ZONING BOARD OF APPEALS

MEETING – MARCH 23, 2017

(Time Noted – 7:04 PM)

Mr. McKelvey: I’d like to call the meeting of the Zoning Board of Appeals to open.

Ms. Gennarelli: The first order of business tonight is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted relief under the Code. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision this evening; but may take up to 62 days to reach a determination. And I would ask if you have cell phones to please put it on silent or turn them off and when speaking, speak directly into the microphone as it is being recorded. We will do a roll call.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPOLIANCE

Pledge of Allegiance to the Flag led by Darrell Bell

 (Time Noted – 7:06 PM)

ZBA MEETING – MARCH 23, 2017 (Time Noted – 7:06 PM)

DIANE McKOY-WILLS 18 OLD SOUTH PLANK ROAD, NBGH

 (51-4-12) R-1 ZONE

Applicant is seeking area variances for the rear yard setback, the maximum lot surface coverage and increasing the degree of non-conformity of the combined side yards setback to build a side deck (10 x 10) onto the existing enclosed porch.

Mr. Levin: Our first request tonight is from Diane McKoy-Wills, 18 Old South Plank Road, Town of Newburgh requesting area variances for the minimum yard (rear) setback, the maximum lot surface coverage and increasing the degree of non-conformity of the combined side yards setback to build a side deck (10 x 10) onto the existing enclosed porch.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, March 15th and in The Sentinel on Friday, March 17th. This applicant sent out sixty-four letters. All the mailings, publications and postings are in order.

Mr. McKelvey: Before we start I’d like the attorney to make an announcement.

Mr. Donovan: So as you can see there are five members of the Board present this evening. This Board is a seven member Board which means you need four affirmative votes to have an application approved this evening. It is the practice of this Board if we don’t have a full complement to offer any applicant the ability to defer their application until such time as we have a full complement otherwise you need four out of five. You always need...you always need at least four but we’re down two Members this evening so if any applicant wishes to defer if you’d let us know now.

----------------------------------- (Time Noted – 7:08 PM) ------------------------------

Ms. Gennarelli: Okay, Troon is adjourned till April 27th.

Mr. Donovan: Now you can’t wait until the Board votes and then try to defer so now...now is your time.

Ms. Gennarelli: Is Ms. Wills here?

No response.

Ms. Gennarelli: Alright, maybe you want to hold that one over and come back. Next would be Fabrizio. McKoy-Wills are you here?

No response.

Ms. Gennarelli: No, not yet.

----------------------------------- (Time Noted – 7:09 PM) -------------------------------

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(Time Noted – 7:30 PM)

Mr. McKelvey: Is the first applicant here?

Ms. Gennarelli: Yes, yes, we can go back to the first applicant.

Mr. McKelvey: Richard, the first applicant.

Ms. Gennarelli: McKoy-Wills.

Mr. Levin: Diane McKoy-Wills, 18 Old South Plank Road, Newburgh variance, area variances for the minimum rear yard setback, the maximum lot surface coverage and increasing the degree of non-conformity of the combined side yards setback to build a side deck (10 x 10) onto the existing enclosed porch.

Mr. McKelvey: Come to the microphone, you can take it off if you want to.

Ms. Gennarelli: It bends up, bends down, whatever you want to do and if you could just introduce yourself.

Ms. McKoy-Wills: Diane McKoy-Wills, the property owner of 18 Old South Plank Road, Newburgh, NY.

Mr. McKelvey: I’d like to thank you too for coming back and getting the sign because of the snow knocking the other sign down.

Ms. McKoy-Wills: Well I finally found it, the snow melted and I found the first sign.

Mr. McKelvey: Yeah, it was a problem. Explain to us what you want.

Ms. McKoy-Wills: I want to build a deck onto...it’s a porch, an enclosed porch on my house on the second story that would give me access to the backyard from inside my house. Because the way my house is constructed right now I have to go out my front door and go around the house to get to my backyard so this will give me a deck and stairs to get to the backyard without having to go outside and go all the way around.

Mr. McKelvey: Any questions?

Mr. Bell: So, the part, sorry, the deck part that I saw there’s no way of entering from the back into your home now?

Ms. McKoy-Wills: That’s correct.

Mr. Bell: Okay. Because it was kind of hard for me to kind of get back there with the snow. I was kind of bending around...I did walk through some of it but I was just trying to kind see how that connected with your enclosed portion.

Ms. McKoy-Wills: At one time, you could go through the garage from the house to the...out the house into the garage into the backyard. I had a fire, this was many years ago, they made me move the furnace so we had to close that back door off a...from downstairs so again, there was still I...so I could go from downstairs and go into the backyard now I can’t do that. I have to go out the door and go all the way around, with the deck with the stairs I can go from inside my house right into the...you know, down the steps into the backyard. I can’t do that at this point in time.

Mr. Bell: Okay.

Mr. McKelvey: Any other questions from the Board?

No response.

Mr. McKelvey: Any questions from the public?

No response.

Mr. McKelvey: Joe?

Mr. Mattina: I have a question. Joe Mattina, Code Compliance, can I see the survey that you guys are looking at? Okay, that is correct. The one I have in my package shows the deck over here so I was concerned we not all looking at the same thing. That is correct.

Joseph Mattina checked all the Board Member’s surveys for correctness.

Ms. Gennarelli: They should all have the same one.

Mr. Mattina: Yeah, I don’t, I have a different one.

Ms. Gennarelli: Oh, well she filled that in at the window for me, sorry.

Mr. Mattina: This doesn’t match up with what I sent her for...

Ms. Gennarelli: Okay.

Mr. Mattina: ...yours are the right one.

Mr. McKelvey: Thank you Joe.

Ms. Gennarelli: Thank you Joe.

Mr. Mattina: The map I have showed your deck over here and if that’s where it was you wouldn’t need a variance.

Ms. McKoy-Wills: Oh.

Mr. Mattina: But it’s not it’s over here.

Ms. McKoy-Wills: Oh.

Mr. Mattina: You still need the two variances.

Mr. Bell: Right.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Thanks, Joe. Any other questions?

No response.

Mr. McKelvey: I’ll look for a motion.

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Here...Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The Public Hearing is closed but they didn’t vote yet on it.

Ms. McKoy-Wills: Okay. Should I stay?

Ms. Gennarelli: If you want to know, yes.

Ms. McKoy-Wills: I’ll stay.

 (Time Noted - 7:33 PM)

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:02 PM)

DIANE McKOY-WILLS 18 OLD SOUTH PLANK ROAD, NBGH

 (51-4-12) R-1 ZONE

Applicant is seeking area variances for the rear yard setback, the maximum lot surface coverage and increasing the degree of non-conformity of the combined side yards setback to build a side deck (10 x 10) onto the existing enclosed porch.

Mr. McKelvey: The Board is ready to resume the Hearing.

Mr. Levin: The first case is Diane McKoy-Wills, 18 Old South Plank Road, Newburgh she is variances, area variances for the rear yard setback, the maximum lot surface coverage and increasing the degree of non-conformity of the combined side yards setback to build a side deck (10 x 10) onto the existing enclosed porch.

Mr. McKelvey: This is a Type II Action under SEQR.

Ms. Gennarelli: Okay, do you want to go through the questions?

Mr. McKelvey: Yes, please.

Ms. Gennarelli: The first one is whether the benefit sought can be achieved by other means feasible to the applicant?

Mr. Levin: I don’t believe it can. I don’t feel that it can I think.

Ms. Gennarelli: Okay. Alright, the second question is there an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: I don’t believe so.

Mr. McKelvey: I don’t believe so either.

Mr. Levin: No.

Ms. Gennarelli: Is the request substantial?

Mr. Scalzo: I don’t believe so.

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Levin: No.

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

Mr. Scalzo: I don’t believe so.

Mr. Masten: No.

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

Mr. Levin: I don’t believe so.

Mr. Bell: No.

Mr. Scalzo: Well it is but there was a fire but I mean...

Mr. Donovan: It’s not determinative as stated so eloquently, yeah.

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

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

Mr. Levin: I'll second it.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The motion is carried.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:05 PM)

ZBA MEETING – MARCH 23, 2017 (Time Noted – 7:09 PM)

ANTHONY FABRIZIO GARDNERTOWN ROAD, NBGH

 (51-9-9) R-1 ZONE

Applicant is seeking area variances for the minimum front yard setback, the minimum rear yard setback, the minimum lot depth and the minimum lot area for Lot #1 and the minimum lot area and the minimum lot width for Lot #2 of a proposed two-lot subdivision application before the planning board.

Mr. Levin: Anthony Fabrizio, Gardnertown Road, Town of Newburgh, area variances for the minimum front yard setback, the minimum rear yard setback, the minimum lot depth and the minimum lot area for Lot #1 and the minimum lot area and the minimum lot width for Lot #2 of a proposed two-lot subdivision application before the planning board.

Mr. Brown: Thank you.

Ms. Gennarelli: And this, one second Charles please, this applicant sent out forty letters. All the mailings, publications and postings are in order.

Mr. Brown: Thank you, I’m Charles Brown, I’m the engineer for the applicant. This is a two lot subdivision that’s before the planning board. It’s at the north side of Gardnertown Road almost to...to Lakeside Road. The parcel has sewer, the lots will be serviced by well and tie into the sewer. The sewer there is a forced main so we’d have to have pump...pump stations for each...each house. This lot was zoned R-2 (R-3) until 2003, local law three dash two thousand, I’m sorry two thousand six, 3-2006. My client had the property prior to that so this is not a self-created hardship. These lots as shown both...both meet all the criteria for R-2 (R-3) zone with a...Town sewer a...and a...the...all the other lots in the neighborhood are a...smaller. So it’s not out of character with the neighborhood. It’s not a detriment to the environment and a...we’re here to request variances so we can proceed with this application before the planning board. Thank you.

Mr. McKelvey: Any questions from the Board?

Mr. Scalzo: Charlie, just one question on Lot #1. I see your building envelope...

Mr. Brown: Yes.

Mr. Scalzo: If you rotated the house could you fit it?

Mr. Brown: If we rotated the house, yes, we could fit it. That is the house...that’s the lot that my client wants to build on. He sold his house on Fabrizio Drive, he’s downsizing and he preferred not to look at the rear of the two residences on Gardnertown Road a...between him and Gardnertown but a...yes, if rotated it we could fit the house.

Mr. McKelvey: But you’d have to have an agreement with the a...client.

Mr. Brown: Sorry?

Mr. McKelvey: You’d have to have an agreement with the...the client.

Mr. Brown: Well my client is here tonight, Tony is here so a...if that’s the Board’s wish I could certainly discuss that with him.

Mr. McKelvey: Any other questions?

No response.

Mr. McKelvey: Any questions from the public? Come to the microphone.

Ms. Gennarelli: Please come to the microphone. Charlie can you put that microphone back in the middle? Thanks. And just introduce yourself for the record.

Ms. Post-Auerbach: Hello, my name is Teddi-Ann Post-Auerbach; I live at 764 Gardnertown Road directly in front of said lots. Yeah if you’re going to turn the house are you going to turn it so it actually faces the opposite way since you’re not going to face my backyard? You’re going to be facing the swamp on Gardnertown Road?

Ms. Gennarelli: Can you hold that microphone a little higher?

Ms. Post-Auerbach: Sorry. Is that your intent...to cock the house so it faces the swamp?

Mr. Scalzo: Maam as it...as it appears on the plan, it would appear as though they would be looking a...not directly into your backyard...

Ms. Post-Auerbach: Right.

Mr. Scalzo: ...but more so into the backyard of the a...adjoiner Fabers.

Ms. Post-Auerbach: Okay.

Mr. Scalzo: So they wouldn’t be...they...that’s what I asked Mr. Brown earlier he couldn’t fit the house if it was rotated looking directly into your backyard but because they’re...they’re here asking for the variances because they would like to rotate it otherwise it appears as though they would meet the other criteria.

Ms. Post-Auerbach: Okay, now do they meet the criteria to put two wells on that property as well because this originally wasn’t it...you want to subdivide this and make it two lots, separate lots with the intent possibly to sell off the other lot?

Mr. Scalzo: This has municipal sewer, when you have municipal sewer there the separation distance is unless someone is still utilizing their sanitary disposal systems which...was it a requirement of the Town to tie in once it was available?

Ms. Post-Auerbach: No, no.

Mr. Scalzo: Okay, do you still have your septic maam?

Ms. Post-Auerbach: Yes, I do and so do all my...a...the gentleman that lives directly next door to me, Ray.

Mr. Scalzo: Charlie, do you have their septics shown or do you have a...?

Mr. Brown: These...we’re...we’re aware that these two lots are currently still on septic. All the lots that are on Lakeside a...Lakeside Road have been tied into that sewer. The cleanouts are all right in front of the houses, we meet the separations from the property line to the wells so we didn’t feel it was necessary to show the septics. The...the terrain of the property is down this way a...so we only need the hundred foot separation from the septics and we do meet that.

Ms. Post-Auerbach: On your map does it show...on your map here does it show where my septic is? Do you actually know where my septic is?

Mr. Brown: No, but we’re required to be a hundred feet from your septic and your septic has to be on your property and we’re a hundred feet from your property line. Yeah, okay?

Ms. Post-Auerbach: Okay, that’s all I have.

Mr. McKelvey: Thank you.

Mr. Scalzo: Mr. Brown, just because she had brought that up...?

Ms. Gennarelli: Can you pull the mic in more?

Mr. Scalzo: It’s tough with the plans being so big.

Ms. Gennarelli: I understand. Put it on top of the plans.

Mr. Brown: If you prefer I could give you half size from now on.

Mr. Scalzo: No, thank you. The property of a...I can’t...Tounkara? Is that an unimproved lot? It’s to your....north, sits in the corner there, directly, yeah?

Mr. Brown: Pellegrino? Tounkara, yes. That, that is actually an unimproved lot, that’s owned by the lot that fronts on Lake...on Lakeside Road and that lot is not buildable. It doesn’t have frontage. The one just next to that Ludlow it’s the same situation. Ludlow actually combined the deeds to...to put that all in one lot a...Tounkara would probably have to do the same thing because again that lot is not buildable, it’s landlocked.

Mr. Scalzo: Okay.

Mr. Brown: Regarding orientation of the building it...it’s my understanding that you don’t want us to rotate it?

Ms. Post-Auerbach: Inaudible.

Ms. Gennarelli: Excuse me.

Mr. Scalzo: Ms. Auerbach, could you come back up to the front please?

Mr. Brown: I should have clarified this before she sat down. I’m sorry.

Ms. Post-Auerbach: No, my issue is not with them turning the house. My issue was my septic, because I do not legally have to tie into that...the sewer lines right at this point in time so I’m not going to do so and I do have a well. Those were my main concerns.

Mr. Scalzo: Okay.

Ms. Post-Auerbach: Was my well and the situation with the a...sewer line which is actually runs right down in front of my house in the gutter.

Mr. Scalzo: Right. And they...they will be utilizing the a...municipal services of the sewer...

Ms. Post-Auerbach: Right.

Mr. Scalzo: ...so they won’t have a septic which could...you know, that could be a concern of other residents but that they...

Ms. Post-Auerbach: Right.

Mr. Scalzo: ...mitigate that by having a set...

Ms. Post-Auerbach: Okay can I...can I address a question in reference to the sewer line that runs in front of my house or is out of realm with this?

Mr. Scalzo: You have the microphone.

Ms. Post-Auerbach: Oh, okay...

Mr. Bell: You’ve got the mic...

Ms. Post-Auerbach: ...I didn’t know if I could...

Mr. Bell: You’ve got the mic.

Ms. Post-Auerbach: ...if that should clog in front of my house which we all know that could who is responsible for that? Because I’ve gotten several different answers from different people in...within the Town of Newburgh, one says Mr. Watt whom just put that in, then somebody said that the person that has the actual sewer line to their property is responsible for that. Would they have to restore said property back to the way it was when they found it?

Mr. Scalzo: Well that’s something I can’t answer.

Mr. McKelvey: Joe, Joe can you answer that?

Mr. Brown: I...I can answer that.

Mr. McKelvey: Oh, okay.

Mr. Brown: At the present time the sewer line is privately owned by Mr. Watt that owns these two lots. At the point that four houses are tied in which would be Fabrizio’s two and Watt’s two the Town would take that over and then the Town would be responsible.

Ms. Post-Auerbach: (Inaudible)

Mr. McKelvey: Okay.

Ms. Post-Auerbach: Until said time if there’s... my issue is until said time?

Mr. Brown: Until said time Mr. Watt would be responsible.

Ms. Post-Auerbach: He is responsible then, okay, for said line. Okay. Alright, thank you.

Mr. McKelvey: Anyone else?

Mr. Palmer: I came in a little bit late but I own the property right next to you...

Ms. Gennarelli: Just identify yourself for the record, please.

Mr. McKelvey: Identify yourself.

Mr. Palmer: Palmer, 750 Gardnertown Road.

Ms. Gennarelli: Thank you.

Mr. Palmer: What do we got here? Yeah, that’ me right there. Okay, what...what are you doing here now? I don’t really know. I got the Notice in the mail. I’m here.

Mr. Brown: Okay.

Mr. Palmer: So you’re going to have to do it all over again...whatever is going on.

Mr. Brown: Oh, okay, this is a proposed two lot subdivision that’s before the planning board. This property, whether you know it or not, was...was all re-zoned from R-2 (R-3) to R-1 back in 2006.

Mr. Palmer: Where are we talking?

Mr. Brown: The whole area. Okay. So that’s why all these houses are on smaller lots is because this used to be R-2 (R-3). My client bought this property before it was rezoned a...and, with the full intent of sub-dividing it and because he bought it before that it’s not a self-created hardship. But the proposal is for two...two lots coming off the fifty foot that he owns right here.

Mr. Palmer: You want to stick two homes in that little piece of property?

Mr. Brown: Correct.

Mr. Palmer: Next to me?

Mr. Brown: Correct.

Mr. Palmer: I’m right here, right?

Mr. Brown: This is Pellegrino.

Mr. Palmer: Yeah, and where’s your...where’s your proposal (Inaudible)?

(Inaudible)

Mr. Brown: You’re in here.

Mr. Palmer: Okay. That little piece of property for two homes?

Mr. Brown: Each of these lots is larger all the built lots in the area.

Mr. Palmer: And you’re hooked up to septic?

Mr. Brown: Sewer.

Mr. Palmer: Yeah, sewer. And why are you here? What do you want to rotate?

Mr. Scalzo: Explain the rotation of Lot 1.

Mr. Bell: Explain the rotation of Lot 1, yeah.

Mr. Brown: Okay, the house as shown is positioned in a way that...because my client wants to build this house... Okay? It’s positioned in the way that he wants to build it. He doesn’t want to look at the back of these two houses. He wants to have the front of his house facing this way. These dash lines right here are the setbacks. Okay? Because we rotated the house we don’t meet the setbacks and that’s why we’re here before this Board. We’re asking for relief from those setbacks so that we can rotate the house.

Mr. Palmer: That’s all you want to do is just rotate it?

Mr. Brown: Yep.

Mr. Palmer: What about this one?

Mr. Brown: That fits within the envelope. See it fits within the dash line.

Mr. Palmer: And that’s like a two-family home that wants to put in there?

Mr. Brown: No, no single family homes only.

(Inaudible)

Mr. Donovan: So this is a Public Hearing and actually your comments should be addressed to the Board. It’s not like a private conversation.

Mr. Bell: Yeah.

(Inaudible)

Mr. McKelvey: Anyone else?

Mr. Scalzo: And really just the biggest one here is a...because the zoning has changed prior to that you would have met the...square foot requirements?

Mr. Brown: Not everything.

Mr. McKelvey: This is a problem with the whole Town.

Mr. Brown: That...that whole area of the Town, in the vicinity of Orange Lake, was R-3 and R-2 all over there. We’ve been in here for various applications where people have existing houses and...and are you know, position where they’re trying to sell it and...and you know, they...they were built with the required setbacks but the required setbacks went from side yards from fifteen to forty when they changed the zoning from R-2 and R-3 to R-1.

Mr. McKelvey: Do you want to pass the mic on again?

Ms. Gennarelli: Sorry, one is still broken and they didn’t get me a new one yet.

Ms. Post-Auerbach: My next question is...I’m under the impression that you have to have forty thousand square feet in R-1...

Mr. Scalzo: That’s correct.

Ms. Post-Auerbach: ...to put on a house?

Mr. Scalzo: That’s correct.

Ms. Post-Auerbach: Now if you...if this gentleman if it goes through and he sub...subdivides this where is there forty thousand square feet for each lot?

Mr. Scalzo: There are not.

Mr. Bell: Not.

Mr. Scalzo: And if you look at the table up at the top...

Ms. Post-Auerbach: I have.

Mr. Scalzo: ...a...

Ms. Post-Auerbach: That’s my...that’s my question.

Mr. Scalzo: ...and...and the reason why Mr. Brown had mentioned his client purchased this property prior to that new zoning restriction being in place so he purchased...if he could have...he could have done this in 2006 (2004) when he purchased the property then he wouldn’t be here at all.

Ms. Post-Auerbach: Right. Well I had to go through the same thing with the Town because the prop...the house Post-Auerbach directly in front of said property I got zinged too with setbacks and then you guys changed from originally R-2 to R-1 and then you changed it back again and I had to shrink my house down a foot...

Mr. Scalzo: Well...

Ms. Post-Auerbach: ...almost ten years ago, I didn’t...I didn’t get nothing grandfathered in...they didn’t pull a hardship on me. I had to comply with what was stated then.

Mr. Scalzo: In that case maam, we don’t...

Ms. Post-Auerbach: I know.

Mr. Scalzo: ...we don’t make the Code...

Ms. Post-Auerbach: No, no I understand that.

Mr. Scalzo: ...the Town Board makes the Code, we just enforce it.

Ms. Post-Auerbach: Right, I’m following you...

Mr. Scalzo: (Inaudible)

Ms. Post-Auerbach: Okay, so...I’m interpreting that he does not have enough property to put two houses there.

Mr. McKelvey: We can grant relief.

Ms. Post-Auerbach: I understand you can grant relief but there are neighbors that which...I know some of them are not here, I’m...I’m just questioning this. Is that going to be feasible? We’ve got a fire department right up there which I’m a member of. Is that feasible for the fire department?

Mr. McKelvey: You take all the houses on Lake...

Ms. Post-Auerbach: I’m just asking...I’m just asking...

Mr. McKelvey: ...all the house in that area are on small lots.

Mr. Scalzo: Right, but that I don’t believe it’s the...I believe the question may be would this be something that the fire department would have a chance to review and the...and the answer is yes but that’s...

Ms. Post-Auerbach: Yes.

Mr. Scalzo: ...in the actual planning board process. We’re only here to answer to him looking for a relief from the square footage required as well as the rotation of the house. That’s all we’re here to a...to vote on this evening. As far as the fire department review, the architectural review, the planning review, the environmental a...drainage reviews that’s all done by the planning board.

Mr. McKelvey: Planning board.

Mr. Scalzo: And which...

Mr. Palmer: (Inaudible)

Mr. Scalzo: That’s something you can address with the...you’ll...going to have a Public...Public Hearing...you may have a Public Hearing...

Mr. Donovan: For a subdivision they will, they can waive for some things but they are required for subdivision.

Mr. Scalzo: For a subdivision they will, you will have the opportunity to stand at the planning board meeting and they...they gave us to act on this before they can finish their process at the planning board but you will have an opportunity to voice these concerns at the planning board.

Mr. Palmer: Yeah, because I think there’s an environmental impact cause I got a brook that runs right next to my house right between this so...

Mr. Scalzo: Well every...every action they require at least a short form a...I don’t know Charlie if they made you go through a long form or not but a...but that’s...that’s the planning board not the zoning board’s a...

Mr. Brown: We have...we have submitted a short form environmental assessment form a...because we are on the Town sewer and don’t have septic systems a...the stream is really not an issue but as Darrin...

Mr. Palmer: Yes, it is when start building...

Ms. Post-Auerbach: Yes it is.

Mr. Brown: ...as Darrin...

Mr. Palmer: Yes it is. He’s sticking two homes in a little tiny parcel.

Ms. Post-Auerbach: Yeah.

Mr. Brown: ...as Darrin stated those issues are...are handled during the planning board process and you will be notified. There will be a Public Hearing there.

Mr. Palmer: (Inaudible) look out I got three acres I really don’t want to look out visually and see two homes on top pop up right next to my backyard.

Mr. Scalzo: I understand you completely which is at the planning board meeting perhaps you can suggest to the planning board that you would prefer a screen of trees a...evergreens so you don’t have to see but that’s...that’s the planning board.

Mr. McKelvey: That’s all on the planning board.

Mr. Scalzo: Not us, we’re only here to talk about the rotation of the house and the a...the square footage on the a...the lots.

Ms. Post-Auerbach: Okay, my issue is like he said...(Inaudible) right now is this...there’s right now there’s not...it’s not feasible as far as I can see to put two houses on the...that property.

Mr. Scalzo: Which is why they’re here.

Ms. Post-Auerbach: Right. That’s...that’s why I’m here, I don’t...

Mr. Scalzo: No, I can...

Ms. Post-Auerbach: ...I’m voicing my...

Mr. Scalzo: ...this is your opportunity...

Ms. Post-Auerbach: ...opinion...

Mr. Scalzo: (Inaudible)

Ms. Post-Auerbach: ...I have no problem...

Mr. Scalzo: ...this is your opportunity...

Ms. Post-Auerbach: ...with the family turning this house that way I have no issue with that but as far as putting two...two houses on that parcel...

Mr. Palmer: It’s ridiculous.

Ms. Post-Auerbach: ...it’s ridiculous. It really is. I don’t see how...

Mr. Palmer: Sticking two homes in a little piece of property.

Ms. Post-Auerbach: ...and for this hardship well, you know, unfortunately...

Mr. Scalzo: Right, and when...when...when we go to vote later there will be a...criteria that we will weigh this action against.

Mr. Levin: Yeah.

Mr. Scalzo: And one of them is you know any change to the character of the neighborhood.

Mr. Palmer: Yes, yes and I... (Inaudible)...brook...

Ms. Post-Auerbach: There will be.

Mr. Palmer: ...you got a full brook running (Inaudible) down past my house into the stream behind the firehouse.

Ms. Post-Auerbach: Yeah.

Mr. Scalzo: Correct, no we, I don’t know that it was mentioned when we first started the meeting but we have all been to the property so...

Mr. Bell: We’ve all been there.

Mr. Scalzo: ...we all, it’s a requirement of our...it’s an obligation that we have to go visit each site...

Mr. Bell: Yeah.

Mr. Scalzo: ...so we have seen...

Mr. McKelvey: That’s right.

Ms. Post-Auerbach: Have you all walked all through there?

Mr. Scalzo: Well I didn’t walk all through it...

Ms. Post-Auerbach: Okay, I was just curious.

Mr. Scalzo: ...but I...I you know I went down over the causeway turned around and came back...it’s not the causeway but it’s in the back...

Ms. Post-Auerbach: Right, close enough.

Mr. Palmer: (Inaudible)

Ms. Post-Auerbach: Yeah.

Mr. Scalzo: You know but as they’re asking Charlie a...are there any wetlands on the property?

Mr. Brown: There’s no wetlands on this property. The wetlands are all down the road...down Gardnertown Road this way.

Mr. Scalzo: Okay, any a...buffer...impact of buffer?

Mr. Brown: No, no, no...Mr. Palmer’s property is actually between us and the wetlands.

Mr. Scalzo: Alright, sir you’re in...if you could stand by Charlie there on the map look at the vicinity map up in the upper right hand corner of the map... Could you generally point to where your house would be?

Mr. Palmer: Right here.

Mr. Scalzo: Okay, so you are completely...

Mr. Bell: Okay.

Mr. Scalzo: ...between the wetlands and where he’s planning or proposing on where he’s putting a dwelling?

Mr. Palmer: Yeah and I got ...I got a brook that feeds quite a bit right here.

Mr. Scalzo: Now does it run between you and this lot...

Mr. Palmer: Yes.

Mr. Scalzo: ...or on the other side of you?

Mr. Palmer: No between me and the lot.

Mr. Bell: Between you and the lot, okay.

Mr. Palmer: You know (Inaudible) from Orange Lake.

Mr. Scalzo: That...that could...again these are things that would be addressed by the planning board...

Mr. McKelvey: Planning board.

Mr. Scalzo: ...nobody else.

Mr. Palmer: Well will I be notified when that will be?

Mr. Scalzo: Absolutely.

Mr. Brown: Yes, yes, just like this, yes.

Mr. McKelvey: They have the same notification five hundred feet from the property all the way around...that’s the people that have to be notified. Anyone else in the audience?

No response.

Mr. McKelvey: Any more questions from the Board?

No response.

Mr. McKelvey: If not, I’ll look for a motion.

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: Is the first applicant here?

Ms. Gennarelli: Yes, yes, we can go back to the first applicant.

 (Time Noted - 7:30 PM)

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ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:05 PM)

ANTHONY FABRIZIO GARDNERTOWN ROAD, NBGH

 (51-9-9) R-1 ZONE

Applicant is seeking area variance for the minimum front yard setback, the minimum rear yard setback, the minimum lot depth and the minimum lot area for Lot #1 and the minimum lot area and the minimum lot width for Lot #2 of a proposed two-lot subdivision application before the planning board.

Mr. Levin: Next, Anthony Fabrizio, Gardnertown Road, Town of Newburgh variances, area variance for the minimum front yard setback, the minimum rear yard setback, the minimum lot depth and the minimum lot area for Lot #1 and the minimum lot area and the minimum lot width for Lot #2 of a proposed two-lot subdivision application before the planning board.

Ms. Gennarelli: Okay, we’ll go through the questions?

Mr. Scalzo: Will we have discussion on that?

Mr. McKelvey: Any discussion?

Mr. Masten: I’ll second it.

Ms. Gennarelli: We didn’t get to that yet.

Mr. Masten: Oh.

Ms. Gennarelli: We have got to go through the questions first.

Mr. Masten: All right.

Ms. McKelvey: We want to...we got a discussion.

Ms. Gennarelli: Discussion first. Can we have discussion on this?

Mr. Scalzo: Well actually we can to the discussion while we’re answering the questions, if can we...

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

Mr. Scalzo: Well with regards to the rotation of the house, yes, it could be. But we didn’t hear any testimony relative to that being the area of concern. The area of concern appeared to be the square footage of the lots.

Ms. Gennarelli: Are we ready to go to the next question or is there more discussion on that?

Mr. Scalzo: Well that being said I...I am one of...in this case five...

Ms. Gennarelli: I’m waiting, yeah.

Mr. Scalzo: Can you hear me okay, Betty?

Ms. Gennarelli: Yes.

Mr. Scalzo: Oh, good. I’m one of five so my vote is just a single vote but a...my opinion on this is because this lot was purchased prior to the zoning change a...you know, I...I feel as though that that relief is...is...is in order but...that’s all I have on that one.

Mr. Donovan: And if I can just say quickly relative to the balancing test it’s not a...there’s five factors but it’s not a three versus two, it’s a...no one factor is more important than another factor and you weigh the benefit to the applicant if the variance is granted versus any...any detriment that may occur. So you...you kind of balance that as appropriate in the circumstances.

Ms. Gennarelli: Okay?

Mr. McKelvey: Okay, Betty.

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

Mr. Scalzo: Well the lots a...at twenty-three thousand square feet and thirty-three thousand square feet appear similar in size to the ones that are existing a...in the...in the neighborhood. They may not be shaped the same...

Mr. Bell: Size.

Mr. Scalzo: ...but square footage wise it appears they are.

Mr. Levin: I agree with that.

Mr. McKelvey: Okay.

Ms. Gennarelli: Okay, whether the request is substantial?

Mr. Levin: I don’t think it’s substantial.

Mr. Bell: No.

Mr. McKelvey: Under the circumstances I don’t think it is.

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

Mr. Levin: I don’t believe so there’s nothing that was shown to us that would indicate that.

Mr. Bell: No.

Ms. Gennarelli: Okay and whether the alleged difficulty is self-created?

Mr. Bell: No.

Mr. Donovan: Just relative to that issue the testimony before the Board I think as Darrin has indicated the property was acquired before the zone change.

Mr. McKelvey: Yes. Do I have a motion?

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

Mr. McKelvey: Do we have a second?

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: The motion is passed.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:09 PM)

ZBA MEETING – MARCH 23, 2017 (Time Noted – 7:33 PM)

DWAYNE & TONI ROBBINS 35 ROCK CUT ROAD, NBGH

 (86-1-21) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built rear deck on the residence.

Mr. Levin: Dwayne and Toni Robbins, 35 Rock Cut Road, Town of Newburgh area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built rear deck on the residence.

Mr. Fremgen: My name is John Fremgen...

Ms. Gennarelli: One second John, and this applicant sent out twenty-eight letters. All the mailings, publications and postings are in order. Okay.

Mr. Fremgen: I’m John Fremgen, the previous owner who built the deck without a Permit, came to the Town and a...we had the deck inspected and I received a...about two weeks later I received a...I came to the Town to tell them what I did, I built the deck, I’m selling the house and I’d like to a...get this fixed. And I received a Google map stating that the deck is eighteen feet from the property line and as you can see on surveys the deck was built a couple of tenths of an inch farther in than the a...existing house so I’m here to try to get it to stay there.

Mr. McKelvey: What’s behind you?

Mr. Fremgen: Well the back of the property is a couple of a hundred feet away, that’s the back property line.

Mr. McKelvey: Again I’d like to thank you for replacing the sign.

Mr. Fremgen: Yeah, I don’t know what happened to it. It might be under the snow.

Mr. McKelvey: It’s under the snow, there’s no doubt about it.

Mr. Fremgen: Okay. The deck is approximate three feet high, ten feet wide at the point you’re looking at it.

Mr. McKelvey: Any questions from the Board?

No response.

Mr. McKelvey: Any questions from anybody in the public?

No response.

Mr. McKelvey: I’ll look for a motion.

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

Mr. Bell: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The Public Hearing is closed; they are going to vote on it later.

Mr. McKelvey: Later we vote.

Ms. Gennarelli: The Public Hearing is closed we’re not done yet though.

 (Time Noted - 7:36 PM)

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ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:09 PM)

DWAYNE & TONI ROBBINS 35 ROCK CUT ROAD, NBGH

 (86-1-21) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built rear deck on the residence.

Mr. Levin: Dwayne and Toni Robbins, 35 Rock Cut Road, Town of Newburgh, variances, area variance for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to keep a prior built rear deck on the residence.

Mr. McKelvey: This is a Type II under SEQR.

Ms. Gennarelli: Okay?

Mr. McKelvey: Any discussion? Okay let’s go through the...

Ms. Gennarelli: Okay. Can the benefit be achieved by any other means feasible to the applicant?

Mr. Levin: She tried to do that she couldn’t.

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

Mr. McKelvey: I don’t think so.

Mr. Levin: No.

Ms. Gennarelli: Is the request substantial?

Mr. Levin: No.

Mr. Bell: No.

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

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Bell: No.

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

Mr. Bell: No.

Mr. Masten: No.

Mr. McKelvey: Do we have a motion?

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

Mr. Levin: I'll second it.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The motion for approval is passed.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:10 PM)

ZBA MEETING – MARCH 23, 2017 (Time Noted – 7:36 PM)

JOHN C. HUSTINS 364 LAKESIDE ROAD, NBGH

 (28-1-20.1) R-1 ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage for accessory buildings, the maximum allowed storage of no more than (4) four vehicles and accessory buildings may be located in a side or rear yard to build a two-story accessory building (28 x 46 x 27’6”).

Mr. Levin: John Hustins, 364 Lakeside Road, Town of Newburgh, area variance for the maximum height of an accessory building, the maximum allowed square footage of an accessory building, the maximum allowed storage of no more than (4) four vehicles; accessory buildings may be located in a side or rear yard to build a two-story accessory building 28 x 46 x 27 (27’’6”) foot high.

Ms. Gennarelli: One second please, this applicant sent out thirty-five letters. All the mailings, publications and postings are in order. Okay.

Mr. Hustins: Hi, it’s John Hustins, 364 Lakeside Road, I don’t think I actually need a variance for some of those items because it’s...it’s only a three-car garage a...and I don’t believe it’s my front yard. I mean you guys can look at the...you know the map to determine that but when we were discussing it we just didn’t want any...any questions so that everything was resolved at one time. Let me put up the map. (Mr. Hustins approached the easel)

Mr. McKelvey: Take the mic with you.

Mr. Hustins: (Inaudible) Okay so this is the...the plans for the garage. So this...it’s just three-car garage, three doors a...with work area on this side. It is over the thousand square feet plus I have a...two gazebos and two sheds on the property so that adds to that square footage also so I definitely need a variance for that a...but it’s not over...it’s not a four car garage. Do you want to see them closer would that help you or...?

Ms. Gennarelli: They all have copies of that.

Mr. McKelvey: We all have copies.

Mr. Hustins: Oh, you have copies.

Ms. Gennarelli: Yes, yes they do.

Mr. Hustins: Beautiful, beautiful, thank you.

Mr. Donovan: So relative to this issue, let me just ask you this, is it your intention to store more than four cars on the property?

Mr. Hustins: Absolutely not.

Mr. Donovan: So we can consider that application withdrawn, then you wouldn’t be able to store more than four cars on the property.

Mr. Hustins: Is that four on the property or four in the garage?

Mr. Donovan: Four on the property.

Mr. Hustins: On the property. I have five right now.

Mr. Bell: Yeah, I’ve seen them.

Mr. Hustins: I mean I am selling a couple of them so I probably will not be over four.

Mr. Donovan: Well so I...so it’s up to you. I mean you could ask for the...for the variance for...

Mr. Hustins: Okay I guess just for...

Mr. Donovan: ...it’s up to the Board, I mean they could deny it but you know...

Mr. Hustins: Okay, I thought it was just the garage specifically.

Mr. Donovan: No, it’s not just the garage it’s been an...an issue in the past but Code Compliance is pretty consistent it’s on the property.

Mr. Hustins: Okay, absolutely so then you know what then we’ll leave it. I wasn’t aware of that, so, absolutely and then there was a question about whether it was the front of my property or not. I am on Lakeside but my access to my house is from Jenny again assuming you came where I am and it’s behind actually the house even if that was the front. Is that...is that true? I...I wasn’t sure if that is still...

Mr. Donovan: So your access is on Jenny Lane...

Mr. Hustins: Jenny Lane, correct.

Mr. Donovan: ...private drive...

Mr. Hustins: And the front of the garage is behind the back, you know, that side of the house. So it’s completely on...

Mr. Donovan: Joe, can you tell us how you guys viewed that?

Mr. Mattina: Right, basically since he has two front yards this could be determined as a front yard...this lot here so, you know, so if you five say it’s not, it’s not...it’s better you know, five heads are better than one. It’s a really close call.

Mr. Donovan: Yeah, yeah, yeah.

Mr. Mattina: You know, this could be considered a front yard. This is definitely a front yard.

Mr. Hustins: It was, there is an existing gazebo in this location...

Mr. Bell: Right.

Mr. Hustins: ...that was permitted, I believe I think everything was brought up to...up to Code previous to that. So taking a screened in gazebo that’s here well I have a separate permit for that and...and moving that so that I can build the garage.

Mr. Bell: So that’s coming down?

Mr. Hustins: It’s being moved, yes. I have a permit for that already.

Mr. Levin: Joe, can I ask you a question?

Mr. Mattina: Yes.

Mr. Levin: How do you determine how many cars can go into that garage?

Mr. Mattina: Well what the Code says is the storage of four vehicles...that that’s what...

Mr. Donovan: So, here...here I kept it...

Mr. Mattina: Good job.

Mr. Donovan: ...that’s Joe’s explanation.

Mr. Mattina: Even if you have one door and you can fit five, six vehicles in there it’s still considered the storage of the vehicles not the amount of doors.

Mr. Hustins: I will...I will and intend put not more than four in that garage.

Mr. Mattina: Right.

Mr. Hustins: I can have more outside the garage and three in the garage. That was my question whether that was considered the storage of...

Mr. Mattina: Well we play on the safe side anyway and we’ll send you for the variance since you’ve come for other ones. If you feel it’s not required it’s better not to need it now than to have...

Mr. Bell: To come back.

Mr. Mattina: ...to come back.

Mr. Donovan: Right, but at the end of the day, right, without a variance he can’t have more than four on the property?

Mr. Mattina: Correct.

Mr. McKelvey: Three in and...

Mr. Hustins: Even without a garage?

Mr. Donovan: That’s correct.

Mr. Mattina: Yes.

Ms. Gennarelli: Stored.

Mr. Abrams: Hiya, I’m their neighbor, I’m John’s neighbor and I’m really looking forward to having this garage.

Mr. Scalzo: Sir, you may be his neighbor but we don’t know you.

Mr. Abrams: I’m at 370 Lakeside Road.

Mr. McKelvey: No, your name.

Mr. Abrams: John Abrams. I’m literally looking at the back of what his garage is going to be and I’m totally in favor of the addition and I have no problem. He is clean as a whistle and the front yard of his house is very large. It runs all the way down to Lakeside Road. This has always been considered the front yard. My house right next door is always considered a front yard.

Mr. McKelvey: And you’re...you’re way up on the hill.

Mr. Abrams: Yeah, absolutely and it’s not going to impede at all to anyone. It’s only going to be an improvement to his property.

Mr. Scalzo: It would appear that the Jarosak...Peter and Jarosak (20.22)...it’s going to impact them the most.

Mr. Bell: It’s going to impact them, yeah.

Mr. Hustins: I did (Inaudible) talk to them, they...there’s...

Ms. Gennarelli: Take the microphone back.

Mr. McKelvey: Take the mic.

Mr. Hustins: There’s a clump of woods right here so their view is already blocked and I asked...I was...specifically before we picked this area I talked to all the neighbors to see if it impacted their view of the lake a...they can only see the lake on this side of my house, straight down through here so we made sure we are not blocking their view in any way here. And when I talked...I don’t believe they are here but when I did talk to them they didn’t have any...any concerns about it. Obviously I do need the variance for the a...for the height and the square footage and then if you want to decide if the others are actually...

Mr. McKelvey: Why the height?

Mr. Hustins: A...it’s twenty-seven and a half foot high.

Mr. McKelvey: I say why do you need the height?

Mr. Hustins: A...just in order to build a garage, three car garage and have any kind of roof it’s going to be over fifteen foot high a...we considered attaching it...if this was attached I guess it would meet all...all codes.

Mr. McKelvey: Yes.

Mr. Hustins: It’s an 1800’s farm house and it was built at two different levels. I don’t have one clear spot to attach without blocking half of a window, you know, that type of thing. Unless I, you know, built it completely out, you know, out this side or something which would be kind of useless so a...really that was the...just demanded to be that tall in order to be that wide.

Audience Member Inaudible

Mr. Hustins: Yes, yes and we picked a design that matched you know, that would blend in kind of to an older farm house instead of just a metal building or a pole barn you know, something cheap and...and easy.

Mr. McKelvey: Are you going to use the upper part...for anything?

Mr. Hustins: Storage, storage and a work space, like a wood shop up there. It’s a fourteen foot wide, eight foot ceiling by the width of the garage.

Mr. McKelvey: Are you going to have electricity?

Mr. Hustins: It will eventually have electricity, yes.

Mr. Scalzo: Plumbing?

Mr. Hustins: No.

Mr. Scalzo: Not even cold water? Sink, nothing?

Mr. Hustins: No, no. Just electric and then I mean eventually maybe a, you know wood stove or a pellet stove but there’s no plans for that even right now, basically a garage with a work space.

Mr. Scalzo: See, one of the concerns that...that we have...it’s a beautiful plan, it’s a beautiful layout but when you’re looking at the height a...sometimes these turn into apartments.

Mr. Hustins: Yeah, oh, I got you, no.

Mr. Scalzo: And...and with an eight foot ceiling you know, now you have livable space up there...

Mr. Hustins: Yup, yup.

Mr. Scalzo: ...so...

Mr. Hustins: Nope.

Mr. Scalzo: ...why Mr. McKelvey probably was asking if you needed that height...

Mr. Hustins: Right, right.

Mr. Scalzo: ...if you were to drop that down a bit that would almost guarantee us that that would never happen.

Mr. Hustins: Got you, I understand, yeah, no, we have no plans we have more...there’s just two of us in the house, it’s twenty-eight hundred square foot we have more room than we need as it is.

Mr. McKelvey: We can stipulate that.

Mr. Hustins: Stipulate, sorry?

Mr. McKelvey: Stipulate that you can’t have...

Mr. Hustins: Absolutely.

Mr. McKelvey: ...living space above.

Mr. Hustins: Absolutely. I have no problem with that. I have no plans to ever put living space there.

Mr. Levin: How many cars are out in the back of your house now?

Mr. Hustins: Right now I have...

Mr. Bell: Was it five? I think it...

Mr. Hustins: Probably...probably five.

Mr. Bell: I saw five when I was there the other day.

Mr. Hustins: Yeah, yeah, two a...so there probably was...could have been one more a...

Mr. Bell: Yeah, it was about five or six.

Mr. Hustins: ...I think, right, I think honestly I think we have seven cars a...

Mr. McKelvey: You’ve got to get it down to four.

Mr. Hustins: Yes, I am. Two of them are at my parent’s house a...two are being sold, one is a 1957 Volkswagen Beetle, it’s going to be a project that’ll go into the garage to be worked on and probably won’t for...for years. I’ve had it twenty something years and it’s never been out of a garage so...I like cars. Obviously. Yeah, I sold two last year; I’m selling a couple more. I had thirteen at one point so. It’s not happening any more, pare em down...money is going into the garage with the car...from my cars that I sell.

Mr. McKelvey: Do you want to read the County’s report?

Ms. Gennarelli: Let’s see if I have one. That’s not on this one.

Mr. McKelvey: Okay, I got it in the wrong place.

Ms. Gennarelli: That was on the McKoy-Wills and then on...

Mr. Masten: Yeah, McKoy and...

Ms. Gennarelli: ...and Robbins.

Mr. McKelvey: Anybody from the public want to speak?

No response.

Mr. McKelvey: Any more questions from the Board?

No response.

Mr. McKelvey: If not, I’ll look for a motion.

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

Mr. Bell: Second the motion.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: Do you want to go back and read the County reports on those other two?

Ms. Gennarelli: Okay, alright then McKoy-Wills, that was a Type II Action under SEQR?

Mr. McKelvey: Yes.

Mr. Donovan: That’s correct.

Ms. Gennarelli: Okay, let’s see...the Planning Department...this is for Diane McKoy-Wills, the Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter and the County recommendation is Local Determination. And then on, the one more, this is on Robbins, 35 Rock Cut; the Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter and the County recommendation is Local Determination.

Mr. McKelvey: Okay, thank you Betty.

 (Time Noted - 7:42 PM)

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:10 PM)

JOHN C. HUSTINS 364 LAKESIDE ROAD, NBGH

 (28-1-20.1) R-1 ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage for accessory buildings, the maximum allowed storage of no more than (4) four vehicles and accessory buildings may be located in a side or rear yard to build a two-story accessory building (28 x 46 x 27’6”).

Mr. Levin: John Hustins, 364 Lakeside Road, Town of Newburgh, area variances for the maximum height of accessory buildings, the maximum allowed square footage for accessory buildings, the maximum allowed storage of no more than (4) four vehicles and accessory buildings may be located in a side or rear yard to build a two-story accessory building (28 x 46 x 27’6”).

Mr. McKelvey: We have to make a correction here too. You can have four vehicles inside and you can have four outside. What’s outside doesn’t matter, right Joe?

Mr. Mattina: Correct.

Mr. McKelvey: It was our mistake.

Mr. Donovan: Well in fairness, it was my mistake. Oh, I’ll take the heat for it. I misunderstood what Joe had said.

Mr. Levin: With license plates.

Mr. McKelvey: Yeah, they have to have license plates, yes.

Mr. Bell: They’ve got to be Registered.

Mr. McKelvey: This is a Type II Action under SEQR.

Ms. Gennarelli: Okay?

Mr. McKelvey: Okay.

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

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Masten: No.

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

Mr. Scalzo: Well we have heard testimony that it seems to be embraced.

Ms. Gennarelli: Whether the request is substantial?

Mr. Scalzo: Well it’s awfully tall. It...it really is. I...if you look at the history the way I look at these can the benefit of the height be achieved by lowering the pitch of the roof or are you married to this twelve pitch? You know I...you heard my concern during the a...Public Hearing portion.

Mr. Hustins: (Inaudible)

Ms. Gennarelli: Please step to the microphone. Thank you.

Mr. Hustins: I’m sorry, the dormers really are there...it’s really for looks a...I don’t even need the dormers up there for space or anything a...it was more...I picked out several garages that were considerably cheaper and my girlfriend was like they’re ugly and she wanted a pretty garage...

Mr. Donovan: I’m not sure that’s one of the five factors.

Mr. Hustins: But it’s considerable, it’s considerable and I couldn’t get anywhere near the fifteen in order to have a three-car garage so we might as well get what we want, you know, it’s still lower than...than the house, tucked behind the house. A...I do see what you’re saying; if you want a stipulation that it can never be used for living space I have no problem with that.

Mr. Bell: How do you know?

Mr. McKelvey: That I would like to see a stipulation.

Mr. Hustins: I have no objection to that at all.

Mr. Scalzo: Alright, how do we enter that into the a...decision, Dave?

Mr. Donovan: So, relative to the height I think perhaps it’s important to the Board that you know, where this is...the building is located, I understand that it’s tucked away, it’s not necessarily visible to a great majority of the traveling public so you have a basis for going higher than you typically do. Obviously this...this is higher in that regard. You can put a stipulation in the resolution that it cannot, this building cannot be used for living space. It can’t be occupied. We’ve done that...we’ve done that in the past.

Mr. McKelvey: That would be made in the motion.

Mr. Donovan: That’s correct, yeah.

Mr. McKelvey: Okay.

Ms. Gennarelli: Is the alleged difficulty self-created?

Mr. Scalzo: Well yeah.

Ms. Gennarelli: Oh, wait, I’m sorry I skipped one. Whether the request will have adverse physical or environmental effects?

Mr. Scalzo: I do not see that.

Mr. Bell: No.

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Masten: No.

Ms. Gennarelli: And then, is it self-created?

Mr. Bell: Yes.

Mr. McKelvey: Okay, we’ll look for a motion.

Mr. Bell: So I make a motion that we’ll approve with the stipulation there’s no living space.

Mr. McKelvey: That’s...do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: No

John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:15 PM)

ZBA MEETING – MARCH 23, 2017 (Time Noted – 7:42 PM)

CHEN GROUP LLC.-XIANG ZHEN CHEN 101 N. PLANK ROAD (RTE 32), NBGH

 (75-1-8) B ZONE

Applicant is requesting an Use variance for the Bulk Table - Schedule 7 - Allows existing single family dwelling units and 185-19-A-4 - A non-conforming use shall not be re-established if such use has been discontinued for 1 year to keep a Prior Built 3 Bedroom dwelling unit (living space) above the proposed restaurant.

Mr. Levin: Chen Properties...the Chen Group, variances... Use variance for the Bulk Table - Schedule 7 - Allows existing single family dwelling units and 185-19-A-4 - A non-conforming use shall not be re-established if such use has been discontinued for 1 year to keep a Prior Built 3 Bedroom dwelling unit (living space) above the proposed restaurant.

Ms. Gennarelli: Is Mr. Chen here tonight?

No response.

Ms. Gennarelli: I don’t see the applicant here tonight.

Mr. Scalzo: Betty, did we receive any correspondence from them...?

Ms. Gennarelli: No.

Mr. Scalzo: ...indicating they would not be here?

Ms. Gennarelli: No.

Mr. McKelvey: The only correspondence we got was he delayed it until tonight’s meeting.

Mr. Scalzo: Yes, yes.

Mr. Donovan: And I believe I have correspondence to the applicant indicating if he wasn’t present this evening you know, the Board could proceed to take action if you so desired. I believe the Public Hearing is still open, correct Betty?

Ms. Gennarelli: Yes, so we would have to close the Public Hearing...

Mr. Donovan: You have to close the Public Hearing before you took action if that’s the Board’s inclination.

Mr. McKelvey: So it’s up to you, the Board, whether you want to close it.

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

Mr. McKelvey: Do I have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Before proceeding the Board will take short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If we could ask, in the interest of time, if could wait out in the hallway we will call you in very shortly.

 (Time Noted - 8:44 PM)

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ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:15 PM)

CHEN GROUP LLC.-XIANG ZHEN CHEN 101 N. PLANK ROAD (RTE 32), NBGH

 (75-1-8) B ZONE

Applicant is requesting an Use variance for the Bulk Table - Schedule 7 - Allows existing single family dwelling units and 185-19-A-4 - A non-conforming use shall not be re-established if such use has been discontinued for 1 year to keep a Prior Built 3 Bedroom dwelling unit (living space) above the proposed restaurant.

Mr. McKelvey: Okay, do we want to vote on the Chen Group or not?

Mr. Levin: I think we should.

Mr. Donovan: Well here are your options because he hasn’t shown up you could deem the application Withdrawn. The application if you vote no and the application comes back and it’s the same application it has to be a unanimous vote to rehear it. So, you can...so, those are your options really. I wouldn’t defer for sixty-two days because he hasn’t been here for ninety-two days but if you want to deem it Withdrawn or you wanted to vote, that’s up to you.

Mr. McKelvey: Do we know if he’s back from China?

Ms. Gennarelli: He is.

Mr. McKelvey: He is back?

Ms. Gennarelli: He is back, yeah.

Mr. Levin: Did he tell you that he wasn’t coming?

Ms. Gennarelli: No. I haven’t spoken to him in two weeks but he is back from China.

Mr. Scalzo: And we can deem it Withdrawn for the applicant?

Mr. Donovan: I think you have the ability to do that. I mean that’s not going to be...it’s an equitable resolution to the situation with him not here. You could vote on it. You could absolutely vote on it. He was told you were going to vote on it.

Mr. Scalzo: I like the direction you’re going Dave.

Mr. Donovan: Since he hasn’t been here to prosecute or pursue the application you could...you could deem it Withdrawn.

Mr. Levin: I’ll make the motion...

Mr. Scalzo: Thank you Richard.

Mr. Levin: ...that we withdraw the application.

Mr. Donovan: No you deem it Withdrawn. He...he withdrew by not pursuing it.

Mr. Masten: Yes.

Mr. Levin: Can we withdraw?

Mr. Donovan: No, you don’t he...he withdrew his application by not pursuing it. We can’t withdraw his application but we can deem it withdrawn.

Mr. Levin: My motion is to deem it Withdrawn.

Ms. Gennarelli: Okay.

Mr. Scalzo: I’ll second that.

Ms. Gennarelli: Okay

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:17 PM)

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:17 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,

 TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. Levin: Town of Newburgh, 2102 Route 300, North Plank Road, Interpretation if site (on-site) use and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. Donovan: So this application is obviously unique, this Board is called upon to render an interpretation with regard to a decision that was issued by the Town of Newburgh ZBA some thirty-five years ago in March of 1982 and to determine specifically whether or not a series of uses which Code Compliance doesn’t confirm or deny are occurring on the premises, they’re just seeking this Board’s guidance as to whether or not they and I’ll quote this “whether they would fall within and be permitted under the use variance granted in the decision issued in March of 1982?” The Board did seek a...and request some guidance on legal issues from me. I did provide some guidance indicating that the general law of use variances is if a use variance is granted and it is unlimited in scope the use becomes a permitted use subject to whatever site plan or bulk requirements that...that may be impacted. If it is a limited variance that is there’s limitations placed on the grant of the variance then those limitations then those limitations have to be given effect by a future Board and modifications beyond those limitations would require an additional use variance. Now the Board does have a...you know, even more difficulty than the fact that this is thirty-five years old. You don’t have the application from 1982 nor do you have the site plan that was submitted together with the application in 1982 so you’re left with making the best you can with the facts and the information that you have. Based upon that my suggestion for the Board to consider is Code Compliance’s has asked for approximately a...there’s eight or nine different categories, Category 1 has a thru e. They’ve asked for guidance as to whether or not those individual items fall with and be permitted under the 1982 decision. My suggestion, if the Board is so inclined, is to address each one of those individually so there would be guidance given to Code Compliance. Understand that this...this whatever interpretation you issue is not the end of the story so a...likely not the end of the story let me put it that way, so it’s my suggestion if it’s that’s what the Board is inclined to do that that you take each item individually and I can go through each of those items if that’s what the Board would like.

Mr. Scalzo: I would like that.

Mr. Bell: I would like that.

Mr. McKelvey: Yeah.

Mr. Masten: Yes.

Mr. Donovan: Alright. So then the first question asked by Code Compliance a...the use of the premises for and in support of the five ‘off-site services’. So does the 1982 variance apply to or authorize, I should say authorize underground and above ground fuel storage tank reconditioning including lining?

Mr. Scalzo: It appears that it does.

Mr. Levin: I would say yes.

Mr. McKelvey: Yes.

Mr. Donovan: So I think what would be appropriate is that the Board would adopt a resolution...I don’t mean to be here all night but I don’t think there’s any other way to do this, you adopt a resolution for 1 (a) indicating that that is covered by the 1982 as authorized by the 1982 use variance opinion.

Mr. Bell: Yes.

Mr. Levin: I’ll make the motion that underground and above ground fuel storage tank reconditioning including lining... (Inaudible)

Mr. Donovan: That’s fine; someone would need to make a second.

Mr. McKelvey: The second.

Ms. Gennarelli: Who was the second? I’m sorry.

Mr. McKelvey: We need a second.

Mr. Bell: Oh, I second that.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: 1 (b) is whether or not underground and above ground fuel storage tank testing would fall within and be permitted under the use variance which granted in 1982?

Mr. Scalzo: From what I recall from reading the a...minutes from a...the 1982 meeting plus the testimony we heard last week I don’t believe they were doing above fuel...above ground fuel storage tank testing on the premises. They were...

Mr. Masten: They were off-site.

Mr. Scalzo: ...they were off-site.

Mr. McKelvey: Off-site.

Mr. Donovan: Well I think the question is for and in support of the following off-site services.

Mr. Scalzo: Oh, for and in support of off-site services then I would agree, yes.

Mr. McKelvey: Yes.

Mr. Levin: I would too.

Mr. Masten: Yes.

Mr. Donovan: So is there a motion to that effect?

Mr. Masten: I’ll make a motion to it.

Mr. McKelvey: We need a second.

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: So 1 (c) the use of the premises for and in support of underground and above ground fuel storage tank excavation?

Mr. Scalzo: Again, as it’s off-site I recall or my opinion from those meeting minutes is yes. I make a motion in agreement to that.

Mr. Levin: I’ll second that motion.

Ms. Gennarelli: One second...

Mr. McKelvey: Roll call.

Ms. Gennarelli: Yeah, I’m sorry, one second, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 1 (d) use of the premises for and in support of the following off-site services, underground and above ground storage tank compliance?

Mr. Scalzo: I don’t recall that phrasing in the use variance granted so I...I don’t have an answer.

Mr. Donovan: So if you don’t have an answer then I think that your answer is...I mean, basically I think you can say yes, it is; no, it isn’t; or then we can’t tell based upon the information submitted to us.

Mr. Bell: I can’t tell.

Mr. Scalzo: If I’m basing it on the information provided to us then the answer is no.

Mr. McKelvey: Do we have a motion?

Mr. Scalzo: Well...

Mr. Bell: I can’t tell.

Mr. Scalzo: Yeah, you know what? I can’t tell.

Mr. Bell: I can’t tell.

Mr. McKelvey: No.

Mr. Donovan: So, I don’t mean to put words in your mouth, is it the motion would be there’s insufficient evidence...?

Mr. Scalzo: Insufficient evidence...

Mr. Donovan: ...to make a determination as...

Mr. Scalzo: ...to make a determination...

Mr. Donovan: ...to whether this use is encompassed by the 1982 use variance.

Mr. Scalzo: I couldn’t have said it better myself, Dave.

Mr. Levin: Very good.

Mr. Donovan: Someone would need to make that motion though.

Mr. Masten: I’ll make that motion.

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 1 (e) the use of the premises for and in support of hydro-excavation business?

Mr. Scalzo: That technology was not available in 1982.

Mr. Masten: That’s right.

Mr. Scalzo: That is clearly a no.

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Bell: No.

Mr. McKelvey: Do we have a motion?

Mr. Scalzo: I’ll make a motion on the negative side there.

Mr. Bell: I’ll second that motion.

Ms. Gennarelli: Roll call.

 Darrell Bell: No. I’m sorry, Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #2, whether or not the 1982 decision would permit outdoor storage of heavy equipment including plows, land grading equipment, etc.

Mr. Levin: I didn’t read that in...when I read the old minutes, anything like that.

Mr. Scalzo: Well, actually I thought he did say he needed a few a...vehicles there.

Mr. McKelvey: I thought he did too.

Mr. Scalzo: Well it says plows, land grading equipment, etc. Grading equipment, no that, that was not included...

Mr. McKelvey: No.

Mr. Scalzo: ...I did not read any of that.

Mr. McKelvey: I think he said pick-up trucks (inaudible)...

Mr. Levin: Pick-up trucks.

Mr. Scalzo: Pick-up trucks.

Mr. Donovan: Well that that will be the subject of another paragraph. Number...paragraph...or item #2 is outdoor storage of heavy equipment including plows, land grading equipment, etc. and I know this is a difficult task but we’re trying to answer the specific questions that Code Compliance has asked to allow Code Compliance to do whatever they determine is appropriate based upon...excuse me, the responses you provide.

Mr. Scalzo: Then a...no, I...I make a motion for a no on the land grading equipment including plows although there was heavy equipment (Inaudible) but no.

Mr. McKelvey: Do we have a second?

Mr. Bell: Second to this.

Ms. Gennarelli: Roll call.

 Darrell Bell: No...Yes, I’m sorry.

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 3, is whether or not the 1982 use variance a...authorized depositing on the surface of the premises a slurry consisting of soil and related materials that have been liquefied using highly pressurized water injected into the ground and simultaneously extracted by a powerful combined vacuum and storage device known as a “Hydrovac” which was constructed by Presvac Systems of Burlington, Ontario?

Mr. McKelvey: That’s a no.

Mr. Bell: Yes.

Mr. Levin: It wasn’t in the...

Mr. McKelvey: No, it wasn’t.

Mr. Levin: ...it didn’t exist then.

Mr. McKelvey: No.

Mr. Scalzo: I second that.

Ms. Gennarelli: You were the first?

Mr. Scalzo: Was John...was John making a motion or was he just stating...?

Mr. McKelvey: No.

Mr. Donovan: I don’t think either...

Mr. Scalzo: Then I’ll make a motion of no

Mr. Levin: I’ll second that.

Ms. Gennarelli: Richard is the second? Okay.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 4, operation of the Hydrovac device on the premises for the depositing of the soil slurry onto the surface of the premises with resultant mechanical and operational noise.

Mr. Scalzo: No.

Mr. Scalzo: I’ll make a motion for no.

Mr. Bell: That’s on that video.

Mr. McKelvey: Do we have a...?

Mr. Levin: Second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #5, outdoor parking of pick-up truck or trucks operated by a business?

Mr. Scalzo: That one I’m going to go with yes Dave, I’ll make a motion for a yes.

Mr. Masten: Yes.

Mr. Bell: Yes.

Mr. Masten: I’ll second.

Ms. Gennarelli: Okay, one second, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #6, outdoor parking of semi-trucks, truck or trucks and trailer or trailers operated by a business?

Mr. Bell: They were parking it there...outside there.

Mr. Levin: I can see a semi-truck...they would have to...

Mr. Donovan: Well the question is whether or not it was authorized by the use variance decision a...that...that’s the real question? That is the question that this Code Compliance is asking. Whether or not that activity would fall within and be permitted under the use variance granted?

Mr. Bell: I don’t think it was actually.

Mr. Donovan: And if you think it’s yes that’s fine but I just it’s...it’s not your subjective thought as to whether or not it should be...it’s whether or not it was authorized by the use variance decision.

Mr. Bell: Right.

Mr. Levin: I don’t recall.

Mr. Bell: I don’t recall any of that.

Mr. Scalzo: I...I can’t determine that by the information provided.

Mr. Levin: I feel the same way.

Mr. Donovan: Is that a motion?

Mr. Levin: A motion that it’s not determinable. Is that a word?

Mr. Donovan: It is now.

Mr. McKelvey: You just made it.

Mr. Donovan: Is there a second to that?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #7, outdoor parking of a 2004 Freightliner truck or trucks on which is mounted a Hydrovac device?

Mr. Scalzo: A...I would make a motion for a no.

Mr. Bell/Masten: I’ll second that.

Ms. Gennarelli: I’m sorry, Richard was the second?

Mr. Donovan: Darrell.

Ms. Gennarelli: Darrell, okay.

Mr. Donovan: Right, I think I had that right.

Mr. Bell: Yes.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #8, outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for storing items and materials?

Mr. McKelvey: I don’t think that was in the decision but...

Mr. Levin: I don’t think it was there. I didn’t read that.

Mr. Bell: I disagree with that.

Mr. Scalzo: No, I...

Mr. McKelvey: No.

Mr. Scalzo: ...I did not see storage containers, shipping containers and the like. I did see storage of tanks or for acetone...

Mr. McKelvey: Yeah.

Mr. Scalzo: ...and diesel fuel but not for...

Mr. Donovan: Well just to reflec...refresh your recollection in the decision item #1, was an in ground fuel storage tank of 6000 gal. capacity for diesel fuel; item 2, an in ground fuel storage tank of 3000 gal. capacity for unleaded gasoline; item 3, an in ground storage tank of 550 gal. capacity for acetone.

Mr. Scalzo: They are not storage containers.

Mr. Bell: Yes.

Mr. Scalzo: Shipping containers they are a...so...

Mr. Levin: It doesn’t include that.

Mr. Scalzo: I’ll make a motion on no.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: And Item #9, outdoor work activities conducted by the employees and agents of the business in furtherance of the uses identified in “1” above and the only thing I would point out to the Board, Item #1 had paragraphs (a) thru (e), item (d), you indicated you had insufficient evidence to make a determination; item e, you indicated no, so I think a reasonable inference was that would apply to items (a), (b) and (c).

Mr. Levin: I think that was included....in the minutes.

Mr. Scalzo: So Dave, if I understood what you just said, we’re looking at the evaluation we’re looking at the evaluation of outdoor work activities encompassing all of the items of “1” and unless we meet all of them...

Mr. Donovan: Well that...

Mr. Scalzo: ...the answer is no.

Mr. Donovan: ...that...that’s the question. I would suggest that...all I was trying to suggest you’ve already decided that (d) and (e) weren’t authorized...right?

Mr. Levin: Yeah.

Mr. Donovan: So, if you wanted to say with regard to items (a), (b) and (c)...I think that that would be fair. You couldn’t say it’s authorized for (d) and (e) because you couldn’t authorize employees or agents for activities that you said weren’t allowed. Do you understand what I am saying?

Mr. Scalzo: Well (d) was undetermined and (e) was not allowed.

Mr. Donovan: But if it’s...okay, I don’t know that you can determine that they could have employees for a business that...for an activity that you haven’t determined is permitted. Well...

Mr. Levin: Do I make the motion for approval of (a), (b) and (c)?

Mr. Donovan: I don’t want you to do anything except what you want to do.

Mr. Scalzo: Yeah, Richard if you want to split them up that’s fine.

Mr. Bell: Split them. Yeah, that’s what we have to...

Mr. Scalzo: Split them up. Yeah for items “1” (a), (b) and (c).

Mr. Levin: I’m making a motion for approval of employees and agents of the business and furtherance the use identified in (a), (b) and (c) of item “1".

Mr. McKelvey: Do we have a second?

Mr. Levin: Is that properly said?

Mr. Scalzo: I’ll second that. Yes.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Scalzo: Now Dave because we did not address (d) and (e) in that do we need to also address those in another...?

Mr. Donovan: That would be in order.

Mr. Scalzo: Okay, Richard you did the first one so well.

Mr. Bell: (d) & (e).

Mr. Levin: The...I make the motion that we...

Mr. Scalzo: Would be no.

Mr. Levin: ...no, determining...no determination of item (d), underground and above ground storage tank compliance.

Mr. Scalzo: And (e).

Mr. Bell: (e).

Mr. Donovan: Well so my only...

Mr. Levin: And (e), no (e) is a different one.

Mr. Donovan: But my only suggestion to the Board for the purposes of consistency if you determine if you don’t have enough information to make a determination for “1” (d), you’ve determined that item “1” (e) is not a...encompassed by the variance then perhaps would be inconsistent to say you authorize outdoor work activities in conjunction with those...

Mr. Scalzo: With an item that we...

Mr. Donovan: Said that is not allowed.

Mr. Scalzo: Right.

Mr. Donovan: Did I say that too complicated...did I make it too complicated?

Mr. Scalzo: Betty will straighten it out in the minutes.

Ms. Gennarelli: I just type what you say.

Mr. Scalzo: That’s what Dave says...not what I say.

Ms. Gennarelli: No, whatever you all say.

Mr. Levin: Would you kindly read what...

Mr. Donovan: So if I understand correctly the Board is looking to make a motion that Items “1” (d) and “1” (e) are not encompassed by the outdoor work activities because they’re not permitted uses...or authorized by the 1982 use variance is the better way to state that...so someone would have...would have to offer that as a motion...

Mr. Levin: I’ll make that motion.

Mr. Scalzo: And, I would second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Scalzo: I believe that’s it Dave. Am I correct?

Mr. Donovan: That is correct. So for clarification this will be incorporated into a written decision that will be delivered...signed by the chairman, delivered to Code Compliance for their future and further use such as that may be.

Audience Member speaking

Mr. Donovan: So for purposes of clarification...we were...this Board was asked to render a determination as to what may have been or may not have been included in the 1982 use variance. This Board has now done that to Code Compliance. It’s up to Code Compliance whether...what...what they do with that information.

Audience Member speaking

Mr. Donovan: I don’t know if that answers your question it may not have been...

Audience Member speaking

Ms. Gennarelli: Excuse me, this is not going to be on the...you need to come up and talk to the microphone. I’m sorry.

Mr. McKelvey: Come to the mic please.

Ms. Gennarelli: And just...just identify yourself please for the record.

Mr. Dietz: Bob Dietz, I’m president of WCC Tank Technology, town resident for over...my whole life and I’ve worked there for thirty years. So I...I understand okay, yes we can have a tank lining business. I believe you also said...you didn’t mention that it had to be either on the property, off the property, I don’t think you put a stipulation on that. Am I correct?

Mr. Donovan: So what this Board did was asked very specific...answered very specific questions that were asked by Code Compliance.

Mr. Dietz: Right.

Mr. Donovan: Probably...let’s be clear about this, not a satisfactory result to anyone.

Mr. Dietz: Oh no, I just don’t understand about why the tractor trailer that is on the property why you didn’t understand why you would need that because that’s the equipment for the tank lining business. Without there is no tank lining business so you...you’re actually saying I should be thinking I should be parking that someplace else.

Mr. Donovan: No I...no I think I...

Mr. Dietz: Am I wrong or am I just misunderstanding?

Mr. Donovan: Well you know what it’s a technical so...so this Board is being asked is that allowed? Right? So...so typically what you look at is what’s...what is in the original application in ’82, which we don’t have; what was on the site plan showed maybe a parking area, we don’t have that; so this Board is confronted with looking at what’s in the minutes, what’s in the resolution and what they said is we can’t tell. It may...may make perfect common sense...

Mr. Dietz: Yeah.

Mr. Donovan: ...but we can’t tell based upon what we’re looking at.

Mr. Dietz: I understand now. Thank you. Thank you.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

MICHAEL MAHER

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:38 PM)

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 7:08 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

 (8-1-97) A/R ZONE

**USE VARIANCE**

Applicant is seeking a Use variance for 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

Mr. McKelvey: Before we start I’d like the attorney to make an announcement.

Mr. Donovan: So as you can see there are five members of the Board present this evening. This Board is a seven member Board which means you need four affirmative votes to have an application approved this evening. It is the practice of this Board if we don’t have a full complement to offer any applicant the ability to defer their application until such time as we have a full complement otherwise you need four out of five. You always need...you always need at least four but we’re down two Members this evening so if any applicant wishes to defer if you’d let us know now. Yes sir?

Mr. Morando: Good evening my name is Anthony Morando; I’m an attorney with the law firm of Cuddy and Feder. I’m here on behalf of Green Street as well as Troon Properties tonight. We would like to request an adjournment of matter on the agenda until next meeting April 27th I believe is the Board’s next meeting?

Mr. Donovan: Is that it Betty?

Ms. Gennarelli: Yes.

Mr. Morando: We would also consent to the extending the sixty-two day period in which to make a decision to this Board a...to that same date.

Mr. Scalzo: I have no objections for me.

Mr. Bell: No.

Mr. Donovan: So if there’s anyone here from the public for Troon Properties that’s going to be heard April 27th there will be no additional notice, this is your notice.

Mr. McKelvey: Everybody on the Board agrees?

Mr. Levin: Yes.

Mr. Scalzo: Yes.

Mr. Bell: Yes.

Mr. Masten: Yes.

Mr. McKelvey: Okay.

Mr. Morando: Thank you very much, I appreciate it.

Ms. Gennarelli: Okay, Troon is adjourned till April 27th.

Mr. Donovan: Now you can’t wait until the Board votes and then try to defer so now...now is your time.

PRESENT ARE:

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 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

JAMES MANLEY

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 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 7:09 PM)

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 7:08 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

 (8-1-97) A/R ZONE

**AREA VARIANCE**

Applicant is seeking area variances (should a Use variance be granted by the ZBA) - Lot #1 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback; Lot #2 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback of a two-lot subdivision to create two solar “electric generating” farms for a Two-lot subdivision application before planning board.

Mr. McKelvey: Before we start I’d like the attorney to make an announcement.

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 (Time Noted – 7:09 PM)

ZBA MEETING – MARCH 23, 2017

END OF MEETING (Time Noted – 8:38 PM)

Mr. McKelvey: Okay, everyone has had a copy of the minutes from last month?

Mr. Scalzo: I didn’t print them out but yes I do....a lot of them

Mr. McKelvey: Yes.

Ms. Gennarelli: There certainly were.

Mr. McKelvey: Do I have a motion we approve them?

Mr. Scalzo: I'll make a motion those minutes.

Mr. Bell: I’ll second it.

Mr. McKelvey: All those in favor say Aye?

Aye - All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: Did everybody get a copy of this?

Ms. Gennarelli: Yes.

Mr. McKelvey: You all got a copy of something that’s for an interpretation for next month?

Mr. Scalzo: Interpretations? Come on.

Mr. McKelvey: Do we want to discuss that with Dave? Everybody want to discuss it?

Mr. Donovan: So is it alright if I...is it alright with you Joe if we call you up here to ask about this interpretation? Of if it’s not okay it’s not...

Mr. Mattina: It probably going to be more Jeff Scully because he presented it.

Mr. Donovan: But this is...no, this is the indoor amusement...I guess...

Mr. Mattina: Oh.

Mr. Donovan: ...I talked to I actually talked to Jim about this, I spoke to John, did you guys deny this? Because where typically it comes to us on a denial...

Mr. Mattina: I have no idea.

Mr. Donovan: Okay.

Mr. Mattina: I fill out the paperwork. Jerry said here...here is what to send them for.

Mr. Donovan: Okay.

Mr. Mattina: Basically I think our feeling...my feeling would be not a permitted use; Jerry’s opinion is it could be a permitted use so he told me...

Mr. McKelvey: But it’s in an I/B Zone.

Mr. Mattina: Yes.

Mr. Donovan: I think...

Mr. McKelvey: It’s not allowed.

Mr. Donovan: ...generally speaking you know, you make a determination, they appeal to us.

Mr. McKelvey: Say no.

Mr. Donovan: So that’s...that’s the feeling of the Board.

Mr. Masten: Yes.

Mr. Donovan: Just tell them no and then they can...

Ms. Gennarelli: Well that’s my question to the Board because I don’t know whether you have denied it or not Joe.

Mr. McKelvey: In order for them to get here they have to have a denial.

Mr. Mattina: Well right, I...obviously not. As far as I know it wasn’t denied...

Mr. Donovan: Okay.

Mr. Mattina: ...I just passed it along.

Mr. Donovan: Got you, just...Jerry can call me if he wants but the Board wants a denial and then they would review that appeal. If he doesn’t think it’s...if he thinks it’s allowed then that’s okay.

Mr. Mattina: Well what there is...there’s in the accessory use I think it’s a big hang up it allows tennis courts, swimming pools, so is electric go karts and laser tag part of that? Is that considered part of the accessory use?

Mr. Donovan: And...and I think, you know, that’s what...they can apply for a use variance and/or...an interpretation and/or a use variance. I just think, you know it’s up to...to Jeff or Mark Taylor to tell you. I would just tell them no because that makes it easier for us but then we have a denial.

Mr. Mattina: It makes it easier for me too.

Mr. Donovan: Okay. If Jerry has a question tell him...

Mr. Mattina: I’ll just tell him it needs to be ruled on, yes or no and sent.

Mr. McKelvey: That’s the way I looked at it.

Mr. Mattina: Send it up for it all; send it for a use variance and an interpretation.

Mr. Donovan: Well yeah, you can deny it and then they can apply for whatever they want to apply for.

Mr. Mattina: Okay, that wasn’t me.

Mr. Donovan: Okay, thanks Joe.

Ms. Gennarelli: We didn’t close the meeting yet?

Mr. Donovan: Make a motion to adjourn first.

Mr. Masten: I’ll make a motion to adjourn.

Mr. Bell: Second.

Mr. McKelvey: All in favor say Aye?

Aye All

Mr. Donovan: Everyone Aye’d it.

Ms. Gennarelli: Thank you.

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 RICHARD LEVIN

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

 JAMES MANLEY

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 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:45 PM)