ZONING BOARD OF APPEALS

MEETING – MAY 22, 2014

(Time Noted – 7:05 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. 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 a cell phone to please put it on silent or turn it off. And also when speaking, please speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

Chairperson Cardone: First I’d like to welcome our new Board Member Darrin Scalzo. Welcome.

Mr. Scalzo: Thank you very much.

(Time Noted – 7:06 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:06 PM)

C D & SONS CONSTRUCTION CORP. 12 BANNERMAN VIEW DRIVE, NBGH

(22-4-6) R-3 ZONE

Applicant is seeking area variances for Lot #1 (Building Permit #13-0428) for one side yard setback and the minimum lot width and for Lot #2 for the minimum lot width for a proposed Two-lot subdivision.

Chairperson Cardone: If anyone is here concerning the Bannerman View Drive application, I have an e-mail.

I will not have approval to the water service for these lots by the ZBA Meeting tonight. Therefore, I am on behalf of my client requesting that this decision of this application be Reserved for another month.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:07 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:07 PM)

CITY OF NEWBURGH 1200-1210 ROUTE 300 & 167 LITTLE BRITAIN ROAD

Aka 1000-1006 UNION AVENUE, NBGH

(CRYSTAL RUN HEALTHCARE)

(97-3-1, 2, 6, 7, 8, 26) I / B ZONE

Applicant is seeking an Appeal of the issuance of the Clearing and Grading Permit (# 14-0084) issued to CRH Realty VIII, LLC. (Crystal Run Healthcare).

Chairperson Cardone: And I also have from CRH Realty (from Burke, Miele & Golden, LLP. regarding CRH Realty):

Dear Chairperson and Board Members, The City of Newburgh respectfully withdraws its Appeal if the determination by the Planning Board and Building Inspector to approve the Clearing and Grading Permit in connection with the Crystal Run application and the associated issuance of Clearing and Grading Permit # 14-0084. This appeal is being withdrawn because the planning board has adequately addressed the concerns of the City of Newburgh regarding the protection of its reservoir and has incorporated measures to mitigate those concerns in its approval of the Crystal Run site plan and Grading Permit Applications. Should you have any questions, please feel free to contact me. Thank you for your cooperation, respectfully submitted Kelly Naughton (Burke, Miele & Golden, LLP.)

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:08 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:08 PM)

DEBRA LEE, LLC. 260 NORTH PLANK ROAD, NBGH

(34-3-4) B ZONE

Applicant is seeking an area variance for the maximum amount of allowed signage to erect a free-standing sign.

Chairperson Cardone: Our first applicant this evening Debra Lee, LLC., C & C Tire and Auto.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, May 14th and in The Sentinel on Friday, May 16th. This applicant sent out thirty letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please state your name for the record.

Mr. Cunningham: Kevin Cunningham, President of C & C Tire. We’re looking for a variance for the a…for our sign to be erected out on the road. A…the problem with our…our situation is our road frontage is only twenty feet it’s the…our driveway a…even though we own an acre and a half and it does...the importance of this sign is because our…our building sits behind another building it’s very hard for people to see us. So the sign for us to do business is…is of…of importance so people can see it as they go up and down the road.

Mr. McKelvey: I’d like to say that every Board Member has been out there and looked at all these properties.

Chairperson Cardone: I have the report from the Orange County Department of Planning and there is a paragraph there that I’d like you to address. According to the information shown the sign is being located on Tax Parcel 34-4-2 (s/b 34-3-2) owned by CNR Realty LLC. County Planning recommends that the Board understand from the applicant if this is viable. The Board should insure that the adjoining Tax Parcel is under their ownership or they have an existing easement to construct such a sign. Implementing an easement or placement of the sign may require planning board approval. And their recommendation is Local Determination.

Mr. Cunningham: And you said it’s owned by…it’s owned by Debra Lee LLC. I thought you said C&C Realty…

Mr. Donovan: I think the issue is the map that we have if…if I’m understanding correctly, the proposed site of your sign, the map that we have with your application indicates the owner is now or formerly CNR Realty, Tax Lot 34-3-2…

Mr. Cunningham: I don’t know who CNR Realty is, I have no idea.

Mr. Maher: The…the parcel of the house in front of…

Mr. Cunningham: Okay.

Mr. Maher: …to the left of your driveway…

Mr. Cunningham: Okay.

Mr. Maher: Do you own that currently?

Mr. Cunningham: No, I do not.

Mr. Maher: Okay, I guess that’s the issue because on the…on the…what you submitted where the sign is going…

Mr. Cunningham: That’s owned by, I believe, Ron Bloomer, Profex.

Mr. Maher: Right.

Mr. Cunningham: Okay?

Mr. Maher: The issue is that the sign that you’re showing on your drawing is located on their parcel not on yours.

Mr. Cunningham: No, it should be right on the edge of our…our driveway. It should be…

Mr. Maher: Do you want to come up and look at your…what you have…

Mr. Donovan: Well the map you gave us or somebody on your behalf gave us…come on up and take a look.

Mr. Cunningham approached the Board

Ms. Smith: It shows it on the other side of your driveway line.

Mr. Cunningham: Okay, but it will be…okay it will be placed here though.

Chairperson Cardone: So this map is incorrect where they’re showing it?

Mr. Cunningham: Well this is the…

Mr. Donovan: You should go back to the mic. I’m sorry. Do you want to take this with you? Sir, do you want to take the map with you?

Mr. Cunningham: No, I have one. That was the sign a…Vinnie Farina that’s… just placed it on there, he didn’t realize but when we put the sign it will be on our property.

Chairperson Cardone: Okay. Thank you for clarifying that.

Mr. McKelvey: That other sign will be removed?

Mr. Cunningham: Yes, yes it will.

Mr. McKelvey: All those flags you have along the road there too they are considered signs.

Mr. Cunningham: I’m sorry?

Mr. McKelvey: Those flags…

Mr. Cunningham: The flags, okay, those…those go up and come down every day.

Mr. McKelvey: They are considered signs. Right Jerry?

Mr. Canfield: Yes, that’s correct.

Mr. Cunningham: Do they have to come down?

Mr. Canfield: Yes, either that or be counted signage.

Mr. Cunningham: Okay. Okay.

Mr. McKelvey: I’m just telling you that…

Mr. Cunningham: For now the reason we did it was so people know where we had moved to and a…you know, sitting in the back with no signage with just that little sign it would have…you know, it would have…nobody would have known we were there. We would be doing no business because we do sit so far back.

Mr. McKelvey: I understand but…

Mr. Cunningham: Okay.

Mr. McKelvey: …you might be a little shocked when they tell you to take them down.

Ms. Smith: You have a temporary sign here in the pictures. Is that the area your sign is going to go?

Mr. Cunningham: Yes.

Ms. Smith: It seems to be very close to the driveway.

Mr. Cunningham: Right.

Ms. Smith: Okay.

Mr. Cunningham: Exactly.

Chairperson Cardone: Do we have any questions from the Board? Do we have any questions or comments from the public?

No response.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:14 PM)

ZBA MEETING – MAY 22, 2014 (Resumption for decision: 8:52 PM)

DEBRA LEE, LLC. 260 NORTH PLANK ROAD, NBGH

(34-3-4) B ZONE

Applicant is seeking an area variance for the maximum amount of allowed signage to erect a free-standing sign.

Chairperson Cardone: On the first application Debra Lee, LLC., 260 North Plank Road, seeking an area variance for the maximum amount of allowed signage to erect a free-standing sign. This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. McKelvey: I think it’s necessary for the business because the business sits so far back off the road.

Chairperson Cardone: And they have so little road frontage.

Ms. Smith: Yeah.

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

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:54 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:14 PM)

KRISTOFFER HAMILTON 627 GIDNEY AVENUE, NBGH

(76-6-1) R-3 ZONE

Applicant is seeking area variances for the front yard setback and the rear yard setback to keep the Prior Built pool and pool deck. (Has two front yards Gidney Avenue and Blue Jay Drive)

Chairperson Cardone: Our next applicant Kristoffer Hamilton.

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

Chairperson Cardone: Please state your name for the record and your request.

Mr. Hamilton: My name is Kris Hamilton a…and what I’m looking for is area variance for the a…front and rear yard setbacks to keep my Prior Built of a…deck and pool.

Ms. Gennarelli: Kris, if you could just tilt that up a little bit toward you?

Mr. Hamilton: Sure. How’s that?

Ms. Gennarelli: Okay, and get closer.

Mr. Hamilton: Okay.

Ms. Gennarelli: Thank you.

Chairperson Cardone: And this was constructed in 2013?

Mr. Hamilton: A…yes. We actually…yeah, the work was performed in 2013, yes. There was a Prior Built a…there originally and what we did was, we were replacing boards on the deck and at that time we actually extended out to the side a little bit but there was nothing as far as a…going back towards the back property line. We did not go that way at all.

Chairperson Cardone: And you did not have a Building Permit at the time?

Mr. Hamilton: No we didn’t.

Chairperson Cardone: Do we have any questions from the Board?

Mr. Maher: So Jerry, because the…because the pool is attached to the deck that counts as the additional…?

Mr. Canfield: Yes, in this scenario it’s all attached, the house, the deck and the pool is all viewed as one so the setbacks apply as it were one structure. I also might add that this is a corner lot so that imposes another degree of difficulty.

Mr. Hamilton: The original a…pool that was there since it is attached, the new pool is attached to the deck, the original pool was a…(24) twenty-four foot in diameter so at that time from the survey map that we had a…you know, that would never have cleared the (40) forty foot setback that’s required either. I don’t know if that makes much of a difference but the new pool that was erected is (33) thirty-three feet in distance, you know, in length so it’s not a...it’s only (9) foot longer towards the back property line.

Chairperson Cardone: But the other pool was also not attached to the house….

Mr. Hamilton: Yes.

Chairperson Cardone: …by the deck…

Mr. Hamilton: Yes it was….

Chairperson Cardone: It was?

Mr. Hamilton: Yes it was.

Mr. Donovan: And Jerry, do you know offhand if the…if the a…deck was not attached to the pool, if the pool was a standalone what the setback would be?   
  
Mr. Canfield: I do not have the Permit and stuff with me at the time. I don’t know when the original pool was constructed…

Mr. Hamilton: I don’t either.

Mr. Canfield: But I think at this point that’s a moot point.

Mr. Donovan: Actually my question was about this pool.

Mr. Canfield: Okay.

Mr. Donovan: If this pool was not connected to the deck, it was standalone, what would be the rear yard…the setback?

Mr. Canfield: It would be (10) ten feet.

Mr. Donovan: Okay.

Mr. Canfield: But because it’s all attached that’s why the zoning applies and the setbacks apply.

Chairperson Cardone: Any other questions from the Board? Any questions or comments from the public?

No response.

Chairperson Cardone: Do I have a motion to close the Public Hearing?

Ms. Smith: I’ll make a motion.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:18 PM)

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ZBA MEETING – MAY 22, 2014 (Resumption for decision: 8:54 PM)

KRISTOFFER HAMILTON 627 GIDNEY AVENUE, NBGH

(76-6-1) R-3 ZONE

Applicant is seeking area variances for the front yard setback and the rear yard setback to keep the Prior Built pool and pool deck. (Has two front yards Gidney Avenue and Blue Jay Drive)

Chairperson Cardone: On the application of Kristoffer Hamilton, 627 Gidney Avenue, seeking area variances for the front yard setback and the rear yard setback to keep the Prior Built pool and pool deck. And this has two front yards on Gidney and on Blue Jay. This is a Type II Action under SEQRA. Do we have discussion on this application?

Chairperson Cardone: Do we have a motion to approve?

Mr. Manley: So moved.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:55 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:18 PM)

LAXMI ESTATES II, LLC. 5277 ROUTE 9W, NBGH

(DUNKIN DONUTS) (20-2-40) B / LHI OVERLAY ZONE

Applicant is seeking a use variance to allow a food preparation shop with a drive-thru window in the Business / LHI overlay zone.

Chairperson Cardone: Our next applicant Laxmi Estates II, LLC. (Dunkin Donuts).

Ms. Gennarelli: This a…applicant sent out thirty-one letters. All the mailings, publications and postings are in order. And that was thirty-one letters for the first one the Use variance and thirty-one for the area variance.

Mr. Gillespie: Good evening everyone.

Chairperson Cardone: Good evening.

Mr. Gillespie: My name is Jim Gillespie from Bohler Engineering. I’m representing the property owner and applicant who is also here tonight, Mr. Amish Patel. I would like to just give the Board a little summary of the project and a…a little bit of history on this application and then get into a…the variances and why we would like the Board to consider those. Our application is for the re-development of an existing 3900 sq. ft. building for the use as a Dunkin Donuts. The building is located at 5277 Route 9W. In order to make this project viable we’re here tonight to request the Board consider granting a variance for a…the front yard setback. It’s an existing building, the front yard setback, the requirement is 50 ft. the existing building is 44 ft. from the property line. We’re also requesting that the Board consider a…a variance to grant a drive-thru use for this Dunkin Donuts facility. Just to give a little brief history of the project this was originally proposed back in 2008 as a full a…straight rebuild ground up Dunkin Donuts. It was actually approved a…but at that time due to the economy like many other projects it just wasn’t able to be completed at that time. So now we’re back before the Town a…to try to make a way for this project to work, to be viable and you know one of the ways that we came up to make this viable is to reuse the existing building and another way that’s going to help and make this project viable and a successful investment for the applicant is the drive thru use. A…well Dunkin…Dunkin Donuts like many other a…facilities of its type a…you know, way back when drive-thru’s were probably thirty percent of this type of use. Now they’re probably seventy or…or eighty percent so it’s a very important part of this…this project and it’s very important a…for the success so for a considerable investment like this, you know, it’s…it’s something that we…we really need to…to have the Town consider and then hopefully grant. A…I would like to in your consideration of the variances that we’re requesting, I would like you to consider the uniqueness of this site. One of the things we would like you to consider is that the prior use was a car wash. And there were three existing car wash drive-thru bays and what we’re proposing is to keep…keep the building and to keep the drive-thru in the exact location of one of the three car wash bays. So this property is certainly not a…a stranger to the drive-thru presence although it’s a car wash it certainly operates a…the same way as a drive-thru for a…a restaurant facility. There…there’s plenty of stacking a…and the services got to be well screened from the surrounding properties. The drive-thru will be in the back of the building and it’ll be screened from the building, from the road and we’d also like you to consider that the property itself is very unique. There’s a…I’m sure you’re familiar with it, there’s a hundred foot hill a…behind the property so this property is unlike any other property because of the existing drive-thru’s and because of just the…the topography and the size of the buffer behind the lot you know this is pretty much a bowl, a hundred foot bowl that is going to be well screened from any neighboring properties and…and any noise or any type of a…any type of noise that would be associated that type of use. So we would really like the Board to consider that. Well, I mean, that’s why we here tonight. We’re here to answer…present the project and answer any questions you may have and a…respect…respectfully request the Board consider these variances to…to make our project work. Thank you.

Mr. McKelvey: Are you going to renovate the existing building?

Mr. Gillespie: Yes the existing building will be renovated inside and out. There will be new a…pavement, parking lot, landscaping throughout. We would keep the two existing a…access drives as they are but it would be a complete renovation and new…new project.

Mr. McKelvey: Is Dunkin Donuts aware of this?

Mr. Gillespie: Oh yeah, absolutely. Yup.

Mr. Donovan: Now if I could a couple…a couple of questions. First, I…I believe…I believe we sang this song before.

Mr. Gillespie: Yes.

Mr. Donovan: Back in 2004 and the Board at that time issued an Interpretation a…that the proposed business falls within the definition of a food preparation shop use and granted a….and said you could have that on the condition that there’d be no drive-thru window. So a…that constitutes a prior precedent of this Board so what…what’s different today other than more Dunkin Donuts have drive-thru windows? What….what…what would be the reason for the justification for…for you to give to this Board to revisit their prior determination on the exact same issue?

Mr. Gillespie: Well, we would just like the Board to consider at that time we would have been completely demolishing the…the existing building. And we also, I don’t think that the argument or the…I don’t think that it was presented or a…or it wasn’t requested that the Board consider that there are the three drive-thru bays for car wash there today. So that’s why we’re here today to you know, maybe rethink it a…we’re keeping the existing building, we’re keeping the drive-thru where those car wash bays are today and we would like the Board to consider the uniqueness of this property. It’s…it’s not like any other that it has those, we’re keeping the building and because it’s so well buffered we would just like the Board to…to reconsider a….some of those…those issues.

Mr. Donovan: Okay, part of your application or your…your…the main part, the main thrust of your application relative to the drive-thru is a use variance. Your application is for a use variance and that would be a use variance. In a use variance you need to present to the Board competent financial proof as to why you couldn’t get a reasonable return a…on…on the business with(out) the drive-thru. By competent financial generally you know, by an accountant or some other financial person would have to give proof to the Board. If you don’t…if you don’t have that proof then the Board can’t grant the relief. As part of that you’d also have to demonstrate that none of the permitted uses…that you could not get a reasonable economic return from any of the permitted uses in the zone. So retail, professional, research, indoor amusement, you run down that list so absent your demonstrating that to us the Board is not in a position to grant your variance.

Mr. Gillespie: Okay, I mean we could…we could request the Board maybe table the application and we could come up with a…some additional information a…if that’s possible?

Chairperson Cardone: That would be needed, yes.

Mr. Gillespie: Okay.

Mr. Donovan: Now I…I don’t mean to be unduly difficult tonight but one other issue comes to mind and…and Jerry I’m looking at you only because I see food preparation shops as permitted accessory uses. Accessory to retail, personal service stores, shopping centers, theatres and something else…how…how did…I’m not sure how this got from a…what use is a Dunkin Donuts accessory to? I guess is my question. And I don’t know how this got some sort of conditional approval from the planning board in 2008 without that issue being addressed.

Mr. Canfield: That…I have that question as well and this is…this project has an extensive history a…and I don’t mean that in a bad way but it has a lot of history between going between the Zoning Board, the planning board, Zoning Board back and forth. But let me start by saying that the car wash a…is a permitted use in the B Zone. A car wash does permit drive-thru. What is the difference between a car wash and a Dunkin Donuts? I don’t know that that’s the question but I just put that on the table just to get everyone thinking in that respect that why and how was it a car wash but now a Dunkin Donuts is not permitted? The classification of the use which typically is the primary, most important thing that needs to be determined to find out what rules apply to what type of project. In this case a…the determination was made by the Zoning Board back at that time that Dunkin Donuts was a food preparation a…establishment. I agree with you the way it’s listed it…in the Bulk Use Tables, food preparation is only listed as an accessory use to those given a…occupancies that are listed in the Bulk Use Requirement. This application is none of the above nor was the previous application however that’s the action that the Board had taken at that time. It’s always been our understanding that once the Board sets a precedence with a decision or a ruling made there is no need for a further update of that and I believe a component of this application was a request of updating or reconfirming that original opinion. I’m not sure that that’s appropriate and that’s what’s required or needed here.

Mr. Donovan: Yeah, that’s a good point Jerry and I saw that as well. Basically when you talk about if we issued an area variance or some type of variance and it’s good for six months with a six month extension that’s for the applicant. Right, if the Board issues a decision, the precedent stands. In the absence of change in circumstance or new information whether the project was built or not built is not relevant. We’re…we’re duty bound to follow our prior decision unless there’s some compelling reason, new evidence, change in circumstances that will lead us to change that decision. So it doesn’t need to be reaffirmed.

Mr. Canfield: Okay, that answers a big question simply because there is and will be other applications similar to this. So if the precedence has been set that Dunkin Donuts a…is not a restaurant, it’s not a fast food, it’s not a convenience store, it’s being ruled as a food preparation then that makes a difference for future applications. Thank you for that clarification.

Chairperson Cardone: If I could interject the report from the Orange County Department of Planning has a suggestion referring to this. Considering the previous…the previous appeal questioning the validity of the proposed project categorized as a restaurant use and the aforementioned use variance sought County Planning recommends that the Town consider appropriate Zoning Code changes to better define the uses associated with restaurants over fast food establishments. And…

Mr. Canfield: And I concur with that.

Chairperson Cardone: Right, I think that’s a valid point…

Mr. Canfield: Our Zoning Code unfortunately does not define fast foods. Local Law #2, I believe it was of 1998, there were several changes made and fast food establishments and permitting them was one that was included in the Bulk Use Tables. However, it was never defined. So I think a…and we have a Councilperson in the room, hint, hint…it may be an item that the (Town) Board may want to look at. I know there are other zoning issues on the Board’s plate right now and they are starting to pick apart at those to kind of clarify some of these but I may suggest perhaps a letter from this Board…the Zoning Board, requesting that the Town Board take that into consideration to expand upon those definitions. That would help us greatly.

Chairperson Cardone: Thank you.

Mr. Ruggiero: We…we also already started talking about this, two weeks ago Gil and I and we do want to take a look at Route 9W and that’s that area where tractors can be permitted and you know, changes can be made in that area, basically it is a commercial area. And I personally don’t agree the way it is zoned you know, the way that it’s written up now so there’s quite some changes there. But if we can get a letter from you requesting that to have us look at that that also help with the other Council Members.

Chairperson Cardone: Okay, thank you.

Ms. Gennarelli: And that was Councilman Ruggiero for the record.

Chairperson Cardone: Okay, I also have a letter here that I just want to read for the record from Pattycake Playhouse to the Zoning Board of Appeals:

This letter is submitted in support of the application known as: Laxmi Estates and the project being proposed as Dunkin Donuts with a drive-thru. I request that this letter be made part of the record of that case and ask that it be shared with each member of the Zoning Board of Appeals. The parcel of property located at 5277 Route 9W, Newburgh, currently is sitting with a vacant run down building on it. As the Board knows, that business area of 9W is suffering from abandoned buildings as well as non-aesthetic looking ones. To bring a Dunkin Donuts to this parcel would be to revitalize the eyesore while bring financial returns on the property. The approval of a Dunkin Donuts with a drive-thru I feel will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located. Respectfully submitted, Pattycake Playhouse, Donna Conklin, owner.

And also the report from the County, in addition to what I had read is, Local Determination.

Mr. Ruggiero: Grace, can I get a copy of that letter to the Board?

Chairperson Cardone: Yes.

Mr. Ruggiero: Thank you.

Ms. Gennarelli: Mr. Canfield gave Mr. Ruggiero the letter.

Chairperson Cardone: Do we have any comments from the Board?

Mr. McKelvey: Would the Board (Town) like a copy of that letter too?

Mr. Ruggiero: What’s that?

Chairperson Cardone: He’ll get it to them.

Mr. Ruggiero: Yes.

Mr. McKelvey: Okay.

Chairperson Cardone: Okay, we had someone from the public who wanted to speak? Yes, would you go to the microphone? Please identify yourself for the record.

Mr. Fenelon: My name is Pat Fenelon, I am a principal of AGL Welding Supply which is a…a neighbor of the proposed Dunkin Donuts. And I have a few concerns, first of all we…we look forward to improvements and development in that area, it’s a eyesore. One of our…one of our concerns would be that a…the side yard that is contiguous with our property. We have a…a commercial operation going so to speak. We have trucks and…

Chairperson Cardone: And you’re north of this, correct?

Mr. Fenelon: We’re north of this…this one. And there’s a revetment ditch that drains water off of the mountains behind both of our properties and I would only request that we talk about screening of the two properties a…good fences make good neighbors. In this case it would be to give us some protection as to looking into our operation a…and the other thing would be for possibly litter or trash blowing into our property now that you’ll have napkins and…and things of that nature. But we were just hoping that if this goes through, we’d like to see something like this go through. We would have some type of a…contingent that there would be some kind of screening and that they don’t put…that their sign is not…we don’t know anything about any signage but we have a free-standing sign also and I would hate to see that blocked coming from…coming from the south going north. A…that…that’s one of our…that’s our…our real a…our real concern. Other than that we look forward to the improvements.

Chairperson Cardone: Right, if it got to the planning board you could address those issues with the planning board if it reached them.

Mr. Fenelon: And I could talk to the principals or the people that are representing the owners. But that would be required on a building plan? Anyway screening?

Chairperson Cardone: Yes.

Mr. Fenelon: Very good. Thank you very much for your time.

Chairperson Cardone: Thank you. Is there anyone else from the public that has a comment? Yes, would you go to the microphone and identify yourself?

Mr. Crisci: My name is Steve Crisci and I own that Red Rock Garden Center across the street from the a…proposed property. Mr. Donovan I got a question with all due respect to your…yourself. In 2008, every business was left literally slaughtered, you don’t call that extenuating circumstances to continue the application as it was and maybe adjust it a little bit? I mean, the recession that slammed us all. It made us get up four o’clock in the morning every morning for seven straight years. You don’t think that should change? I’m not…I’m not gettin that…

Mr. Donovan: I…I…

Mr. Crisci: Well let…go ahead, what…what is your answer to that?

Mr. Donovan: No but this is your time, go ahead.

Mr. Crisci: All right well, you know, it kind of blows my mind that…I mean we’ve been looking at that property, not only us but twenty thousand cars a day are looking at that property. They come into my place and they…they look across the street and you know what they say to me? What’s up with that? That’s what they say to me. What’s up with that? That…that’s what everyone says. I don’t get it. I mean this guy is going to put millions of dollars into that property. The QuickChek is beautiful, that…that M&T Bank is awesome, that’s a beautiful thing. You come off the exit on…on…from Route 84 head north on 9W and that just tells the mentality of the people that M&T Bank is beautiful and you say, wow, this must be a beautiful place, keep driving up the road now you see that QuickChek beautiful. Don’t stop now. That’s all I’m asking you. It’s a beautiful thing to seen that kind of stuff. That’s really all I want to say.

Chairperson Cardone: Thank you.

Mr. Donovan: My…my comment was only that I wanted to make sure we were following the precedent we set in 2004. The Board made a decision, if we are going to revisit that decision which we could, I just ask the gentlemen representing the Dunkin Donuts to explain to us why we should do that. I…I don’t think I’ve said anything other than that. So that was all my question was, that’s all my intent was. It’s not my intent to have an eyesore a…at the building or at the property. We made a decision in 2004. We’re revisiting that decision now. Why should we decide differently? I think that’s…that’s a fair question.

Chairperson Cardone: Do we have any questions or comments from the Board?

Mr. McKelvey: I think we should hold this over and get more information, because of the use variance.

Mr. Gillespie: I mean you would need some actual paper documentation?

Chairperson Cardone: Yes, correct.

Mr. Gillespie: I mean the owner is here tonight. He could speak as far as the history of the property but I guess what I’m hearing from you is that you would need more than that, some actual physical…

Chairperson Cardone: That’s correct.

Mr. Gillespie: …paper evidence?

Mr. Maher: Well there are…there are five points. Dave to you want to…?

Chairperson Cardone: Four points.

Mr. Donovan: Actually there are four points on the use variance.

Mr. McKelvey: Four points.

Mr. Donovan: And…and, you know, we can’t…I can’t give you legal advice. My job is to give legal advice to the…to the Board but they’re easy enough to locate those points. You may want to…I don’t know if the applicant has his own attorney a…but you…you can find those elements relatively easily and if you make a presentation to the Board, you know, the…the Board will be receptive to that presentation, I’m sure.

Mr. Gillespie: Great.

Mr. Donovan: If it’s the Board’s inclination to hold the Public Hearing open you just need a motion to continue the Public Hearing, I assume that would be on both applications, the area and the use variance applications…

Chairperson Cardone: Yes.

Mr. Donovan: …to the June meeting?

Mr. Maher: I’ll make a motion to keep the Public Hearing open.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Ms. Gennarelli: That’s June 26th.

Mr. Canfield: Grace, does that hold true for both applications, on the front yard as well?

Chairperson Cardone: Yes. We’re holding them both open.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 7:43 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:18 PM)

LAXMI ESTATES II, LLC. 5277 ROUTE 9W, NBGH

(DUNKIN DONUTS) (20-2-40) B / LHI OVERLAY ZONE

Applicant is seeking an area variance for the front yard setback to build a food preparation shop with a drive-thru window in the Business / LHI Overlay zone.

Chairperson Cardone: Our next applicant Laxmi Estates II, LLC. - Dunkin Donuts seeking an area variance for the front yard setback to build a food preparation shop with a drive-thru window in the Business / LHI Overlay zone.

Chairperson Cardone: Our next applicant Laxmi Estates II, LLC. (Dunkin Donuts).

Ms. Gennarelli: This a…applicant sent out thirty-one letters. All the mailings, publications and postings are in order. And that was thirty-one letters for the first one the Use variance and thirty-one for the area variance.

Mr. Gillespie: Good evening everyone.

Chairperson Cardone: Good evening.

Mr. Gillespie: My name is Jim Gillespie from Bohler Engineering. I’m representing the property owner and applicant who is also here tonight, Mr. Amish Patel. I would like to just give the Board a little summary of the project and a…a little bit of history on this application and then get into a…the variances and why we would like the Board to consider those. Our application is for the re-development of an existing 3900 sq. ft. building for the use as a Dunkin Donuts. The building is located at 5277 Route 9W. In order to make this project viable we’re here tonight to request the Board consider granting a variance for a…the front yard setback. It’s an existing building, the front yard setback, the requirement is 50 ft. the existing building is 44 ft. from the property line. We’re also requesting that the Board consider a…a variance to grant a drive-thru use for this Dunkin Donuts facility. Just to give a little brief history of the project this was originally proposed back in 2008 as a full a…straight rebuild ground up Dunkin Donuts. It was actually approved a…but at that time due to the economy like many other projects it just wasn’t able to be completed at that time. So now we’re back before the Town a…to try to make a way for this project to work, to be viable and you know one of the ways that we came up to make this viable is to reuse the existing building and another way that’s going to help and make this project viable and a successful investment for the applicant is the drive thru use. A…well Dunkin…Dunkin Donuts like many other a…facilities of its type a…you know, way back when drive-thru’s were probably thirty percent of this type of use. Now they’re probably seventy or…or eighty percent so it’s a very important part of this…this project and it’s very important a…for the success so for a considerable investment like this, you know, it’s…it’s something that we…we really need to…to have the Town consider and then hopefully grant. A…I would like to in your consideration of the variances that we’re requesting, I would like you to consider the uniqueness of this site. One of the things we would like you to consider is that the prior use was a car wash. And there were three existing car wash drive-thru bays and what we’re proposing is to keep…keep the building and to keep the drive-thru in the exact location of one of the three car wash bays. So this property is certainly not a…a stranger to the drive-thru presence although it’s a car wash it certainly operates a…the same way as a drive-thru for a…a restaurant facility. There…there’s plenty of stacking a…and the services got to be well screened from the surrounding properties. The drive-thru will be in the back of the building and it’ll be screened from the building, from the road and we’d also like you to consider that the property itself is very unique. There’s a…I’m sure you’re familiar with it, there’s a hundred foot hill a…behind the property so this property is unlike any other property because of the existing drive-thru’s and because of just the…the topography and the size of the buffer behind the lot you know this is pretty much a bowl, a hundred foot bowl that is going to be well screened from any neighboring properties and…and any noise or any type of a…any type of noise that would be associated that type of use. So we would really like the Board to consider that. Well, I mean, that’s why we here tonight. We’re here to answer…present the project and answer any questions you may have and a…respect…respectfully request the Board consider these variances to…to make our project work. Thank you.

Mr. McKelvey: Are you going to renovate the existing building?

Mr. Gillespie: Yes the existing building will be renovated inside and out. There will be new a…pavement, parking lot, landscaping throughout. We would keep the two existing a…access drives as they are but it would be a complete renovation and new…new project.

Mr. McKelvey: Is Dunkin Donuts aware of this?

Mr. Gillespie: Oh yeah, absolutely. Yup.

Mr. Donovan: Now if I could a couple…a couple of questions. First, I…I believe…I believe we sang this song before.

Mr. Gillespie: Yes.

Mr. Donovan: Back in 2004 and the Board at that time issued an Interpretation a…that the proposed business falls within the definition of a food preparation shop use and granted a….and said you could have that on the condition that there’d be no drive-thru window. So a…that constitutes a prior precedent of this Board so what…what’s different today other than more Dunkin Donuts have drive-thru windows? What….what…what would be the reason for the justification for…for you to give to this Board to revisit their prior determination on the exact same issue?

Mr. Gillespie: Well, we would just like the Board to consider at that time we would have been completely demolishing the…the existing building. And we also, I don’t think that the argument or the…I don’t think that it was presented or a…or it wasn’t requested that the Board consider that there are the three drive-thru bays for car wash there today. So that’s why we’re here today to you know, maybe rethink it a…we’re keeping the existing building, we’re keeping the drive-thru where those car wash bays are today and we would like the Board to consider the uniqueness of this property. It’s…it’s not like any other that it has those, we’re keeping the building and because it’s so well buffered we would just like the Board to…to reconsider a….some of those…those issues.

Mr. Donovan: Okay, part of your application or your…your…the main part, the main thrust of your application relative to the drive-thru is a use variance. Your application is for a use variance and that would be a use variance. In a use variance you need to present to the Board competent financial proof as to why you couldn’t get a reasonable return a…on…on the business with(out) the drive-thru. By competent financial generally you know, by an accountant or some other financial person would have to give proof to the Board. If you don’t…if you don’t have that proof then the Board can’t grant the relief. As part of that you’d also have to demonstrate that none of the permitted uses…that you could not get a reasonable economic return from any of the permitted uses in the zone. So retail, professional, research, indoor amusement, you run down that list so absent your demonstrating that to us the Board is not in a position to grant your variance.

Mr. Gillespie: Okay, I mean we could…we could request the Board maybe table the application and we could come up with a…some additional information a…if that’s possible?

Chairperson Cardone: That would be needed, yes.

Mr. Gillespie: Okay.

Mr. Donovan: Now I…I don’t mean to be unduly difficult tonight but one other issue comes to mind and…and Jerry I’m looking at you only because I see food preparation shops as permitted accessory uses. Accessory to retail, personal service stores, shopping centers, theatres and something else…how…how did…I’m not sure how this got from a…what use is a Dunkin Donuts accessory to? I guess is my question. And I don’t know how this got some sort of conditional approval from the planning board in 2008 without that issue being addressed.

Mr. Canfield: That…I have that question as well and this is…this project has an extensive history a…and I don’t mean that in a bad way but it has a lot of history between going between the Zoning Board, the planning board, Zoning Board back and forth. But let me start by saying that the car wash a…is a permitted use in the B Zone. A car wash does permit drive-thru. What is the difference between a car wash and a Dunkin Donuts? I don’t know that that’s the question but I just put that on the table just to get everyone thinking in that respect that why and how was it a car wash but now a Dunkin Donuts is not permitted? The classification of the use which typically is the primary, most important thing that needs to be determined to find out what rules apply to what type of project. In this case a…the determination was made by the Zoning Board back at that time that Dunkin Donuts was a food preparation a…establishment. I agree with you the way it’s listed it…in the Bulk Use Tables, food preparation is only listed as an accessory use to those given a…occupancies that are listed in the Bulk Use Requirement. This application is none of the above nor was the previous application however that’s the action that the Board had taken at that time. It’s always been our understanding that once the Board sets a precedence with a decision or a ruling made there is no need for a further update of that and I believe a component of this application was a request of updating or reconfirming that original opinion. I’m not sure that that’s appropriate and that’s what’s required or needed here.

Mr. Donovan: Yeah, that’s a good point Jerry and I saw that as well. Basically when you talk about if we issued an area variance or some type of variance and it’s good for six months with a six month extension that’s for the applicant. Right, if the Board issues a decision, the precedent stands. In the absence of change in circumstance or new information whether the project was built or not built is not relevant. We’re…we’re duty bound to follow our prior decision unless there’s some compelling reason, new evidence, change in circumstances that will lead us to change that decision. So it doesn’t need to be reaffirmed.

Mr. Canfield: Okay, that answers a big question simply because there is and will be other applications similar to this. So if the precedence has been set that Dunkin Donuts a…is not a restaurant, it’s not a fast food, it’s not a convenience store, it’s being ruled as a food preparation then that makes a difference for future applications. Thank you for that clarification.

Chairperson Cardone: If I could interject the report from the Orange County Department of Planning has a suggestion referring to this. Considering the previous…the previous appeal questioning the validity of the proposed project categorized as a restaurant use and the aforementioned use variance sought County Planning recommends that the Town consider appropriate Zoning Code changes to better define the uses associated with restaurants over fast food establishments. And…

Mr. Canfield: And I concur with that.

Chairperson Cardone: Right, I think that’s a valid point…

Mr. Canfield: Our Zoning Code unfortunately does not define fast foods. Local Law #2, I believe it was of 1998, there were several changes made and fast food establishments and permitting them was one that was included in the Bulk Use Tables. However, it was never defined. So I think a…and we have a Councilperson in the room, hint, hint…it may be an item that the (Town) Board may want to look at. I know there are other zoning issues on the Board’s plate right now and they are starting to pick apart at those to kind of clarify some of these but I may suggest perhaps a letter from this Board…the Zoning Board, requesting that the Town Board take that into consideration to expand upon those definitions. That would help us greatly.

Chairperson Cardone: Thank you.

Mr. Ruggiero: We…we also already started talking about this, two weeks ago Gil and I and we do want to take a look at Route 9W and that’s that area where tractors can be permitted and you know, changes can be made in that area, basically it is a commercial area. And I personally don’t agree the way it is zoned you know, the way that it’s written up now so there’s quite some changes there. But if we can get a letter from you requesting that to have us look at that that also help with the other Council Members.

Chairperson Cardone: Okay, thank you.

Ms. Gennarelli: And that was Councilman Ruggiero for the record.

Chairperson Cardone: Okay, I also have a letter here that I just want to read for the record from Pattycake Playhouse to the Zoning Board of Appeals:

This letter is submitted in support of the application known as: Laxmi Estates and the project being proposed as Dunkin Donuts with a drive-thru. I request that this letter be made part of the record of that case and ask that it be shared with each member of the Zoning Board of Appeals. The parcel of property located at 5277 Route 9W, Newburgh, currently is sitting with a vacant run down building on it. As the Board knows, that business area of 9W is suffering from abandoned buildings as well as non-aesthetic looking ones. To bring a Dunkin Donuts to this parcel would be to revitalize the eyesore while bring financial returns on the property. The approval of a Dunkin Donuts with a drive-thru I feel will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located. Respectfully submitted, Pattycake Playhouse, Donna Conklin, owner.

And also the report from the County, in addition to what I had read is, Local Determination.

Mr. Ruggiero: Grace, can I get a copy of that letter to the Board?

Chairperson Cardone: Yes.

Mr. Ruggiero: Thank you.

Ms. Gennarelli: Mr. Canfield gave Mr. Ruggiero the letter.

Chairperson Cardone: Do we have any comments from the Board?

Mr. McKelvey: Would the Board (Town) like a copy of that letter too?

Mr. Ruggiero: What’s that?

Chairperson Cardone: He’ll get it to them.

Mr. Ruggiero: Yes.

Mr. McKelvey: Okay.

Chairperson Cardone: Okay, we had someone from the public who wanted to speak? Yes, would you go to the microphone? Please identify yourself for the record.

Mr. Fenelon: My name is Pat Fenelon, I am a principal of AGL Welding Supply which is a…a neighbor of the proposed Dunkin Donuts. And I have a few concerns, first of all we…we look forward to improvements and development in that area, it’s a eyesore. One of our…one of our concerns would be that a…the side yard that is contiguous with our property. We have a…a commercial operation going so to speak. We have trucks and…

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Mr. Fenelon: And I could talk to the principals or the people that are representing the owners. But that would be required on a building plan? Anyway screening?

Chairperson Cardone: Yes.

Mr. Fenelon: Very good. Thank you very much for your time.

Chairperson Cardone: Thank you. Is there anyone else from the public that has a comment? Yes, would you go to the microphone and identify yourself?

Mr. Crisci: My name is Steve Crisci and I own that Red Rock Garden Center across the street from the a…proposed property. Mr. Donovan I got a question with all due respect to your…yourself. In 2008, every business was left literally slaughtered, you don’t call that extenuating circumstances to continue the application as it was and maybe adjust it a little bit? I mean, the recession that slammed us all. It made us get up four o’clock in the morning every morning for seven straight years. You don’t think that should change? I’m not…I’m not gettin that…

Mr. Donovan: I…I…

Mr. Crisci: Well let…go ahead, what…what is your answer to that?

Mr. Donovan: No but this is your time, go ahead.

Mr. Crisci: All right well, you know, it kind of blows my mind that…I mean we’ve been looking at that property, not only us but twenty thousand cars a day are looking at that property. They come into my place and they…they look across the street and you know what they say to me? What’s up with that? That’s what they say to me. What’s up with that? That…that’s what everyone says. I don’t get it. I mean this guy is going to put millions of dollars into that property. The QuickChek is beautiful, that…that M&T Bank is awesome, that’s a beautiful thing. You come off the exit on…on…from Route 84 head north on 9W and that just tells the mentality of the people that M&T Bank is beautiful and you say, wow, this must be a beautiful place, keep driving up the road now you see that QuickChek beautiful. Don’t stop now. That’s all I’m asking you. It’s a beautiful thing to seen that kind of stuff. That’s really all I want to say.

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Chairperson Cardone: Do we have any questions or comments from the Board?

Mr. McKelvey: I think we should hold this over and get more information, because of the use variance.

Mr. Gillespie: I mean you would need some actual paper documentation?

Chairperson Cardone: Yes, correct.

Mr. Gillespie: I mean the owner is here tonight. He could speak as far as the history of the property but I guess what I’m hearing from you is that you would need more than that, some actual physical…

Chairperson Cardone: That’s correct.

Mr. Gillespie: …paper evidence?

Mr. Maher: Well there are…there are five points. Dave to you want to…?

Chairperson Cardone: Four points.

Mr. Donovan: Actually there are four points on the use variance.

Mr. McKelvey: Four points.

Mr. Donovan: And…and, you know, we can’t…I can’t give you legal advice. My job is to give legal advice to the…to the Board but they’re easy enough to locate those points. You may want to…I don’t know if the applicant has his own attorney a…but you…you can find those elements relatively easily and if you make a presentation to the Board, you know, the…the Board will be receptive to that presentation, I’m sure.

Mr. Gillespie: Great.

Mr. Donovan: If it’s the Board’s inclination to hold the Public Hearing open you just need a motion to continue the Public Hearing, I assume that would be on both applications, the area and the use variance applications…

Chairperson Cardone: Yes.

Mr. Donovan: …to the June meeting?

Mr. Maher: I’ll make a motion to keep the Public Hearing open.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Ms. Gennarelli: That’s June 26th.

Mr. Canfield: Grace, does that hold true for both applications, on the front yard as well?

Chairperson Cardone: Yes. We’re holding them both open.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 7:43 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:43 PM)

WILLIAM NOBLE 44 ODELL CIRCLE, NBGH

(51-1-21) R-1 ZONE

Applicant is seeking area variances for the rear yard setback, the combined side yards setback, the maximum lot building coverage and the maximum lot surface coverage to keep the Prior Built wraparound deck on the residence.

Chairperson Cardone: Our next applicant William Noble.

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

Mr. Brown: Okay, my name is Charles Brown, I’m the engineer for the applicant a…this is an existing house on a lot on Orange Lake. A…it was built in 1954 prior to Zoning a…back in 2003, there was an application made for an addition a…to the south side, a supposed to be a full addition. That application did come before this Board but again at that time it was the lot was zoned R-3. A variance was granted for that work however than…than build addition he put in the deck and a roof over it and left it open a…and then in 2006 this property was zoned R-1 which totally obviously changed all the setbacks, lot areas, all…all the parameters for the lot. It is on water and sewer so under the R-3 it was only a 12,000 sq. ft. (12,500) required lot size a…the setbacks were fifteen foot for each side, forty for the front and forty for the rear. A…the setbacks are obviously much larger now as you can see on the Table. Everything that’s…that’s here was…was built prior to that zoning change. It is consistent with the area; it will not a…have an adverse effect on the neighborhood again because there’s no additional work proposed. Also it will have no adverse effect on the environment for the same reason. It’s my understanding that the Building Department referred us to the Zoning Board here because what was built was different than what was permitted. Again what was permitted was a full addition. What was built is an open porch with a roof. A…a…and the last thing, is it self-created? I mean in my opinion, no, because a…a…we were told by the Building Department this was referred to the Zoning Board because that Permit was held open and not closed out while the zoning changed.

Ms. Smith: Jerry, the dimensions of the open porch…is it the same as what was planned for the addition?

Mr. Canfield: I think Mr. Brown can best describe that.

Ms. Smith: Okay.

Mr. Canfield: I think it’s slightly different but Charlie do you remember?

Mr. Brown: Inaudible.

Mr. Canfield: It is the same?

Ms. Gennarelli: Can you give him the microphone? Thank you.

Mr. Canfield: Okay.

Mr. Brown: Yes, it’s the same dimensions. The…the foundation a…for the proposed addition is what used for the deck. The deck is not cantilevered a…a…the roof may be set back a little bit so the roof would actually be less of an impact but generally you guys don’t really look at soffits anyway so that’s kind of irrelevant.

Chairperson Cardone: Jerry, could you go through the history of the Building Permit that he stated was held open and…the statement that was just made about the and then the zoning changed, I don’t...?

Mr. Canfield: Well I believe that portion of the Town the zone did change a while back. But there were Permits. The applicant did come before the Board for the addition and Mr. Brown did indicate but I think after that point the owner had a desire to change and not do the addition that was proposed and they ended up doing this covered porch so to speak. If there were no roof on this, this would not be an issue…

Chairperson Cardone: Right.

Mr. Canfield: …because the actual deck area is less than twelve inches off the ground. That type of structure is exempt from areas…area requirements and side yard setbacks but because it does have a roof over it it’s part of the…the structure.

Chairperson Cardone: Thank you.

Mr. Brown: Well with respect to the rezoning it was March 6, 2006, Local Law 3-2006, was the rezoning from R-3 to R-1 in this area.

Chairperson Cardone: Right, thank you. Any questions or comments from the Board?

No response.

Chairperson Cardone: Do we have any questions or comments from the public?

No response.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Brown: Thank you.

(Time Noted - 7:49 PM)

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ZBA MEETING – MAY 22, 2014 (Resumption for decision: 8:55 PM)

WILLIAM NOBLE 44 ODELL CIRCLE, NBGH

(51-1-21) R-1 ZONE

Applicant is seeking area variances for the rear yard setback, the combined side yards setback, the maximum lot building coverage and the maximum lot surface coverage to keep the Prior Built wraparound deck on the residence.

Chairperson Cardone: On the application of William Noble at 44 Odell Circle, seeking area variances for the rear yard setback, the combined side yards setback, the maximum lot building coverage and the maximum lot surface coverage to keep a Prior Built wraparound deck on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application? Do we have a motion for approval?

Ms. Smith: I'll motion for approval.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:56 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:49 PM)

ALAN B. CRAWFORD 1836 & 1834 ROUTE 300, NBGH

(14-1-17 & 14-1-18) A/R ZONE

Applicant is seeking area variances for Lot #1-the rear yard setback; for Lot #2-the lot area, lot width, lot depth, the front yard setback and the maximum lot building coverage for a lot line change to relocate the boundary line between two parcels.

Chairperson Cardone: Our next applicant Alan B. Crawford. Please identify yourself for the record.

Mr. Yanosh: Good evening, my name is Dan Yanosh, surveyor for Mr. Crawford.

Chairperson Cardone: I believe there was a question on…

Mr. Yanosh: Okay, I guess there was the question…

Chairperson Cardone: …relating to the survey.

Mr. Yanosh: …last month about the variances that were requested. When we went to the planning board meeting a couple of months ago a…we needed the variances listed in the letter from Mr. Donnelly a…for all the six different variances. Most of them are pre-existing, non-conforming uses but we were going to take care of that with the meetings at the Zoning Board. After the planning board meeting, I talked with my client and I talked to Pat Hines, the Town engineer, I made the lot width of proposed Lot #2 wider to include frontage along their existing driveway so both lots have frontage on an existing driveway. It will be easier for ingress and egress with an easement so in that case we do not need a lot width requirement now. The variance was for one hundred forty-five feet for Lot #2 and now the lot width is a hundred and seventy-three point five feet so we don’t need that variance anymore. We still need the variance for proposed Lot #1 the rear setback, fifty feet and forty-nine point five which is a pre-existing non-conforming use, we can’t change that at all. The area for Lot #2, 40,000 sq. ft. we’re changing it from 9,992 sq. ft. to right now a new…since I moved the line over to 15, 253 sq. ft. We’re making an old issue better. The lot depth for Lot #2, a…formerly it used to be a…seventy- two feet now we’re making it a hundred and fourteen point seven where a hundred and fifty is required, we’re making it better. The front yard setback on Lot #2 is eight point seven feet pre-existing condition where fifty feet is required and the building lot coverage it should be ten percent, it was a…at one time sixteen point two percent now we’re taking it down to ten point six percent. So we’re making pre-existing, non-conforming issues better and some of them we just have to…to deal with as we go along here.

Chairperson Cardone: Okay, thank you. And I believe Mr. Donovan you were the one with the question on that.

Mr. Donovan: That’s correct and Mr. Yanosh has answered my question.

Chairperson Cardone: Any questions or comments from the Board?

Mr. McKelvey: I think that was an improvement, a big improvement.

Mr. Yanosh: Yes, that’s what we were looking to do.

Chairperson Cardone: And in case I didn’t read it last month the County report is Local Determination. Do we have any questions or comments from the public?

No response.

Chairperson Cardone: Anything else from the Board?

No response.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

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

Ms. Smith: I’ll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Yanosh: Thank you.

(Time Noted - 7:54 PM)

ZBA MEETING – MAY 22, 2014 (Resumption for Decision – 8:56 PM)

ALAN B. CRAWFORD 1836 & 1834 ROUTE 300, NBGH

(14-1-17 & 14-1-18) A/R ZONE

Applicant is seeking area variances for Lot #1-the rear yard setback; for Lot #2-the lot area, lot width, lot depth, the front yard setback and the maximum lot building coverage for a lot line change to relocate the boundary line between two parcels.

Chairperson Cardone: On the application of Alan B. Crawford at 1836 & 1834 Route 300, seeking area variances for Lot #1 and Lot #2 as stated this evening because there were changes. Do we have discussion on this application?

Mr. Manley: The changes appear to be a…significant from the last time, he’s actually eliminated some variances and increased the a…conformity of the lot so they have done a substantial a…amount of changes.

Chairperson Cardone: Do we have a motion for approval?

Mr. McKelvey: I'll make a motion.

Chairperson Cardone: This was a Type II Action under SEQRA.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:57 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:55 PM)

LAMBRINI ANDRIANIS 32 COMMONWEALTH AVENUE, NBGH

(46-5-8.1) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings and the maximum allowed storage for not more than (4) four vehicles to build a carport (Two - 18 x 21 combined) 18 x 42 on an accessory building.

Chairperson Cardone: Our next applicant Lambrini Andrianis.

No response from audience.

Chairperson Cardone: Is Mr. Andrianis here?

No response from audience.

Chairperson Cardone: Okay, we will go on to the next.

Mr. Donovan: Just to be clear, we will come back to that.

(Time Noted – 7:56 PM)

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(Time Noted – 8:25 PM)

Chairperson Cardone: Okay and once again I will call for Lambrini Andrianis.

No response from audience.

Chairperson Cardone: Okay, obviously the applicant is not here but there may be members of the public here and also Mr. Canfield may wish to make comments.

Mr. Canfield: A…yes, Miss Chairman though there are members from the public a…residents from the area a…a suggestion would be perhaps we could hear from…

Chairperson Cardone: Yes, we planned to.

Mr. Canfield: …to the condition of the property. The last appearance by Mr. Andrianis I believe he had made some a…commitments to the Board as to what would be the condition of the property and what his attempts would be. Perhaps the neighbors could attest to what has actually happened there? I don’t know if that’s a…(Inaudible)

Chairperson Cardone: And some Board…

Mr. Canfield: (Inaudible)

Chairperson Cardone: …some Board Members may also a…I know I was there on Saturday. I did not get a chance to visit the property today but I was there on Saturday. I would like to hear from the neighbors. If any of the neighbors would care to make a comment please identify yourself.

Mr. Gozza: My name is Anthony Gozza, I’m at 10 Susan Drive, I have noticed some improvement. Okay? But it’s my opinion that if the applicant is approved with this a…metallic building a…I suspect strongly that he will revert back to what he was originally doing with his commercial vehicles and a…I just see it as an excuse to perhaps work and be protected from the rain. Okay? Again my main concern is that it…its…this particular building would just devalue the market value of my particular property…on my property of my home and that’s a major concern to myself. Okay? A…other than that a…I don’t know, this is the third month we’re here…

Chairperson Cardone: Yes.

Mr. Gozza: …and a…well, thank you.

Chairperson Cardone: Okay, thank you. Do we have any other comments?

Mr. Palermo: I’m Tom Palermo, I live on 8 Susan Drive and a…Andrianis hasn’t done anything in six and seven years in there as Jerry can verify that. And he just keeps making the place worse than what it was. He had not regard for his neighbors or I don’t think he has any regard for you people or he would be here tonight. So I can’t see him getting the variance to put up that carport which he’ll only add more junk to it and abuse the property more than it is now.

Chairperson Cardone: Thank you. Do we have any other comments from the public or any comments from the Board?

Mr. Donovan: Jerry, to your knowledge has there been a final adjudication or any adjudication in court proceedings?

Mr. Canfield: A…no, we are going to go to trial on this.

Mr. Donovan: Do you have any idea when that is?

Mr. Canfield: I believe the next conference is set for next week.

Mr. Donovan: Okay, thank you.

Mr. McKelvey: I will say I was there Saturday also. He has done some cleaning but he hasn’t got completely finished.

Ms. Smith: I was there on Tuesday. It has…it’s cleaned up a little bit, yeah.

Mr. Manley: There’s been some cleanup. I guess my…my real concern is that the size of the structure…

Chairperson Cardone: That is a concern.

Mr. Manley: …that they want to put there really doesn’t conform to the neighborhood. It’s residential, this is kind of a real commercial type of structure…a…the gentleman has plenty of room in that carriage house. If the carriage house were to be emptied out and cleaned out of all the unnecessary stuff that maybe is in there the applicant has room that he can put his other stuff in there perhaps therefore not needing the variance. So, you know, I just have concerns. I have concerns with the…you know; he mentioned that he wants to bring cars from Poughkeepsie into Newburgh. A…I just think that the concerns that the neighbors have I…I…I agree that there…there may be additional issues in the future if the variance is granted.

Ms. Smith: The structure is very big. It’s going to be forty feet in length. Correct? When they go end to end.

Chairperson Cardone: Right.

Mr. McKelvey: I couldn’t tell either whether that truck that’s on the property is licensed. He had tires set in front of it which was another eyesore.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

Ms. Smith: I will motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I would ask you in the interest of time if you would wait out in the hallway and then we’ll call you in shortly.

(Time Noted - 8:31 PM)

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ZBA MEETING – MAY 22, 2014 (Resumption for decision: 8:57 PM)

LAMBRINI ANDRIANIS 32 COMMONWEALTH AVENUE, NBGH

(46-5-8.1) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings and the maximum allowed storage for not more than (4) four vehicles to build a carport (Two - 18 X 21 combined) 18 x 42 on an accessory building.

Chairperson Cardone: On the application of Lambrini Andrianis, 32 Commonwealth Avenue, seeking area variances for the maximum allowed square footage of accessory buildings, the maximum allowed storage for not more than (4) four vehicles to build a carport on an accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Maher: I do think the a…the size the request is…is excessive and I don’t really think it fits the character of the neighborhood.

Mr. Manley: I would concur.

Chairperson Cardone: Do we have a motion for approval on this application?

Mr. Masten: I'll make a motion.

Chairperson Cardone: Do we have a second?

No response.

Chairperson Cardone: Do we have…we have no second and I will ask do we have a motion for disapproval on this application?

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried (for disapproval).

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:58 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 7:56 PM)

LAKE CREEK PROPERTIES, LLC / 65 NORTH PLANK ROAD, NBGH

LINGO ASSOCIATES, LLC. (76-1-1.1) B ZONE

(McDONALD’S)

Applicant is seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment.

Chairperson Cardone: Our next applicant Lake Creek Properties, LLC./Lingo Associates, McDonald’s.

Ms. Gennarelli: Okay, on this one the paper had omitted the ad from the Mid-Hudson Times. So the ad was published, the Legal ad was published on March 19th so all mailings and postings and publications are in order.

Mr. Myrow: Good evening, my name is Jay Myrow, I’m an attorney with Blustein, Shapiro, Rich & Barone in Goshen, New York and I’m the attorney for the applicant in this matter. And I understand this matter is a…we haven’t been representing McDonald’s and except from the last time the Board met on this matter, I believe it was last November (February 27, 2014). A…this application is for an Interpretation and it stems from an application to the planning board a…which was a proposal for McDonald’s to basically demolish a…their existing building and put up a new prototype basically to modernize their facilities. I believe the matter was referred to this Board from the planning board for an Interpretation as to whether McDonald’s use as a non-…as a legal non-conforming use could in fact be demolished and rebuilt pursuant to the terms of your Code and the applicable section of the zoning laws, Section 185-19 which a…applies to non-conforming buildings and uses. So I believe the issue is a…from our point what we’re looking for is an Interpretation of the Code that would direct the planning board a…that in fact, demolition and re…reconstruction of the building is permitted under you Code and McDonald’s has proposed basically to go from a…the proposal is to go essentially from a fifty-six square foot footprint to reconstruct…to actually a smaller building to essentially a fifty-two hundred… Did I say fifty-six hundred? I said fifty-six square foot? That’s small. Okay, so from a fifty-six hundred square foot building to a fifty-two hundred square foot building. So a…but the reconstruction would not be exactly in the same footprint a…so we want…we would like to also interpret that when they do the rebuild it can be substantially in the same but because the design of the building is going to be different…it’s permitted to actually modify and tweak the exact location of the reconstruction as to where…where it will be built. And I’m hoping that I’m stating everything that the Building Inspector might need to allow us to go forward in the planning board. So I think that’s the scope of what the interpretations are that we need. So a…I would call the Board’s attention to a…Section 185-19 of the Zoning Law, sub-section B-2 and I believe this is what we claim to be the authority to allow the building to be demolished and reconstructed and basically B-2 says that restoration after damage in non-conforming buildings shall not be restored or other than…for other than a non-conforming use after damage of more than 50% from any cause unless a prior non-conforming use is reinstated within one year of such damage. So the key points there are from any cause and we’re asking the Board to interpret that to mean that an intentional demolition of the building will trigger a one year period to reinstate the a…the use a…so long as we’re not enlarging or otherwise a…unlaw…violating any other bulk setbacks. And in terms of…I would call the Board’s attention to B-1 a…relocation in a non-conforming building or structure shall not be moved to another location where such building or structure would also be non-conforming unless such movement would decrease the non-conformity. In this case a…it’s not necessarily the movement that’s going decrease the non-conformity it’s the fact that we’re actually reducing the size of the building. So, it’s our position that under B-1 a minor deviation in terms of where your footprint is going to be should be permitted under that section. So those are essentially the two sections that we believe support our application for the interpretation. I’m happy to answer any questions.

Mr. Donovan: Is everybody satisfied with the information that they have the map that they have now shows the existing location plus the new location? Or do you have anything that’s colored?

Mr. Myrow: I…I apologize. David Wisotsky is here with me from Bohler Engineering. He has renderings and he has a map with the existing footprint…

Mr. Donovan: The other guy from Bohler wasn’t good enough for this application?

Mr. Myrow: Say it again.

Mr. Donovan: I don’t know, we got two guys from Bohler tonight…I…sorry.

Mr. Wisotsky: They had to send in the better looking one right now.

Mr. Donovan: Do you have anything that you could put, I mean we have a map here; do you have anything you can put up on the board for us?

Mr. Wisotsky: Okay and for the record it’s David Wisotsky with Bohler Engineering, I’m representing McDonald’s and what I…what I put up on the…on here is…you should also have a copy of in your application but just for reference this is…this is the a…a…land title survey prepared by Control Point Associates. It just shows…shows the existing…the existing conditions. The existing McDonald’s building as Jay had mentioned is roughly fifty-six hundred square foot store a…that fronts North…North Plank Road and it is in the a…in the location right…right in the middle…right in the middle of the plot. And then moving right ahead to a rendered version of the site plan that…that actually is the same…same as Sheet 4 that’s in your packet. It’s just colorized for presentation so you can see…so you can see the difference. This is a…the a…proposed McDonald’s building is the orange or yellow piece in the middle surrounded by the grey pavement and the green landscaping. So if you compare and contrast the two, the a…in this layout, the…the proposed McDonald’s is you know, is roughly, roughly ten to fifteen feet further to the south than…than the existing building and it’s also about another twenty or thirty feet to the west off of the…off of the road…off of North Plank Road, away from North Plank and the existing condition, which actually eliminates one of the existing setback variances. The existing has a non-conforming front setback which the…the proposed condition would actually eliminate that and shift the building down. The layout…the layout as proposed really remains the same it…it…it operates in a typical counter clockwise rotation to get to the drive-thru in the back with parking around it. And that’s the same as the existing case and proposed so the a…the proposed building only roughly fifty-two hundred square feet. I think to be exact its fifty-two hundred and six square feet versus the existing which is fifty-six hundred and twenty a…sorry, fifty-six hundred and fifty-seven square feet so it’s a…in our view it would be a decrease of the non-conforming use and…and make a better…a better, more efficient kind of site plan as well.

Chairperson Cardone: I have a question for you Dave. Would this fall under B-1, if they’re decreasing the non-conformity?

Mr. Donovan: Well, I, you know, I guess the…the question is B-1 a non-conforming building or structure shall not be moved to another location where such building or structure would also be non-conforming unless such movement would decrease the non-conformity. A…so I think the question before the Board is could you rationally determine that a…to satisfy an existing side yard setback which presently is being violated plus building a small building would that decrease the non-conformity? I think that you could a…you have a rational basis to draw that conclusion.

Mr. Maher: Then we get to number two.

Mr. Donovan: Then you get to number two.

Chairperson Cardone: Number two.

Mr. Donovan: I think Jerry has a question.

Chairperson Cardone: Yes?

Mr. Canfield: If I may? And exactly the point I was going to make. A…I think counsel for the applicant has done accurate presentation however, I respectfully disagree with that B-1 does apply because the B section pertains to non-conforming buildings. It is not the building that’s the question here it’s the use.

Mr. Donovan: I thought I heard that there was a setback being violated by the existing structure that would be a…which violation would be cured by moving the building.

Mr. Canfield: I think the…the non-conforming use…see by virtue of tearing down the building or the need for a site plan negates any non-conformities so that’s what brings the application here. It was a referral from the planning board for the site plan and the demolition and reconstruction of a new facility. By virtue of that site plan, you lose the existing non-conforming use protection so that’s what brings the application here. And I think the accurate application of the Code is A non-conforming uses which that is what directs you to B-2…

Chairperson Cardone: Right.

Mr. Canfield: …which deals with non-conforming buildings specifically to restoration after damage a…I think the applicant’s representative has made a presentation with respect to that our Code does not specify how the damage is to be incurred. He…he’s claiming that because we’re tearing the building down that’s damage. A…and it could very well may be, the use and the aging of the building could be damage that is irreparable and there’s a need to take the building down and reconstruct it. But I don’t believe that the B-1 Section is what applies here. And that’s just a clarification point.

Mr. Myrow: Well if I could…

Chairperson Cardone: A-1 is what you would apply.

Mr. Canfield: That’s correct.

Mr. Myrow: Well, my…my only mention of B-1 was with respect to the reconstruction of the building and the necessity. I believe it came up in front of the planning board, I believe it was asked a…as to whether or not if the building…if it was permitted to come down and go back up whether it had to be exactly in the same footprint. I believe that was asked. I wanted to make sure, even if it wasn’t, I wanted to make sure that we don’t have to come back here if the demolition is permitted and we can reconstruct if they have to tweak the location and the Section 1 does apply to location. And it pertains specifically to the building…in…in my opinion it what would be what was proposed to be reconstructed so my reading of B-1 allows…is authority to say listen, you need…if you’re going to rebuild the thing you don’t have to put it exactly brick for brick within the existing footprint. Not only are you allowed to rebuild it under B-2 but you do it if you do something that rationally makes sense and in our case we’re actually building a smaller building. The planning board doesn’t have to say to the applicant if you deviate one foot from the existing footprint you got to go back to the ZBA. I don’t think that’s what was intended and I wasn’t looking at B-1 for a forty…to tear it down and build it back up. That’s a separate question and I agree that’s covered under B-2 but I was only referring to B-1 for the proposition that if we get past B-2 can the planning board look at this and say we can actually allow you to locate it a little off from where the prior one was. That was…that was my only purpose of referencing it that way.

Chairperson Cardone: But I think what Jerry is saying you have to get past A-1 first.

Mr. Canfield: That’s the way I interpret it.

Chairperson Cardone: That’s right.

Mr. Canfield: That’s correct.

Mr. Myrow: To get past which?

Chairperson Cardone: A-1.

Mr. Wisotsky: A-1?

Chairperson Cardone: Yes.

Chairperson Cardone: Or placed on a different portion of the lot or a…

Mr. Myrow: But A…A-1 says a…

Chairperson Cardone: …parcel of land.

Mr. Myrow: …non-conforming use shall not be enlarged, extended, reconstructed or restored except in accordance with Sub-Section B-2. So that’s how I go to B-2.

Chairperson Cardone: But it reads or placed on a different portion…

Mr. Myrow: Yeah, B-2 is…

Chairperson Cardone: …of the lot or parcel.

Mr. Myrow: Listen, B-2 is what’s going to allow us to either knock this thing down and rebuild it or not. If…if the Board interprets this to say that for any cause, and damage from any caused includes an intentional demolition which in my opinion actually there’s a public policy reason to include that language, I don’t think it’s just random, public policy is…is that, you know, if you have a building… I believe this was built in the ‘70’s…

Mr. Canfield: I believe that’s been quite a while.

Mr. Myrow: …yeah, so now you’ve got a building that’s thirty, forty years old, why force the…the…why force these people to continue to operate in a building that may over time just use…lose its usefulness. You’re code actually provides, hey, if you want to modernize it by tearing it down and rebuilding it there’s actually authority for you to do that because an intentional demolition could fall within any cause a…that…that’s, I believe, there’s actually a real…a…a…a strong public policy argument to support the language there in terms of allowing for a teardown and a buildup.

Mr. Donovan: Jerry…

Mr. Myrow: Number one your window.

Mr. Donovan: Jerry, can I go back to 185-19-B? A non-conforming building or a building housing a non-conforming use, do we cover both the building and the use in there or…or do you still think I’m wrong? Cause I could very well be but…

Mr. Canfield: It does say or non-conforming use but A-1 is what reverts you to B-2. That’s what I’m basing my opinion on.

Chairperson Cardone: Right.

Mr. Canfield: However, ultimately this Board has that authority to make that determination. I’m just rendering my opinion on it.

Mr. Donovan: And your opinion is valued.

Mr. Manley: And I think that this…this Board has taken very painstaking approaches towards Interpretations as interpretations do often times set precedent. And you bring up a…a valid point but one of the things that…that I would ask, playing devil’s advocate, and asking you the question if that’s so obvious, why wouldn’t the Town simply include that in the Code? When they developed the Code, why not…why not be more explicit in expressing exactly what you said, you know that, you know if you wanted to demolish the building for purposes of the …the building has used up its useful life then that is covered under that. I mean, it...it specifically says damage a…and in the subsequent sentences it does say from any cause but it…it specifically references damage so…so…

Mr. Myrow: But you can’t ignore for any cause, the three words.

Mr. Manley: …but I mean you are splitting hairs. Is it…is it intentional damage or unintentional damage?

Mr. Myrow: Well it says for any cause. From any cause and that to me is…is a…an…expresses an intent on the part of your legislative body that it’s supposed to be…to have a broad interpretation and now…

Mr. Manley: And we…

Mr. Myrow: …you could…

Mr. Manley: …we revisited the Code back in…

Mr. Myrow: Wait.

Mr. Manley: …2005…

Mr. Myrow: Yes.

Mr. Manley: …when they redid the Master Plan and perhaps that should have been, if that was a…a thing that stuck out to them that should maybe have been addressed in…

Mr. Myrow: Maybe.

Mr. Manley: …in ’05.

Mr. Myrow: Well, you’re assuming that it’s not as intended. It’s supposed to be that broad. Any da…any cause, I mean you’re assuming that because they didn’t elaborate on it they should have elaborated on it. My position would be that by looking at…at the language in it it’s broad for a particular reason and that particular reason might be the case where damage, although intentional, serves a legitimate public purpose. And that is to prevent businesses that have long standing non-conforming uses a…it’s not intended, our code is not intended to prevent them from to modernizing their facilities even if it’s a complete rebuild. That, you know, we have restrictions on non-conforming uses but we are not restricting to the point where for a one year period if you chose to tear your building down to modernize and to make it better and to certainly make it more efficient and more functional we’re going to give you the opportunity to do that. A…would it have been nice if…you know, listen, I don’t know how many pages our code is but if every time you wanted to see the elaboration you would like to have your Code would be three times as big as it is. So you sit here as the Board that actually interprets the Code and I guess the ultimate question here is whether…whether those three words for any cause have a broad a meaning as I believe they’re…they’re intended to have. And I…I…I…I appreciate the comment because it’s always nice especially from where I sit to have it elaborated exactly as you would want it to be but when I look at the read…when I look at the words, when I analyze a code there’s two things that could have happened here. The Board could have simply not elaborated and they should have or they saw no need to elaborate, we want it to be this broad. So, I would suggest that because you could actually point to a public policy reason and a legitimate, health, safety, public interest reason why you should give it a broad meaning I think if you look at…I think there’s plenty of reasons why that interpretation should be given. And ultimately, you know, to cut to the chase and stop talking legalize you are going to have a better building. It’s a McDonald’s. It’s been there forever. It’s probably rundown. It’s probably withstood, you know, withstood its useful purpose and at the end of the day they’re going to rebuild, it’s going to be pretty much the same where it is but it’s going to be a more efficient layout. It’s going to cure some of the setback problems we have. Is that what the Board…is that what you…is that what the Town Board intended? I would say, you…certainly you could give a fair reading to that.

Mr. Manley: Just one more question. What about the non-conforming use perhaps that maybe isn’t so desirable? In this particular case you are making the statement that your particular building which is a nice building, no doubt that it’s going to be much nicer than what you have but what about that one building that is non-conforming? Or it could be two buildings or three buildings, in the future, that all of a sudden the public hears is going to re-modernize itself and re-change and now it doesn’t have to go through this…this oversight because of this new interpretation that this Board rules on…

Mr. Myrow: Well.

Mr. Manley: …and all of a sudden you have something that now is going to be brand new that is despised by the community without having the opportunity to come before the Board because that interpretation has been made. So I throw that question at you. What about that particular case?

Mr. Myrow: Well there’s two things, number one a…most likely, I...I believe in most circumstances you’re going to have to go through the planning board process. Just like we’re going through the planning board process so if it’s permitted that a building that’s or a use that is not particularly liked a…has to…must do a total teardown and rebuild the planning board has the authority to mitigate as much as possible where they didn’t have it without the teardown, you know, maybe additional screening, maybe change the signing, maybe change the colors a…maybe change the setbacks, maybe relocate the building a…there is…there is one level of review that’s gonna have to happen and there is an opportunity there to try to fix some of these things. From a legal standpoint, a…a non-conforming use that preexists zoning is considered a legal use whether the public likes it or not and it has…in an legal non-conforming use essentially has a…the same a…protections that a permitted use has within the zone so a…typically the way if you really have something that’s abhorrent your legislature and your…your Town Board has the authority maybe amortize that use out. A…I mean that’s done with adult uses, it certainly could be done with other uses but I think you’re now into more of a legislative function than, you know, and that’s really something that an elected official should be handling on behalf of the public a…I hope that’s the short answer. I’m not really sure but again, there are lev…you know, it’s a good question because and…and I think the real answer is where if you don’t allow the teardown and the rebuild of the abhorrent building it can stay there forever just the way it is. If they want to tear down and rebuild it at least you have some opportunity to have the planning board impose whatever things they can do to make it better for the public. And then you have the opportunity to have the Town Board amortize them out and get rid of them. So…I think that’s typically how you look at it.

Mr. Brown: Is this a Public Hearing?

Chairperson Cardone: Yes.

Mr. Brown: May I make a comment?

Chairperson Cardone: Absolutely. Just identify yourself for the record.

Mr. Brown: Okay, I’m Charles Brown and my office is actually… Is this your dumpster here?

Mr. Wisotsky: Over here.

Mr. Brown: I’m directly across the street from that. I…if I understand this right, what makes this a…a…a non-permitted use is the drive-thru, correct? A…and if this is what they’ve been doing at other McDonald’s this is actually now a dual drive-thru so they’re actually expanding the non-conformity or maybe that’s what really should be addressed by the legal counsel here. A…I think maybe that’s the intent of the planning board for an interpretation again. I wasn’t at the planning board meeting for this. A…but, you know if you come off with a positive determination in…in the favor of the applicant I think you got to be clear that the drive-thru is really a…being modified. A…and that’s what makes this a non-conforming use if I’m understanding the code.

Mr. Wisotsky: So if I…

Ms. Gennarelli: Do you need batteries, Jerry?

(Microphone not working)

Mr. Manley: You have to repeat all that.

Mr. Brown: I will.

Chairperson Cardone: You can take the other microphone off the stand.

Mr. Brown: I am not against the project. I just want to be clear on that.

Mr. Wisotsky: Yeah, and the…that is correct. The drive-thru…the drive-thru does a…does change but a…a…but it’s still a…one drive-thru with one a…payment window, one pick up window, the same…the same as there is today. What…what happens is they…they do a dual…a dual stacking lane in the back to allow…to allow for more efficient a…efficient stacking and…and a easier way…easier way of ordering. So…so while a…that…that is accurate, that we are improving the stacking and improving the efficiency of it and…and adding to…and adding a split in back where there’s two places to stack an order…it’s…it’s still one drive-thru with…with one pickup window and one a…one payment spot. The…and as far as the planning board went I think it was…their concern was…over…the…that a…that overall use and…and the movement of the building which is why they were referred here a…I think if we look at their record it didn’t…it didn’t indicate that they were concerned at the drive-thru change just the…

Mr. Manley: How many windows are there now? Two or one? I’m trying to remember.

Mr. Wisotsky: There…there’s two…there’s two windows now, so you have a a…a payment window and a pickup window.

Mr. Brown: I can hear them at twelve o’clock at night when I’m still working.

Mr. Maher: Just to clarify, the planning board did refer based on the…the fast food use.

Chairperson Cardone: Do we have any other comments from the public?

No response.

Chairperson Cardone: Do we have any questions or comments from the Board?

No response.

Chairperson Cardone: Any other comments from Code Compliance? Do we have a motion to close the Public Hearing?

Mr. Manley: I would so move.

Mr. Master: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:24 PM)

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ZBA MEETING – MAY 22, 2014 (Resumption for decision: 8:58 PM)

LAKE CREEK PROPERTIES, LLC / 65 NORTH PLANK ROAD, NBGH

LINGO ASSOCIATES, LLC. (76-1-1.1) B ZONE

(McDONALD’S)

Applicant is seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment.

Chairperson Cardone: Lake Creek Properties, LLC./Lingo Associates, LLC. seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment. Do we have discussion on this application?

Mr. Manley: I would like to have some additional time to review the Code.

Chairperson Cardone: Right, I…I do think that we do need additional time. Do I have a motion to Reserve Decision on this application?

Mr. Manley: I would so move…

Mr. Masten: I'll second it.

Mr. Manley: to Reserve Decision.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:00 PM)

ZBA MEETING – MAY 22, 2014 (Time Noted – 9:00 PM)

EUGENIA FERRARI-FALIN 35 ODELL CIRCLE, NBGH

(51-2-25) R-1 ZONE

**OTHER BOARD BUSINESS**

Chairperson Cardone: Under Other Board Business, I have a letter:

I am requesting a 6-month extension of the Zoning Board of Appeals’ approval of my variances, due to unforeseen circumstances that have occurred since the Zoning Board meeting/approval. First and foremost, the contractor did not have the proper insurance and was unwilling to get it unless I paid the deposit of $4000. Needless to say, he is no longer my contractor… My father, to whom I am the primary caregiver, had to have heart surgery. I’ve had to have a second surgery done to my foot. Thank you for your cooperation and understanding. Respectfully, Gina Ferrari-Falin

Mr. McKelvey: She is under the time limit, right?

Chairperson Cardone: Right. They’re…

Mr. McKelvey: I make a motion we grant the six months.

Ms. Smith: I’ll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: That motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:01 PM)

ZBA MEETING – MAY 22, 2014

END OF MEETING (Time Noted – 9:01 PM)

Chairperson Cardone: I think that everyone has a communication from Mark Taylor. I’ll read it to refresh your memory.

The Town Board has received a request from the applicant for the Polo Club multiple-dwelling project that the board considered an amendment to the Zoning Code which would permit fee ownership of zero lot line lots containing the individual townhouse units and multiple-dwellings with a common areas and improvements to be a separate lot owned by the Homeowner’s Association rather than single-group ownership of the entire site. The request may be found on the Town’s Website under the documents for the Town Board’s May 14th Work Session. The revision would have at least one benefit for the Town.

The…and the Town Board is requesting input from our Board before making a final determination. So, once again, I would encourage anyone who has any comment to make to please E-mail me.

Mr. Manley: Just one question at David, if the Town were to go ahead with that do you see any Zoning Board issues with respect to a…people there requiring variances or…?

Mr. Donovan: If the Zone changes…well, no…the answer is no…if it’s done properly the answer is no.

Mr. Manley: Okay.

Mr. Donovan: In other words they…they would specifically allow for it in the zoning so you wouldn’t have, you know, an issue with the zero lot line coming to us for a side yard or a front yard or rear yard variance.

Mr. Manley: Okay.

Mr. Donovan: And I…and I would assume they would do it correctly. I’m assuming they know what they are doing and they’re well counseled, so...

Chairperson Cardone: Okay, did anyone, aside from the minutes, have anything else to bring before the Board? Okay we did not vote on minutes for the March meeting. So first are there any additions, changes, anything or do we have a motion to approve the minutes from March?

Ms. Smith: I’ll make a motion to approve the March minutes.

Mr. Masten: I’ll second.

Chairperson Cardone: All in favor?

Aye All - except Mr. Manley abstained.

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Okay and now the April minutes. Everyone has had a chance to read the April minutes? Any changes…?

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

Chairperson Cardone: Okay. Second?

Mr. Manley: Second.

Chairperson Cardone: All those in favor?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. Do we have a motion to adjourn?

Ms. Smith: I’ll make a motion to adjourn.

Mr. McKelvey: Second.

Chairperson Cardone: All in favor?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Okay. The meeting is adjourned.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:07 PM)