mr. Dembeck: But basically what the new garage is for is to get the stuff out of the garage that's underneath the house.

Mr. Masten: And then you're planning on changing the garage into a living area?

Mr. Dembeck: No, no, no we're going to use that for storage of her car.

Mr. Masten: Alright, alright put her...alright. That...that was my main concern that it...the a...two sheds...

Mr. Dembeck: Well it's that I mean we're...we're like every other American family we got...we accumulated a lot of stuff...

Mr. Masten: Yeah.

Mr. Dembeck: ...lawn furniture I put in there in the winter put in...

Mr. McKelvey: But between the sheds and the new building you're over the square...maximum square footage.

Mr. Dembeck: That's why we're here. Yeah, that's why we're here we're asking, you know, it's not it's...it is over, I mean.

Mr. Scalzo: Mr. Marino?

Mr. Marino: The shed you're going to build will be identical in appearance to the two that are there now?

Mr. Dembeck: Yes.

Ms. Connelly: Yes.

Mr. Dembeck: Yes, the same siding, the same color, it's going to be the same pitch roof, same roof if that's, I mean the doors are going to be with the X like an old barn.

Mr. Marino: Any of your neighbors opposed to the project?

Mr. Dembeck: Nobody said...has said anything to me as yet.

Mr. Scalzo: We're going to find out very shortly.

Mr. McKelvey: If you store a car in it you and you have to have a concrete floor, right?

Mr. Dembeck: It is going to have a concrete floor.

Mr. McKelvey: Okay.

Mr. Dembeck: Yes.

Mr. McKelvey: Just make sure you do.

Mr. Dembeck: Yes sir. Yes, Grey's Woodworks is building it. I contracted it out to Grey's Woodworks because I'm a carpenter in Manhattan I don't have time to do it. I barely have time to mow the lawn anymore so it's easier for them, it would take me all summer to do it and they're going to do it in a couple of weeks.

Mr. McKelvey: I just wanted you to be aware that you have that concrete floor.

Mr. Dembeck: Yes sir.

Mr. Donovan: So relative to the issue of vehicles so what the Code says is that an accessory use in this district is private garage for not more than four vehicles. The Code doesn't define what a vehicle is but assuming that a motorcycle would be included in that definition of a motor vehicle a...since it's registered and with a license plate I think you could infer that it is a vehicle...on the motor vehicle definition but you...you'd be limited to four.

Mr. Dembeck: Okay.

Ms. Connelly: Okay, we have three bikes.

Mr. Donovan: It's a miracle...worked out that way.

Ms. Connelly: They're registered; they can all be on DMV.

Mr. Scalzo: Myself, fellow Board Members covered any questions that I have had. At this time, I'd like to invite any members of the public to speak about the project or any comments for or against?

Audience Member (Inaudible)

Mr. Scalzo: Come up to the microphone.

Mr. Brown: Members of the Board, thank you I'm here on behalf of my mother-in-law Rose Lombardi that lives at 1 Mimosa Place, a neighboring property. A...no real concern other than we

haven't seen a sketch of where...where the building would go. If there was going to be a driveway?

Mr. Scalzo: Well you can...well the information was...it actually was on-line if you had access to a computer...

(Inaudible)

Mr. Brown: We could...we could stop by and see Mike. I tried to stop by a couple of days ago and we just haven't been able to sync up so...

Ms. Gennarelli: If you'd like to look at this you could? Do you want to take a look at this?

Mr. Scalzo: You could take a...if you could just do me one favor...?

Mr. Brown: Of course.

Mr. Scalzo: You may have identified yourself but I didn't...I didn't hear it.

Mr. Brown: I'm sorry, my name is John Brown.

Mr. Scalzo: John Brown, thank you.

Mr. Brown: I am a Montgomery resident speaking on behalf of my mother-in-law Rose...

Mr. Scalzo: Thank you very much.

Mr. Brown: ...Lombardi.

Mr. Scalzo: And if you'd like to take a look at the sketch that they...

Mr. Brown: If you don't mind.

Mr. Scalzo: Go right ahead.

Mr. Brown: Please, thank you.

Mr. Scalzo: We've established that it's not to scale.

Mr. Brown: I heard that yes.

(Inaudible)

Mr. Scalzo: Actually if you're going to explain something to him...well we're going to leave the a...Public Hearing open to any other members of the public and if you're going to step...if you're

going to explain it to your mom then you need to do it up here if not, you can go out in the hallway.

Mr. Brown: Okay, thank you.

Mr. Scalzo: Thank you.

Mr. Brown: Thank you all very much for your time.

Mr. Bell: Inaudible.

Ms. Gennarelli: He (Mr. Bell) has a question for you.

Mr. Bell: Yeah.

Mr. Dembeck: I didn't know who I was to talk to.

Mr. Bell: Your wife had mentioned that...that you had a...authorized C.O. for one...

Mr. Dembeck: For one of the sheds we do, yes.

Mr. Bell: Can I see it because we don't have it?

Mr. Dembeck: We got it...we got it from you guys.

Mr. Bell: Okay.

Mr. Dembeck: So there's actually only two sheds without the C.O.'s, they're the ones I did.

Mr. Bell: What shed is this for?

Mr. Dembeck: That shed was already there when she bought the home.

Ms. Connelly: They made a mistake on the address is what they told me.

Mr. Bell: So it's not Vincent Lane is what you're saying?

Ms. Gennarelli: Code Compliance said it didn't match up to any of the ones you have.

Ms. Connelly: The...the original it did. When we bought the house Andy Bell...(Inaudible) he was the builder.

Mr. Dembeck: He was the builder of the house.

Mr. Bell: Okay.



Mr. Scalzo: Dave if I could ask the...help me out with the interpretation if the applicants have three motorcycles in this proposed garage or proposed new additional garage... they have one vehicle in the other garage is there any other stipulations that they can have other vehicles in the driveway? I would...I would assume that they could.

Mr. McKelvey: In the driveway they can.

Mr. Donovan: Yeah, I think that was issued from Code Compliance.

Mr. Bell: 8 x 10, it's none of those. 12 x 8, right...

Ms. Gennarelli: It doesn't match...

Mr. Bell: ...at least listed on the diagram cause it's a 12 x 8 yeah.

Mr. Dembeck: It's a 10 x 12. It's this one right here.

Ms. Gennarelli: It says 8 x 10...

Mr. Dembeck: I know, I drew it wrong...

Mr. Scalzo: Okay, I tell you what folks, at this point it's...it's very difficult to determine what's going on in the conversation and I apologize Betty and Mr. Bell if we could get clarification on this from the Building Department at another time. I don't know that we can...whether dimensionally it matches up to the sketch that we have perhaps the shed was...additions were put on the shed so at one point there may have been a shed with a C.O. however it's not indicative of what's on the sketch at this time.

Mr. Bell: Right, okay.

Mr. Donovan: The application in front of the Board is...is for a variance of the total allowed square footage. I...I would indicate to the Board if there's too many vehicles that's an issue for Code Compliance. That application is not before us. I mean, it's...it's a germane question but we're not ruling on that. We're ruling on whether or not a...you're going to approve nine hundred and ninety three square feet of accessory structures. That's...that's what you're ruling on. It would have to comply a condition if you were to grant the variance, they would have to comply with all Code Compliance requirements, they'd have to get a Certificate, either they have it or they don't but if they don't they have to get it. Any condition of approval would be a...you know proper Permits and approvals for all sheds on the property.

Mr. Scalzo: So the application includes the square footage of the shed as it exists right now? Not for the dimensions that were on the initial C.O. that you have, am I correct?

Mr. Dembeck: The shed...that original shed is a...8 x 12...

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

Mr. Dembeck: That original shed is an 8 x 12 shed.

Mr. Scalzo: Correct.

Mr. Dembeck: I just wrote...I wrote the wrong dimension on the sketch and then I put two sheds...attached two sheds to it. There are two separate sheds, they have walls in between all three sheds.

Ms. Connelly: (Inaudible) ...wall...the one to the left is an actual shed.

Mr. Scalzo: Okay and just help me out one last time on this. The square footage of accessory buildings for the one that you have existing plus the one that you're proposing on building the square footage over the allowed per code is that indicative or indicated in your application?

Mr. Dembeck: Yes. Because originally you guys told us we could have up to a thousand square feet so we had like nine hundred and something square feet and...and we said, we're...we're good. And then we came back and you said no, that was wrong we could only have seven hundred and fifty square feet. (727.88 sq. ft.) Because you have some formula that you figure it by so that's why we're going through this process now.

Mr. McKelvey: You know that all comes out of Code Compliance.

Mr. Dembeck: Yes. Well we're trying to get everything squared up and everything legal on the property you know, that's what we want to do. That's our...that's our...our main goal here is to have everything legal, up-to-date and do what we got to do so we have C.O.'s on everything. I mean we have...we have the second largest piece of property in the neighborhood. We have three quarters of an acre so it's not like we're...we're not short of property for what we want to do so...

Mr. Scalzo: If we...as I say, we were all through the neighborhood...

Mr. Dembeck: Yeah, yup.

Mr. Scalzo: ...and we did a...we did see that.

Mr. McKelvey: The problem was it used to be Residential 3 and they changed it to R-1.

Mr. Dembeck: I don't understand what that is I don't know what that means.

Mr. McKelvey: It...it matters what you can do on the property.

Mr. Scalzo: How long have you owned the property?

Mr. Dembeck: Since 1996.

Mr. McKelvey: Zoning was changed after that.

Mr. Scalzo: After that, yes.

Mr. McKelvey: When was zoning change Betty, do you remember?

Ms. Gennarelli: 2005...

Ms. Connelly: 1995...

Ms. Gennarelli: It was actually before...they bought the house then...

Mr. Dembeck: I don't...I don't know...what's an R-1...what is that?

Mr. Scalzo: Residential 1 is single family, Residential 3 is three family dwelling however the bulk requirements change for each zone. Bulk requirements being the setbacks to the front yard, side yard, rear yard...

Mr. Dembeck: Yes sir.

Ms. Connelly: April of '95.

Mr. Scalzo: Okay now I'm going to open it back up again to the a...any members of the public that wish to speak on this applicant?

No response.

Mr. Scalzo: Hearing none I'll turn back to the Board.

Mr. Bell: I'm good.

Mr. Levin: I'm good.

Mr. Scalzo: Okay, does the Board feel as though we have enough information to close the Public Hearing? If so, if I could hear a motion?

Mr. Marino: I'll make a motion we close the Public Hearing and take a vote.

Mr. Masten: I'll second.

Mr. Scalzo: Motion by Mr. Marino, second by Mr. Masten.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: Thank you, we will a...as I mentioned in the beginning of the meeting we will do our best to render a determination this evening, later on in the evening.

Mr. Dembeck: Okay, thank you very much.

Mr. Scalzo: Thank you. And if I could, just for Members of the Board, side conversations need to be captured by the microphone so they can be part of the meeting minutes. So if there are questions between us please speak into the microphone that way they can be recorded.

(Time Noted - 7:23 PM)

---

ZBA MEETING – JUNE 28, 2018 (Resumption for decision: 8:12 PM)

DARCI CONNELLY  
2 LINDEN DRIVE, NBGH  
(90-3-5) R-1 ZONE

Applicant is seeking area variances for the maximum total allowed square footage by formula (727.88) for accessory buildings to build a 24 x 24 accessory building - two-car garage (has three sheds built without permits on the premises).

Mr. Scalzo: Alright folks I'd like to call the meeting back to order. We will make determinations on the following applicants this evening beginning with Darci Connelly, 2 Linden Drive, Newburgh, area variances for the maximum total allowed square footage by formula (727.88 sq. ft.) for accessory buildings to build a 24 x 24 accessory building - two-car garage and there are currently three sheds built on the property. This is a Type II Action Under SEQR. So prior going through the criteria, the weighing criteria, do we have any final comments from the Board?

Mr. Bell: I'm good.

Other Board Members: No.

Mr. Scalzo: Okay, we'll go through the area variance criteria and discuss the five factors that we are going to weigh, the first one being whether or not the benefit can be achieved by other means feasible to the applicant? Mr. Bell, feelings on that?

Mr. Bell: None.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No, I can't.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Fantastic. Second, is there an undesirable change in the neighborhood character or a detriment to nearby properties? I'll start to my other side there, Mr. Marino?

Mr. Marino: I don't think there is any problem.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I don't believe there is anything.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I agree.

Mr. McKelvey: I agree.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: I agree.

Mr. Scalzo: Mr. Bell?

Mr. Bell: I agree.

Mr. Scalzo: I am with you. Third, whether the request is substantial? Personally I don't think it's substantial it is one of the larger lots in the subdivision. Mr. Bell?

Mr. Bell: No problem.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: It is not.

Mr. McKelvey: No problem.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I'm okay with it.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I'm alright.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Yeah, okay with you.

Mr. Scalzo: The fifth, whether the alleged difficulty is self-created? It is relevant but not determinative. Of course it's self-created but I don't feel it's going to be a determination that would flip me over. Now if the Board approves it shall grant the minimum variance necessary and may impose reasonable conditions. A reasonable condition in my opinion would be that should the Board grant approval to this that the Code Compliance Department needs to inspect the sheds as they exist out there now, Building Permits issued, C.O.'s issued for them. That's...that's my opinion a...if anyone wants to craft a motion around that? Feel free.

Mr. Bell: I agree.

Mr. Levin: I'll make a motion for approval based on those conditions.

Mr. Bell: I'll second.

Mr. Scalzo: Motion from Mr. Levin, second from Mr. Bell, Roll Call.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: Motion carried, you are approved with conditions.

Mr. Bell: With conditions you get those three sheds C.O.'d.

Mr. Connelly: So what do we do next?

Ms. Gennarelli: They have to be in compliance is what they are saying.

Mr. Connelly: And how do we go about doing that...what do we next?

Ms. Gennarelli: The Building Department.

Mr. Connelly: The Building Department? Okay, thank you very much.

Ms. Gennarelli: Have your inspections.

Mr. Bell: Yup and get them certified...in compliance.

PRESENT ARE:

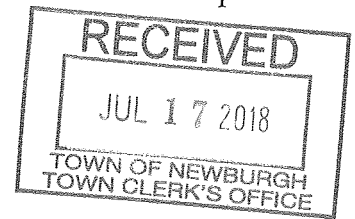
DARRELL W. BELL  
RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:16 PM)

BS 7/17/18



ZBA MEETING – JUNE 28, 2018

(Time Noted – 7:23 PM)

WENDY AFFRON KELLER

14 WINDING LANE, NBGH  
(80-2-10) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to enclose the existing non-conforming open front porch and breezeway to create habitable space on the premises (corner lot Winding Lane and Sunset Drive).

Mr. Scalzo: Our second applicant of the evening is Wendy Affron Keller, 14 Winding Lane, Newburgh, seeking an area variance for increasing the degree of non-conformity of the front yard setback to enclose the existing non-conforming open front porch and breezeway to create habitable space on the premises. It is a corner lot of Winding Lane and Sunset Drive. Ms. Gennarelli.

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

Mr. Scalzo: Mr. Cella, if you could introduce yourself and present the applicant...application.

Mr. Cella: Good evening, I'm Jonathan Cella representing the applicant. I believe Mr. Scalzo said everything I had to say. The property is located in R-1 zoning district and we're proposing a three hundred square foot addition which will just be under the existing overhang of the front porch. It will follow the a...the column line...that's there now. There's two columns and the...so we'll just remove the existing wall that's and pull that out front. A...we're in the R-1 zoning district. We're serviced by public water and we have an on-site sewage disposal system. The bedroom count of the residence will remain the same and the a...the addition will a...increase the...the living room square footage. The...the area...area variances required are for the front yard setback and the increase of the degree of non-conformity.

Mr. McKelvey: They were here once before on this project.

Mr. Cella: That's...that's correct a...

Mr. McKelvey: What's the main change?

Mr. Cella: A...the...the previous additch...the previous request was for the variance was similar where we a...a...this is an updated photo of the right hand side of the...the front of the building. They had a...enclosed a breezeway...they had...there was a...a existing breezeway and they had converted that to living space and we're now just a...proposing to again not...not increase the footprint of the residence but just to enclose the...the front overhang. It's roughly three hundred square feet.

Mr. McKelvey: Thank you.



Mr. Cella: So the variance that we requested last time is the same as the one we're requesting this time just...

Mr. Scalzo: Okay, so as you stand on the concrete step...that's going to be enclosed?

Mr. Cella: A...the concrete steps not...

Mr. Scalzo: No, I'm sorry (Inaudible)...

Mr. Cella: (Inaudible)...

Mr. Scalzo: ...not the concrete steps...

Mr. Cella: ...yes just...just...

Mr. Scalzo: ...underneath the overhang.

Mr. Cella: ...the overhang that's it, correct.

Mr. Scalzo: Very good, thank you. I'll turn to the Members of the Board. Mr. Bell?

Mr. Bell: No, I'm good, no questions.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No questions.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: I asked my questions.

Mr. Scalzo: Okay, Mr. Levin?

Mr. Levin: I'm okay, no questions.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No I don't have a question.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Hearing nothing I will turn to the a...members of the public anyone have any comments on this application?

No response.

Mr. Scalzo: Hearing none, I'll give one more opportunity to the Board.

No response.

Mr. Scalzo: Then I would look for a motion.

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

Mr. Bell: I'll second.

Mr. Scalzo: We have a motion from Mr. Levin, a second from Mr. Bell.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Cella: Thank you.

(Time Noted - 7:26 PM)

ZBA MEETING – JUNE 28, 2018 (Resumption for decision: 8:16 PM)

WENDY AFFRON KELLER

14 WINDING LANE, NBGH  
(80-2-10) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to enclose the existing non-conforming open front porch and breezeway to create habitable space on the premises (corner lot Winding Lane and Sunset Drive).

Mr. Scalzo: Okay and the second applicant for the evening was Wendy Affron Keller, 14 Winding Lane, Newburgh, seeking an area variance for increasing the degree of non-conformity of the front yard setback to enclose the existing non-conforming open front porch and breezeway to create habitable space on the premises. It is a corner lot Winding Lane and Sunset Drive. Prior to going through the criteria, this is a Type II Action Under SEQR, one last opportunity to the Board for comments.

Mr. Scalzo: Whether or not the benefit can be achieved by other means feasible to the applicant?  
Mr. Bell?

Mr. Bell: No, none.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: None.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: The plans are the same as the last time.

Mr. Scalzo: You are correct, sir. Mr. Levin?

Mr. Levin: Have a question, was it approved last time?

Mr. Scalzo: Yes, yes it was. Mr. Masten?

Mr. Masten: I say the same thing as John does, I agree with it.

Mr. Scalzo: Okay, Mr. Marino?

Mr. Marino: Good with it.

Mr. Scalzo: Whether or not the benefit can be achieved by other means feasible to the applicant?  
Mr. Marino?

Mr. Marino: I don't think so.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I don't think so

Mr. Scalzo: Mr. Levin?

Mr. Levin: No.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: No.

Mr. Scalzo: Mr. Bell?

Mr. Bell: No it can't.

Mr. Scalzo: The third, whether the request is substantial? I don't believe it is going to be substantial.

Mr. McKelvey: No, we approved it before.

Mr. Scalzo: Yeah, we approved it before. Anyone?

Mr. Scalzo: The fourth, whether the request will have an adverse physical or environmental effects? I don't think it's going to be noticeable at all.

Mr. Bell: No.

Mr. Masten: No.

Mr. Levin: No.

Mr. Marino: No.

Mr. Masten: It will blend in.

Mr. Bell: A smaller entry way.

Mr. Scalzo: Alright, if the Board approves it shall grant the minimum variance necessary and may impose reasonable conditions. I don't believe any conditions should be attached to this applicant.

Mr. Bell: None at all.

Mr. Scalzo: Therefore I will look to the Board for a motion.

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

Mr. Masten: I'll second it.

Mr. Scalzo: Motion from Mr. Bell, second from Mr. Masten, Roll Call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: Motion carried.

Ms. Affron-Keller: Thank you.

PRESENT ARE:

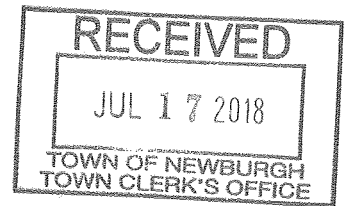
DARRELL W. BELL  
RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:18 PM)

*BG 7/17/18*



ZBA MEETING – JUNE 28, 2018

(Time Noted – 7:26 PM)

PAUL & LINDA GRAY

9 WESTWOOD DRIVE, NBGH  
(90-3-27) R-1 ZONE

Applicant is seeking area variances for the maximum 10% coverage of required yard and the maximum allowed square footage (by formula-527 sq. ft.) of accessory buildings to build an accessory building (26 x 26 garage) on the premises.

Mr. Scalzo: Our next applicant is Paul and Linda Gray, 9 Westwood Drive. They're seeking area variances for the maximum 10% coverage of required yard and the maximum allowed square footage by formula, they are allowed a maximum of 527 sq. ft. of accessory buildings to build an accessory building (26 x 26 garage) on the premises. Ms. Gennarelli.

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

Mr. Scalzo: Thank you very much.

Ms. Gennarelli: You're welcome.

Mr. Scalzo: If you could introduce yourselves and speak to as why you're looking for relief?

Mr. Gray: Good evening everybody, my name is Paul Gray; this is my wife Linda Gray and we're just trying to get a garage built on our property, a two-car garage for storage and a car and a...I don't know what else to say there.

Mr. Scalzo: Okay and you know, as...as I mentioned earlier we've all been to the site.

Mr. Gray: Yeah.

Mr. Scalzo: I will at this point turn to the Board. Mr. Bell any questions or comments?

Mr. Bell: No, I'm good.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: This garage will be at the end of your driveway...

Mr. Gray: Yes.

Mr. Olympia: ...where that retaining wall is?

Mr. Gray: Yeah, I put the...to make it...everything look nice. It's going to right next to that and it's going to match the house.

Mr. Olympia: And the current garage is (Inaudible)?

Mr. Gray: The other garage I have...

Mr. Olympia: Un...underneath...

Mr. Gray: ...underneath the house and you can't fit a car in there and a I got a new grandbaby in the house now but I can't keep the lawnmower and stuff because the fumes and everything from the lawnmower and everything comes into the house and I don't want to create any problems there.

Mr. Olympia: Thank you.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: I was going to ask the same question.

Mr. Scalzo: Very good, Mr. Levin?

Mr. Levin: I'm fine.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No, I have nothing.

Mr. Scalzo: Mr. Marino, you're good?

Mr. Marino: Yes.

Mr. Scalzo: A...my only question is the a...the temporary structure with the grey roof on it...

Mr. Gray: Oh yeah, no that goes that's just (Inaudible) thing to keep the car in it just...just comes right down...

Mr. Scalzo: I just had to ask, yeah, as you are aware I was at the property today a...

Mr. Gray: Yup.

Mr. Scalzo: ...it seems pretty straight forward.

Mr. Gray: Yeah and my... (Inaudible) is here to if you have any questions.

Mr. Scalzo: It may come to that it may not. At this point I'll open the a...up to members of the public to comment on this application.

No response.

Mr. Scalzo: Hearing none, I'll to back to the Board for one last opportunity.

Mr. Bell: None

Mr. McKelvey: None.

Mr. Masten: No.

Mr. Scalzo: Hearing none, if I could hear someone entertain or...

Mr. Olympia: I'll move it.

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

Mr. Masten: I'll second.

Mr. Scalzo: Mr. McKelvey made the motion, Mr. Masten second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The Public Hearing is closed.

Mr. Gray: Alright, thank you.

(Time Noted - 7:29 PM)

-----  
ZBA MEETING – JUNE 28, 2018 (Resumption for decision: 8:18 PM)

PAUL & LINDA GRAY 9 WESTWOOD DRIVE, NBGH  
(90-3-27) R-1 ZONE



Applicant is seeking area variances for the maximum 10% coverage of required yard and the maximum allowed square footage (by formula-527 sq. ft.) of accessory buildings to build an accessory building (26 x 26 garage) on the premises.

Mr. Scalzo: The third applicant this evening is Paul and Linda Gray, 9 Westwood Drive, seeking area variances for the maximum 10% coverage of required yard and the maximum allowed square footage by formula for an accessory buildings to build an accessory building 26 x 26 garage on the premises. Before we hit our criteria here, it is a Type II Action listed Under SEQR, Board one last opportunity before we start evaluating?

Mr. Bell: Nope, I'm good.

Mr. Scalzo: No, very good, okay whether or not the benefit can be achieved by other means feasible to the applicant? I don't believe so. The second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Masten: No.

Mr. Olympia: No.

Mr. Scalzo: I didn't see that either. Third, whether the request is substantial? No.

Mr. Bell: No.

Mr. Olympia: No.

Mr. Levin: No.

Mr. Masten: No.

Mr. Marino: No.

Mr. Scalzo: I don't believe so. The fourth, whether the request will have adverse physical or environmental effects? I don't believe so.

Mr. Masten: No.

Mr. Scalzo: Actually it will be a benefit to them not having to smell fumes coming up through the garage. And the fifth, whether the alleged difficulty is self-created? Relevant but not determinative, I don't believe, although it self-created but I don't believe it's cause for...

Mr. Olympia: No.

Mr. Scalzo: ...cause for concern. I'll look to the Board for a motion.

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

Mr. Bell: I'll second.

Mr. Scalzo: Motion from Mr. McKelvey, second from Mr. Bell.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The motion is carried.

Mr. Gray: Thank you very much.

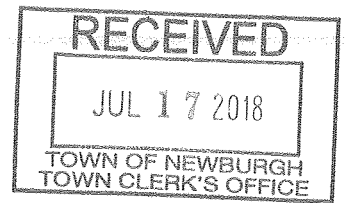
PRESENT ARE:

- DARRELL W. BELL
- RICHARD D. LEVIN
- ANTHONY R. MARINO
- JOHN D. MASTEN
- JOHN H. MC KELVEY
- PETER M. OLYMPIA JR.
- DARRIN J. SCALZO

ALSO PRESENT:

- DAVID A. DONOVAN, ESQ.
- BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:20 PM) 7/17/18  
BS



ZBA MEETING – JUNE 28, 2018

(Time Noted – 7:29 PM)

DANIEL & ELISSA DICKINSON

SBL 6-1-12 (IN VICINITY OF NORTH  
FOSTERTOWN, REVERE ROAD, TARBEN  
WAY & STILLHOLLOW ROAD) A/R ZONE

Applicant is seeking an area variance from the requirements of New York State Town Law 280-a - (1) allowing a single family home to be constructed on property where no street or highway giving access to the property has been duly placed on the official map or plans and where such access is not on an existing State, county or town highway and is not a street shown upon a plat approved by the planning board nor is it a street on a plat duly filed and recorded in the office of the county clerk prior to the appointment of such planning board and (2) road must be suitably improved to the satisfaction of Town road specifications to have a Building Permit issued.

Mr. Scalzo: Alright, that takes care of new applications for this meeting and moving on to held open from March 22<sup>nd</sup>, April 26<sup>th</sup>, May 24<sup>th</sup> meetings Daniel and Elissa Dickinson. They are seeking an area variance from the requirements of New York State Town Law 280-a - (1) allowing a single family home to be constructed on property where no street or highway giving access to the property has been duly placed on the official map or plans and where such access is not on an existing State, county or town highway and is not a street shown upon a plat approved by the planning board nor is it a street on a plat duly filed and recorded in the office of the county clerk prior to the appointment of such planning board and (2) road must be suitably improved to the satisfaction of Town road specifications to have a Building Permit issued. Ms. Gennarelli this was a held open so we did not have to re-notice, correct?

Ms. Gennarelli: That's correct.

Mr. Scalzo: Thank you. Charlie, just before... well, I'll let you introduce yourself.

Mr. Brown: Charles Brown, engineer for the applicant a...this Board requested a letter addressed to this Board from the Title Company. The Title Company asked for a letter from Mr. Tarsio authorizing the access. Mr. Tarsio agreed to that on the condition that a...Mr. Dickinson a...had a lawyer create a maintenance agreement for Tarsio Lane...a Tarsio the name whatever it is...that will be in place until such time as the road is dedicated to the Town.

Mr. Scalzo: Okay, do we have something memorializing that other than your verbal testimony?

Mr. Brown: A...Dan Bloom is working on it.

Mr. Bloom: May I address the Board, sir?

Mr. Scalzo: Please.

Mr. Bloom: Good evening, my name is Dan Bloom and I represent Mr. Dickinson and Mr. and Mrs. Dickinson and I am in the process of...I prepared a road maintenance agreement and a right-of-way maint...a right-of-way agreement...road maintenance agreement a...and I submitted it to

the attorney for a...for the adjacent property Mr. Tarsio. I submitted it to him about ten days ago. I was in communication with him today. He's reviewed it. He had no objection at that point but he wants to meet with his engineer and his client and then ask final word on it. I'm hoping that that takes place in the next week or so and I'm hopeful that it will be signed and we'll be able to submit it to a...Charlie Brown to the Board.

Mr. Scalzo: Okay. Mr. Brown is it your intention at this point to ask for the Public Hearing to be extended one more time so that we have that document in hand?

Mr. Brown: Yes, it is.

Mr. Donovan: The only other thing Charlie I don't recall about it since it's been a little while, do we know the nature of the improvement of the driveway just so if you could give us a little information on that to make sure it's accessible to emergency vehicles and that kind of stuff because that's important to the Board as well. If you've given that to us, I didn't see it, we need it.

Mr. Brown: We submitted the a...initial application site-plan that shows the grading of the driveway and the crossing through the wetland.

Mr. Donovan: Correct and any kind of the composition of the driveway? Is it gravel, asphalt or ...?

Mr. Brown: A...a lot is gravel up to a certain percentage and I'm pretty sure we...I'd have to check.

Mr. Donovan: I'm not saying it needs to be one or the other just if it's shown on the plan the way so that we know it's passable.

Mr. Brown: Town Code wide, yeah gravel.

Mr. Donovan: And...and it's shown on the plan?

Mr. Brown: Yes.

Mr. Donovan: Okay.

Mr. Scalzo: Well, thank you.

Mr. Donovan: So you need a motion to hold the hearing open until July.

Mr. McKelvey: I'll make that motion.

Mr. Masten: I'll second it.

Mr. Scalzo: We have a motion from Mr. McKelvey and a second from Mr. Levin (Mr. Masten).

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Audience Member (Inaudible)

Mr. Scalzo: If it remains open...yeah, but well we're going to hold the meeting open until the July meeting however if there is anyone here to speak about this application please step forward and identify yourself.

Mr. Brown: Thank you.

Mr. Scalzo: Thank you. Oh...

Mr. Leroy: Mike Leroy, I live at 36 South Dix Avenue, I'm speaking on behalf of my son David who owns the lot adjoining the one in question. Will I be able to speak again at the next meeting?

Mr. Scalzo: Yes sir.

Mr. Leroy: Okay, I'll wait until then.

PRESENT ARE:

DARRELL W. BELL  
RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:34 PM)

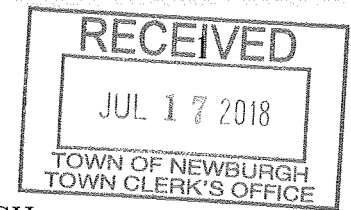
  
7/17/18

ZBA MEETING – JUNE 28, 2018

(Time Noted – 7:34 PM)

RE-HEARING OF FRANK DARRIGO  
REVOCABLE TRUST

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



Re-hearing of 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).

Mr. Scalzo: Okay we are moving on to the final on the agenda this evening which is held open from the May 24<sup>th</sup> meeting. It is the re-hearing of the Frank Darrigo Revocable Trust, 84 Lakeside Road, Newburgh, the re-hearing of the use variance for 185-83 solar farms shall be located in the Industrial District (I Zone) to build a solar farm in a Residential-1 District (R-1 Zone). Ms. Gennarelli please note that I am recusing myself from this application, please come and get me when they're done.

Mr. Lease: I'm Jeff Lease, representing the Darrigo family in this application and a...as per requested at the last meeting we have had a site plan drawn up by a licensed engineer showing a 4-megawatt array on the sixty acres of Darrigo farm. If I may let me...let me talk directly to the map. The map which had been submitted to you previously and this has been the very same stamped by Arden Consulting a...Engineers which is a...Mike Ortego who happens to be the engineer for the approved a...4-megawatt solar array that is in New Windsor. He is the same engineer and he's working with Enter Solar who provided the technical information regarding the placement and the...and the number of a...solar panels. To orient ourselves this is obviously Lakeside Road over here and Interstate is a broad sweep on the bottom of the page here. The solar panels are arranged in two sections a...totaling a...a...4-megawatts. There's a...a hill as well as it...with trees in this section which a...prevented them from putting solar panels in that area. The buffer around the entire property is fifty feet and the setback off of the property lines is a hundred feet as a...as it was stated in the original application. A...the remainder of the supply house and the a...farm will exist on the balance of the twenty acres and the locations of those buildings and their access driveways to there. The solar array a...will not will use the existing driveway as a...as a service access a...for weekly lawn maintenance and a...and a...repairs as needed and that...that...that driveway is shown here. It roughly follows the driveway that's there currently. A...the a...the buffer along the back of the property is very similar to the way it is right now in that with the exception of this area over here this area and this area are already fields as well as this portion is already a field as well. So the only portion of the area that will require some tree taking is this area here...this...this quadrant right over here. A...I've gone through the points but I'd like to go through them one more time as why...I think this application should be approved...those four points which are met by the four points of hardship. The applicant for the variance cannot exercise the current zoning because of the contamination on the property. Number two the hardship is unique and that this is the only former hazardous waste site in the entire Town of Newburgh. It's one of the only two in the whole county. The variance would not alter the neighborhood but rather it would...it would be more in keeping with the current appearance than if the zoning of R-1 were applied to this property. For this reason so many of the neighbors came out in favor of this variance. The condition was not self-created this condition was not self-created as the materials were dumped legally with the laws describing what would be determined hazardous waste were changed by the DEC over time and it became hazardous.

And finally fifth, dollars and cents approach done by Valuation Consultants show that under the current zoning the value of the property is a hundred and ninety thousand dollars and that the a...as a solar farm this property is worth a million three. There is no real use for this property given the current zoning other than solar farm and it turns out that by happy accident that we...we have and a...we have a user that will do just that. Let me reiterate there is no reasonable return on this property. We provided a dollar and cents approach from one of the best valuation firms in the county and moreover the analysis was not based on...on speculation but on hard and fast financial analysis with genuine valuation numbers. Factoring everything necessary to develop this property at the current zoning the investment need to build the roads, to do the topography, to change the trees, put in water, sewer and curbs would erase any conceivable gain on this property. Most importantly the DEC restrictions regarding the hazardous waste and the subdivision of the property would make the property virtually unsaleable. The fact is the property will yield little to no return under the current zoning. It is uniquely burdened by environmental factors that do not apply to normal circumstances or to any other property in the Town of Newburgh. The property is completely unique. Residential development will simply not work on this property. Let me just address one thing that came up in the last meeting and that was...was the notion of an overlay district. The action of an overlay district is no different than the change of the zoning and that is exactly why we're before this Board because it exposes the Town to a...a potential lawsuit that favors one property over the other. In fact the Town Counsel was right to do that by reason of hardship and I never thought when I began this project that this property would so perfectly fit the hardship criteria. I thought it was going to be a strong one but I never thought it was going to be as overwhelming and unique as it is. This action cannot be replicated by other properties because of its unique condition. In fact a code change or an overlay as proposed would actually make the Town vulnerable to a suit by another entity who would favor...who would argue favoritism in the case of the Darrigo property. Approval tonight is a classic case of an impenetrable action against further litigation. I have...I stood up here for four meetings and I've not...I've tried to stay just with the four points of hardship because that's really what we're talking about here. I haven't talked about value of a solar farm how the...the...the Darrigos have worked very hard on this property to preserve it and that farming is coming to an end and there to technically their ownership use of the property is coming to an end but I...I think this...this case we have an existing owner who has cleaned up the property and now would like to see the property used for another use besides farming a...and a...the solar farms are getting approved in pretty graphic order across the county a...it's a limited window and a...as I mentioned before a...Central Hudson had granted an extension for this project uniquely because it's such an important project with respect to the Coldenham substation. They...they tie into this substation because that substation has a peak power demand starting right about now will require increased lines coming into the substation and as a result they're going to have to a...a...build new power lines to take care of peak demand. This project will come on line exactly and provide the most amount of power during the sunlight hours of the warmest part of the year where air conditioning causes its peak demands and it prevents the substation from having to...to have massive renovations. This is a private...a private a...developer which is actually helping public utility and keeping public utility cost down but that has nothing to do with the hardship of the application and I...I haven't mentioned any of those things but I...I think it's important and I think it's important to the Town to also have at least one solar project in their...in their Town. I mean almost every town New Windsor has got one and many are being approved across the county. A...lastly I want to say that Dan Darrigo and I worked very hard to pull this application

together and we respect the...the work that the Board does a...we've had several obstacles in terms of working this thing through first talking to the Town, holding an open workshop meeting for residents in the area, then meeting with the Town again, getting denied by the Counsel to change the zoning a...law and then coming to you now for the fourth time. A...I think we have...we worked very hard and we have a clear and compelling hardship case here which is completely unique and...and really well earned. A favorable decision from you this evening is right for so many reasons. Thank you.

Mr. McKelvey: But I disagree with you though, we don't...we don't make the a solar law in this Town...

Mr. Lease: No, I didn't...

Mr. McKelvey: ...and it says it has to be in an Industrial business district. If we grant one to you in a residential district what's going to prevent somebody else from coming in saying...

Mr. Lease: Because the reasons for this approval are unique. They meet the four points of hardship so clearly.

Mr. McKelvey: They don't meet the district.

Mr. Lease: But that's not the point of the reason why I'm here is that the...

Mr. McKelvey: That's the solar law.

Mr. Lease: I understand that but the four points of hardship that you argue for are the...are the use variance within the...on the application. The reason that I'm here is that it doesn't comport with...with the current zoning. So it's argument (Inaudible)...

Mr. McKelvey: I don't...I disagree.

Mr. Lease: Well you...the reason for not accepting the use variance is it doesn't comport to the zoning is a (Inaudible) I mean it of course it doesn't apply to the zoning because that's why we're here.

Mr. McKelvey: Why do we have a zoning law a...for solar?

Mr. Lease: You have a zoning law that's...that's...that's made out but you have a case here in which you have a unique situation which...

Mr. McKelvey: The situation is it can't go in a R...in a residential district.

Mr. Lease: No, that's the law but that's not the unique hardship.

Mr. McKelvey: That...that's...what's going to prevent other people coming in in residential districts and doing the same thing...?



Mr. Lease: Because I...

Mr. McKelvey: ...they're going to say we granted you one?

Mr. Lease: Because in they will...it will be impossible for them to replicate hardship under these terms and conditions. No one can prove hardship the way we have on this property. It's completely under...and it is the best reason for doing it. It's the best reason for doing it...we...we cannot...

Mr. McKelvey: I...I...

Mr. Lease: ...the law is that way or that supports the reason why it shouldn't be approved...that's...

Mr. McKelvey: I still agree when Animal (Mr. Hughes) said an overlay district.

Mr. Lease: I just explained that an overlay exposes the Town for the very reason that I came before you in the first place that is to say it shows favoritism. An overlay district or a change in zone exactly shows the favoritism that you want to avoid.

Mr. McKelvey: Pilot got one.

Mr. Lease: What's that?

Mr. McKelvey: Pilot got one. Pilot got an overlay district.

Mr. Lease: And it took seven and a half years and it was a...it was a nightmare. In fact, funny that you should mention that because that's exactly what Gil Piaquadio asked me to avoid. He said, Jeff let's have a town hall meeting so we can avoid the problems that we had with Pilot.

Mr. McKelvey: But Gil don't make our...make your decisions.

Mr. Lease: I know that but I try to...I try to comply with Gil's original conversation a year and a half ago by doing a town hall meeting but you...I don't know the Pilot application and what exactly happened there. He asked me to do something in a way that included the neighbors that included a kind of whole approach to getting a variance or getting a...or getting a use on this property. I think that you need to stay within the four points of the hardship. You've asked me to stay and prove the four points of hardship. I think that you also have to stay within those restrictions. You can't bring extraneous reasons for denying the application that are outside the four points of hardship. What limits me...

Mr. McKelvey: I disagree.

Mr. Lease: I don't...I don't know how to make it any clearer. I just...the...the law is not proof of its own existence. The fact that the law is there does not deny the fact of a variance. In fact, what

you're really proposing is that a use variance would be impossible in any case because the law exists a variance for a use would be impossible.

Mr. McKelvey: Use variance are hard to get.

Mr. Lease: No but doesn't...but what about other variances that were heard tonight? Wouldn't it deny the fact that you're Board would exist in any case since the law exists no applicant...

Mr. McKelvey: We're not talking about the rest of them we're talking about this.

Mr. Lease: But I'm talking about the application for a variance. You're saying because the law exists no variance can be heard. I don't understand that.

Mr. McKelvey: Why do we have laws?

Mr. Lease: Why do we have a variance for it?

Mr. McKelvey: Dave, maybe you can help me out.

Mr. Donovan: I...what do you want me to say?

Mr. McKelvey: It's a residential district.

Mr. Donovan: So...so the situation that you have here is the use is not allowed in a residential district.

Mr. McKelvey: That's right.

Mr. Levin: That's right.

Mr. Donovan: So now there's a request for a use variance that...that's what happens when someone has a use that's not permitted in the district. They have two options; one is to petition the Town for a zone change, the second option is to ask for a use variance. This applicant...this applicant has made an application to this Board seeking a use variance. Under the New York State Town Law we have an obligation to review the four factors of...that are set forth in New York State Town Law to determine if those factors have been satisfied. If the Board believes those four factors have been satisfied then you issue a use variance. If you believe they have not been satisfied you...you deny the use variance. I mean, that's the law, I mean obviously you...you know, Mr. Lease is making the argument that he's satisfied those. It's up to the Board who takes the public input to determine that they have in fact satisfied those. I'm not...the reason why I asked the question what do you want me to say is I'm not sure that we accomplish anything by yelling at each other.

Mr. McKelvey: No, I agree with you.

Mr. Lease: I'm sorry...

Mr. McKelvey: I apologize.

Mr. Lease: ...no, no I'm the one who was speaking loudly, I'm sorry.

Mr. McKelvey: But when this motion...when this was turned down the first time we had members, three or four members said that it was self-created.

Mr. Donovan: Well so, and...and actually interestingly enough, the motion to approve had failed three to two.

Mr. McKelvey: Yes.

Mr. Donovan: There was three votes in favor of the approval. Right so a...but you need four votes and tonight, just so we're clear this is a motion to re-hear and on an application to re-hear you need a unanimous vote to overturn the prior decision so you have to have all six members who are voting, Darrin is excluded, to vote in favor to overturn the prior determination which was a disapproval under 267-a-13 of the Town Law because you didn't have sufficient votes even though it was three to two in favor. If I've made that any clearer at all, I'm not sure that you have but...

Mr. McKelvey: No, you have...

Mr. Donovan: ...but just trying to...this is what happened before.

Mr. McKelvey: Okay, is there any question by the Board Members? Mr. Bell?

Mr. Lease: May...may I say one more thing? Mr. Donovan is...do...does my argument make any sense with respect to...that the...that an application for a use variance it's the zoning law itself is is not a reason for denying a use variance because it's...it's the very reason for coming here? I know a magician so I don't know understand this...

Mr. Donovan: But...but...

Mr. Lease: ...I don't understand that argument. I'm sorry, I'm sorry go ahead

Mr. Donovan: So you made your argument, right? My job is not to tell you whether you made a good argument or a bad argument. My job is to give advice to the Zoning Board. The Zoning Board has to determine whether or not you've satisfied the criteria...

Mr. Lease: Right.

Mr. Donovan: ...and then you they vote. That's...

Mr. Lease: Okay.

Mr. Donovan: ...that's...that's all I can say.

Mr. Lease: Were there any a...you've asked me to do the plan here so are there any a...a... questions regarding the plan?

Mr. McKelvey: No, I only asked for it last month because you had no plans.

Mr. Lease: Okay, well...

Mr. McKelvey: And I thought the Board would want them.

Mr. Lease: Okay.

Mr. McKelvey: Because you gave us a drawing last month with no...no seal, no signature.

Mr. Lease: Right but it was a drawing to scale.

Mr. Levin: I think you drawings are acquit or adequate.

Mr. Lease: Thank you, thank you (Inaudible). Again I...I think the four points of hardship are really clearly met here and the Darrigos are looking to do something with the farm other than farming in perpetuity. They're...they don't have any heirs that want to take it over as a farm. They're looking to do the next thing. That's why we're here.

Mr. Olympia: Can I comment?

Mr. McKelvey: Yes, go ahead, please.

Mr. Olympia: I'm a very, very strong believer in alternative energy, alternative energy sources. I think it's the wave of the future something we need to recognize. I think that Mr. Lease and Mr. Darrigo, the Darrigo Trust have certainly provided us with enough information to bring us to a conclusion that this property can't be used for anything else and I think there is a very, very distinct a...financial burden that's been placed on them and not being able to develop it. If there were alternative ways that they could develop the property and within...within the current zoning I think we would really be looking at it a little bit differently. But I think under the circumstances and giving what they want to do with the a...property. The neighbors...there are no neighbors that have really voiced a negative concern about this property in what the future use or proposed use is for. So on that basis I think that we should look at this with certainly with a very, very critical eye but at the same time I think this is one of those properties that really does meet the four criterias that have been established.

Mr. Lease: Thank you. In fact you have a letter in your packet that was from one of the neighbors actually at the entrance drive that approves of the project and we had several other neighbors that came out in favor but did not write letters but the Kneisers wrote a letter in favor of this and they are the people right at the entry drive.

Mr. McKelvey: You made a statement...Betty, this...this contaminated sites are in the Town?

Ms. Gennarelli: Yes.

Mr. McKelvey: You said there were only two contaminated sites in the Town.

Mr. Lease: No, only...only a...only...this is the only former hazardous waste site. This is the only former hazardous DEC hazardous waste site. There may be other contaminated sites. There's a contaminated home on (Inaudible) Drive.

Mr. Donovan: Well let me...may I...may I ask? I don't know where this comes from...so there's a EnviroMapper or I don't know who produced it...there's a sheet but there's no letterhead, there's no seal, I don't know... Let me also...I think we may also be talking, if I may, kiwis and kumquats because the information that's here on the hazardous waste...cites facilities are required to provide information about their activities and required to provide recording record keeping. If I understand the letter from the DEC correctly, dated January 19, 2018 that's been submitted remediation at this site which is only a portion right?

Mr. Lease: Right.

Mr. Donovan: It's just a portion it's eight acres but remediation is completed.

Mr. Lease: Correct.

Mr. Donovan: So, so there is no more reporting. That's I think the paper we have from DEC is different from whatever this other information is.

Mr. McKelvey: I...I'm just...this was given to us tonight, that's all I wanted to know.

Mr. Lease: By who?

Mr. McKelvey: Where did it come from Betty?

Ms. Gennarelli: Mr. Hughes dropped it off. He couldn't come in himself because he's having problems walking.

Mr. Lease: It is the only former hazardous waste site in the county. And the...and the letter from the planner validated that to some extent because she heard her letter a...authorizing a...to go forward with this please.

Mr. McKelvey: Do you have anything Mr. Levin?

Mr. Levin: No, I'm fine.

Mr. Masten: I have nothing right now John.

Mr. Marino: No, I'm good

Mr. Levin: Is the Public Hearing still open?

Mr. Lease: Yeah.

Mr. McKelvey: Is there anybody from the public that would like to speak?

Mr. Darrigo: May I be heard?

Mr. McKelvey: Yes.

Mr. Darrigo: Hello, I'm Dan Darrigo, I live at 86 Lakeside Road and I'm the trustee of the... of the farm. A...I mean I feel that Jeff like a...Mr. Olympia's statement I feel that he did all the four points and if the big question is is that this Board is afraid to approve it because there might be a future applicant saying well they want to put one to my counter would be then do the four points just as well and they have the property would it be bad to let another solar farm go if there's another area of the Town where it doesn't change the structure, they have no other recourse, the neighbors aren't against it. I mean is that such a bad thing to have two arrays in the Town? If that's the only reason that I'm hearing that you may not want to approve this.

Mr. McKelvey: I just don't want to set a precedent. That's all.

Mr. Masten: That's right.

Mr. Darrigo: Well precedent any future precedent has to hit the four points and as I heard here before a use variance is hard not impossible, you have the use variance option but the State gave a use variance option for a reason and I believe that we fit in that reason. You know I don't know what argument to make and if it is a precedent like I said, if some future person can prove the four things to a reasonable person then let it, you know, I doubt there'll be like a hundred, you know, we're not trying to put another Dunkin Donuts up here.

Mr. Masten: No, another one, no.

Mr. Darrigo: Think about it, where else in the Town can you get another solar array that would hit the four points. And I mean if it's there and the landowner wants to do it they should be allowed to do it. We're not you know, if...if neighbors had come in here with...with pitchforks and torches and demanded no, no, no I can see the Board maybe voting against it. A...but I believe we hit the four points. I mean I...if the Board can just focus on that. And as far as staging a precedent once again I don't need to beat a dead horse but if that future applicant can meet all the four points in a reasonable way then let them have it too but how, again, how many can there possibly be in the Town of Newburgh. Maybe in the State of New York yes, there's probably more and a...you know, I heard in this talk about the overlay district a...to me you know, if...if the Board could came up with a reason why there shouldn't be a solar array on the property or how you might argue that it brings in a criminal element, I don't want that. I still want to live there. A...voting no because you're afraid of a precedent to me is...is, I don't mean to you know,

Anthony Marino: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yes

Mr. McKelvey: Can you have Darrin come back in?

Mr. Scalzo: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight's applications. If I could ask in the interest of time if you folks could wait out in the hallway a...we'll call you back in very shortly.

(Time Noted - 8:03 PM)

ZBA MEETING – JUNE 28, 2018 (Resumption for decision: 8:20 PM)

RE-HEARING OF FRANK DARRIGO  
REVOCABLE TRUST

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

Re-hearing of 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).

Mr. Scalzo: Our last...oh, very good...our last applicant for the evening is the re-hearing of the Frank Darrigo Revocable Trust, a re-hearing of the 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 that would be the R-1 Zone. This is a Unlisted Action a... by SEQR. As this is a use variance we will go through the test of the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by New York State Town Law from granting an approval. To allow a use not otherwise allowed in zoning, an applicant must demonstrate to the Board - unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following, for each and every use... in that permitted zone (permitted in that zone). And just to paraphrase that it's you need every one of them, you know, two out of three, three out of four does not make it. It's got to be four out of four. So I am not a voting portion of this action although I will read and ask for the determination of the Board. The first is the land cannot realize a reasonable return, in dollars and cents, substantial as shown by competent financial evidence. I'll look to the Board. Mr. Bell any comments?

Mr. Bell: No, I think that it's been proven that...that there's no other option, you know, as financial...for financial gain or you know to justify hardship on financial assets.

Mr. Scalzo: Thank you. Mr. Olympia?

Mr. Olympia: I agree there's a hardship.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: I have to agree.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I think they reasonably showed that to us.

Mr. Scalzo: Mr. Masten?

Mr. Masten: I agree the same thing.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Yup, he proved it.

Mr. Scalzo: Second that the alleged hardship is unique and does not apply to substantial portion of district or neighborhood. I'll go back to Mr. Marino?

Mr. Marino: I think it's definitely unique, extremely so.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Same thing.

Mr. Scalzo: Mr. Levin?

Mr. Levin: Definitely unique.

Mr. McKelvey: Yes.

Mr. Scalzo: Mr. McKelvey, yes.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: I agree.

Mr. Scalzo: And Mr. Bell?

Mr. Bell: Yes, I agree.

Mr. Scalzo: Alright, two for two so far. The third that the request...requested variance will not alter the essential character of the neighborhood. Back to Mr. Bell?



Mr. Bell: Actually it...it would improve it. It won't alter. It won't alter. No.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: I agree.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: It will improve it.

Mr. Scalzo: Mr. Levin?

Mr. Levin: It will not alter the neighborhood.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Same thing.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Same.

Mr. Scalzo: Alright, three for three folks. And lastly that the alleged hardship has not been self-created I'll look to Mr. Marino?

Mr. Scalzo: Alright, three for three folks. And lastly that the alleged hardship has not been self-created I'll look to Mr. Marino?

Mr. Marino: I don't think it's been self-created it was thrust upon him.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Same, I agree with...with what Tony said.

Mr. Scalzo: Mr. Levin?

Mr. Levin: I definitely agree it's not self-created.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: I have to.

Mr. Scalzo: Mr. Olympia?

Mr. Olympia: It's not self-created.

Mr. Scalzo: Mr. Bell?

Mr. Bell: It's not.

Mr. Scalzo: Keeping in mind, All four of these criteria must be met or the Zoning Board is barred Law from granting an approval. I had not heard anything that would lead me to believe we have heard that. Again, do we have anything further from the Board on this applicant?

No response.

Mr. Scalzo: Hearing none, does the Board have a motion of some sort?

Mr. Levin: I would like to make a motion for approval.

Mr. Masten: I'll second it.

Mr. Scalzo: We have a motion to approval Mr. Levin. Second from Mr. Olympia (Mr. Masten), Roll Call.

Ms. Gennarelli: Mr. Olympia?

Mr. Olympia: Yes.

Ms. Gennarelli: Oh, I'm sorry; I thought it was from down there. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yeah I have to approve.

Mr. Donovan: Just for a piece of housekeeping we need to do a Negative Declaration as well under SEQR because it is an Unlisted Action.

Mr. Scalzo: Oh, I'm sorry. Thanks Dave. Well back it up a little bit a...it appears that the Board has approved a...made the motion to approve...we need a motion for a Negative Declaration...if...

Mr. Olympia: I'll make a motion for a Negative Declaration.

Mr. Bell: Second.

Mr. Scalzo: Motion by Mr. Olympia, second by Mr. Bell.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yes

Mr. Scalzo: I believe that a...is an approval.

Mr. Lease: Thank you.

Mr. Darrigo: Thank you very much.

PRESENT ARE:

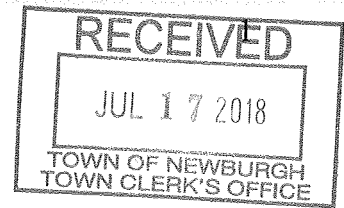
DARRELL W. BELL  
RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO - RECUSED

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:25 PM)

*BJ 7/17/18*



ZBA MEETING – JUNE 28, 2018

END OF MEETING

(Time Noted – 8:25 PM)

Mr. Scalzo: Okay, on to other board business, has everyone had a chance to read the meeting minutes from the May meeting?

Mr. Masten: Yes.

Mr. Bell: Yeah, there was a lot of minutes too.

Mr. Scalzo: Do I have a motion to approve the meeting minutes from the May meeting?

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

Mr. Olympia: I'll second.

Mr. Scalzo: All those in favor Aye?

Aye - All

Mr. Scalzo: Do we a...we don't need to go over the a...the sign...we did receive information regarding signs...signing or was that last month? No?

Ms. Gennarelli: I don't remember any.

Mr. Scalzo: No, okay, then may I have a motion to adjourn?

Mr. McKelvey: I'll make a motion we adjourn.

Mr. Masten: I'll second it.

Mr. Levin: I'll sec...I'll third it...he did it already?

Mr. Scalzo: All in favor?

Aye All

Mr. Scalzo: The meeting is adjourned.

PRESENT ARE:

DARRELL W. BELL

RICHARD D. LEVIN  
ANTHONY R. MARINO  
JOHN D. MASTEN  
JOHN H. MC KELVEY  
PETER M. OLYMPIA JR.  
DARRIN J. SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:26 PM)

*ES 7/17/18*