ZONING BOARD OF APPEALS

MEETING – OCTOBER 26, 2017

(Time Noted – 7:02 PM)

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

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Darrin Scalzo

(Time Noted – 7:05 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 7:05 PM)

NEWBURGH PARK ASSOCIATES, INC. 747 BOULEVARD (& I-84)

 (89-1-80.1 & 80.2) I/B ZONE

Applicant is seeking area variances for the front yard setback and one side yard setback for a site plan approval application before the planning board to construct a gas station and convenience store.

Mr. Manley: The first application that the Board will be hearing this evening is Newburgh Park Associates, Inc., 747 Boulevard; it’s going to by I-84 seeking area variances for the front yard setback and one side yard setback for a site plan approval application before the planning board to construct a gas station and convenience store. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, October 18th, and The Orange County Post on Friday, October 20th and this applicant sent out twelve letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Also note that the Orange County Department of Planning has also sent their comments regarding this application. The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We further have no objection to a 280 (a) variance should the town attorney or the Zoning Board attorney determine that such variance is necessary. County recommendation Local Determination. Good evening, could you state your name for the record, please?

Mr. Lytle: Ken Lytle representing the Newburgh Park Associates on this application.

Mr. Manley: Thank you. You may proceed.

Mr. Lytle: Good evening what we’re proposing is at the intersection of Route 747 Boulevard and Route 84 (I-84) on the northeast corner, it’s a proposed actually a gas station and a small convenience store. What we’re here tonight for is a front yard zoning variance and a side yard for the gas canopies. We’re before the planning board and this is one of the procedural items.

Mr. Donovan: Ken, if I could ask what happened to the 280 (a) variance? And the reason why I ask is when you were in front of the planning board in July there was an extended conversation about the potential need for a 280 (a) variance. I’m sorry January, you were back in July, it wasn’t mentioned, it wasn’t in the referral and it wasn’t applied for.

Mr. Lytle: Basically we had changed our plan to make it I believe so that was not required at this point.

Mr. Donovan: If I can, I’m sorry Mr. Chairman? So the strip in between the two parcels who owns that?

Mr. Lytle: The strip in between here is actually owned by the New York City Aqueduct and we actually a confirmed easement across that...a permanent easement across that.

Mr. Donovan: And yet...

Mr. Lytle: That paper works been submitted to Mike Donnelly.

Mr. Donovan: Right I did get a chance to speak to Mike late today and he did not have a recollection but therein lies your potential difficulty...

Mr. Lytle: That’s right.

Mr. Donovan: ...why...why is it you think you do not need at 280 (a) variance?

Mr. Lytle: Because in the deed it’s got a permanent easement right across that property from the first parcel to the second parcel they believe they stated if we had a permanent easement across there we would not need the special 280.

Mr. Scalzo: Okay. Dave, I think I know exactly where you’re going because I was reading the same thing in the deed. As it states in the deed ‘together with such right of way as the party of the first part has from the property herein described over and across said Catskill Aqueduct property to the public highway, such right-of-way being located near the north end of the course above described’. And if you go back to the description it’s a very general description that gives distances but no courses. What you supplied to us I don’t even see any boundary line information to place where that easement would be and we happen to have people here that are familiar with you can’t put a building within an easement and I don’t know where your easement is.

Mr. Donovan: You know Darrin you raised...that’s...you did know where I was going because my...my other issue is we don’t have a survey. I don’t know how you calculate the front yard and the side yard without a survey. So there’s no survey or... (Inaudible) ...

Mr. Scalzo: There’s got to be good boundary information if he’s going to the tenth of a foot so there is...it does exist...

Mr. Donovan: But it’s not on this plan. I don’t have a surveyor’s seal, there’s no attribution to a surveyor, there’s no courses and descriptions on the boundary.

Mr. Lytle: Yeah, we were putting that additional information back on to the plan when it went back to the planning board. Didn’t believe we needed it for the actual Zoning Board at this point.

Mr. Donovan: Well a separate issue maybe, I’m sorry, for future discussion but there is a...there is a minimum requirement for a sketch plan review for a site plan and you know, I don’t know that we want to put folks who want to put decks on the back of their house to that but if there is a new site plan in front of the planning board it seems to me we ought to get a plan that meets the minimum requirements for a sketch before the planning board refers it to us. That’s just my comment.

Mr. Lytle: (Inaudible) And the metes and bounds of the overall property are on the first sheet just not for the easement itself.

Mr. Scalzo: Okay I didn’t get a first sheet that’s...that’s...

Mr. Donovan: I don’t have that.

Mr. Scalzo: You know if I had a first sheet I probably wouldn’t have had the question.

Mr. Donovan: That’s right.

Mr. Lytle: The sheet that has the metes and bounds...the first sheet has the metes and bounds.

Mr. Donovan: I don’t have that.

Mr. Scalzo: Ken, I don’t think anybody gave us the first...

Ms. Gennarelli: It wasn’t submitted.

Mr. Scalzo: Yeah, sheet one wasn’t submitted.

Mr. Lytle: Do you want me to add the a...easement information directly across that and reference and label that with the metes and bounds...okay?

Mr. Donovan: I don’t know that the easement gets you to where you need to be relative to 280 (a). I got to tell you that. I’m not...I’m not sure that...

Mr. Lytle: I believe it is an issue we’re going to deal with at the planning board, Mike Donnelly...but I can get that confirmed before we come back.

Mr. Donovan: Well, okay. If that’s...if the Board wants to proceed understanding that you...just so it’s clear that you may need relief either from the Town Board or from this Board.

Mr. Lytle: That’s correct.

Mr. Manley: Which means they’d be back again.

Mr. Donovan: Potentially, correct.

Mr. Lytle: That’s right...

Mr. Manley: Which now you’re...

Mr. Lytle: ...if that’s required.

Mr. Manley: You know I...personally I don’t believe in...in doing things piecemeal. Only because I look at the totality of a request versus little bits and pieces. To me that’s like creeping...that’s the decision of the Board...

Mr. Scalzo: You don’t know Ken I...I understand...I didn’t realize there was the other sheet was supplied which may have clarified it but I have had a chance to...I haven’t seen it.

Mr. Lytle: Oh, I understand, again there are no metes and bounds for the easement itself on there. There are notes on there regarding but we can actually get the metes and bounds for that.

Mr. Scalzo: Yeah, it’s a very general description in the deed so you know I get it the original deeds aren’t forty acres...

Mr. Lytle: That’s correct.

Mr. Scalzo: ...so a...it’s...

Mr. Lytle: Inaudible.

Mr. Scalzo: ...again, personally I don’t have enough information that I could feel as though I could render an opinion tonight. The rest is up to the...other Members.

Mr. Donovan: I’m sorry Mr. Chairman... (Inaudible).

Mr. Manley: I think the most important thing is that you know when an applicant comes before us that we have everything that we need to make a decision. I don’t...I would agree with Mr. Scalzo, I don’t feel comfortable without all the information and having a determination whether or not you’re going to need that other variance.

Mr. Lytle: And we’re going to want to get that determination right from the planning board that they accept that as being a permanent easement, correct, before we come back here?

Mr. Manley: I would say...

Mr. Lytle: Can Mike Donnelly review that and give us and okay about that?

Mr. Donovan: Just to be clear I don’t know that a permanent easement...I mean, you need to have a...your frontage and access needs to be on a street that’s either a public street or a street shown on a map. I don’t know that you meet those requirements. I mean you have your...your driveway goes across someone else’s property and then on a separate tax parcel which appears to be owned by your client if I understand correctly a...I don’t know that the planning board...they may be able to do what you want but I don’t know that they can. It...it would be helpful if you do that before tonight...

Mr. Lytle: Right.

Mr. Donovan: ...because then we would know what we needed to do.

Mr. Lytle: These two parcels and the parcels to the west side of actually 747 Boulevard was created when they put that road through. In doing so so that these two land...properties were not landlocked and could not be used in future time they gave them a permanent easement at...again the DOT actually created and built that blacktop road up to the start of this property as you it in the field today. So they made provisions for that so that this would not be an issue but we can get some documentation for you for that.

Mr. Donovan: Okay.

Mr. Manley: Mr. Canfield, did you...?

Mr. Canfield: Yeah, just for clarification...we’re talking about...

Ms. Gennarelli: Could you give Jerry the mic Ken? Thank you.

Mr. Canfield: (Inaudible) plan that was just revised in 6-18-2017? Correct, so we’re all looking for the same plan? What was submitted is a...

Mr. Donovan: 6-8-2017...I and I think the rest of Board has one sheet because...

Ms. Gennarelli: That’s all that was submitted.

Mr. Donovan: ...that’s what was submitted.

Mr. Canfield: Oh, that’s all I have too, sheet two of two but that’s the plan we’re referring to.

Mr. Donovan: That’s what the Zoning Board Members have, that’s what I have.

Mr. Canfield: Okay.

Mr. Donovan: I didn’t realize there was a metes and bounds description so I...that’s caused me a little...

Mr. Manley: Two of two. Does the Board have any other questions before I open it up to members of the public?

No response.

Mr. Manley: At this point, is there anybody from the public that has any questions, comments with regard to this application? If you do if you could just raise your hand and we’ll call on everybody to come forward.

No response.

Mr. Manley: Okay, there doesn’t appear to be any questions or comments from the public. At this point, my recommendation would be that this Public Hearing be held open. If there is anybody here that is interested in this application it will more than likely be brought up again next month, November twenty...second?

Ms. Gennarelli: Tuesday, November...I’m sorry one sec.

Mr. Scalzo: Thursday is Thanksgiving.

Mr. Donovan: It’s on a Thursday this year Darrin?

Mr. Scalzo: Yeah, this year it is, yeah.

Ms. Gennarelli: Yeah, we won’t be here on Thursday.

Mr. Manley: Twenty-first.

Mr. Bell: Twenty-first.

Mr. Masten: Yeah.

Ms. Gennarelli: Twenty-first, yes.

Mr. Manley: So the discussion of this will be November 21st. Will you have enough time to get what you need and make sure you get it back to the a...Zoning Board before...ten days before that.

Mr. Lytle: I’ll give Betty an update in case we can’t make it for that agenda but we should have ample time to do it.

Mr. Manley: Okay.

Mr. Donovan: Can you provide the other sheet, just so...?

Mr. Lytle: Yes.

Mr. Donovan: Okay, thanks.

Mr. Lytle: Thank you.

Mr. Manley: Do we have a motion from the Board to hold the Public Hearing open until the November 21st meeting?

Mr. Masten: I’ll make a motion.

Mr. McKelvey: I’ll second.

Mr. Manley: I have a motion from Mr. Masten and a second from Mr. McKelvey.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:16 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 7:16 PM)

WAL-MART REAL ESTATE BUSINESS 1201 ROUTE 300, NBGH

 (95-1-39.21) I/B ZONE

Applicant is seeking an area variance for the total amount of square footage of signage allowed to erect new signage on the exterior of the building.

Mr. Manley: Our next item that the Board has to hear tonight is the matter of the Wal-Mart Real Estate Business, 1201 Route 300 in Newburgh seeking an area variance for the total amount of square footage of signage allowed to erect new signage on the exterior of the building**.** Ms. Gennarelli are all the postings and mailings in order?

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

Mr. Manley: Thank you. I’m going to read into the record a letter the Orange County Department of Planning with regard to this matter. The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We believe that the Town of Newburgh has two issues to consider in this matter: one issue is that there have been multiple requests for signage over the maximum area permitted by the Code and the Town Board may wish to consider the issue...that issue the next time the Zoning Code is updated to determine whether or not the Code is too restrictive regarding signage. The other issue that the Zoning Board of Appeals may wish to consider in this case is that this is the third variance requested by Wal-Mart for increased signage and their signage area. If this variance is granted will allow them more than double the signage to which they are entitled as of right. The Town may wish to consider this variance in that context. The County recommendation is Local Determination. Good evening.

Ms. Smith: Good evening...my name is Sarah Smith; I am with Harrison French & Associates. We’re the architectural firm and I’m representing Wal-Mart’s. Wal-Mart is going...they’re having a remodel done and part of the remodel they’re updating their nationwide branding package which includes changes to the...the color of the exterior of the building and changes in wall signage. Particularly on this store the major difference is we’re asking for an additional a hundred and eleven point three seven square feet. That is to add the...the biggest sign, the biggest newest sign I should say is the Pick-Up spark sign which is sixty-six point seven six square feet. That sign is to show the new service of the on-line grocery pick-up. If you’re not familiar with that it’s where customers can place an order on line, park in a spot and those items are brought out to their car. The two...there’s two other additional signs that are smaller. There’s an Auto Center sign with an arrow on the front façade to show customers which direction to go for the Auto Center and then a small eight point eight, I’m sorry, eight point eight one square foot Vision Center sign to show that that store has a Wal-Mart Vision Center.

Mr. Manley: The property also encompasses part of the Town of New Windsor so I have a letter here from the Town of New Windsor office of the planning board and I’ll read this into the record. Town of Newburgh, 1496 Route 300, Newburgh, NY, Dear Zoning Board: The Town of New Windsor Planning Board has received the referral in connection with a sign variance regarding the subject property, the matter was discussed by the board at their regular meeting of September 27th. I am writing on behalf of the board to advise you that they are hereby referring that matter back to your board with no comment. The New Windsor Planning Board believes your board will consider all the appropriate matters before making any decision. Thank you for your opportunity of considering the application. Very truly yours, Town of Newburgh...Town of New Windsor Planning Board, Mark J. Edsall, engineer for the Planning Board. Does anyone from the Board have any questions for the applicant?

No response.

Mr. Manley: Hearing no questions from the Board I will turn to the public. Is there anyone from the public that has any comments or questions on this application?

No response.

Mr. Manley: Hearing none I’ll come back to the Board if there’s anything further that the Board has before I ask for a motion to close the Public Hearing?

Mr. McKelvey: Has any of the signage started yet? Been put up?

Ms. Smith: We haven’t changed the signage yet. We’re waiting on sign Permits.

Mr. Manley: If there’s no further comments from the Board Members or questions I’ll ask for a motion to close the Public Hearing.

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

Mr. Manley: Motion from Mr. Levin.

Mr. Bell: I’ll second.

Mr. Manley: Second from Mr. Bell, roll call.

Ms. Gennarelli:

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 7:22 PM)

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ZBA MEETING – OCTOBER 26, 2017 (Resumption for decision: 9:05 PM)

WAL-MART REAL ESTATE BUSINESS 1201 ROUTE 300, NBGH

 (95-1-39.21) I/B ZONE

Applicant is seeking an area variance for the total amount of square footage of signage allowed to erect new signage on the exterior of the building.

Mr. Manley: The first item that the Board will be acting on this evening is application of Wal-Mart Real Estate Business, 1201 Route 300 in Newburgh seeking area variance for the total amount of square footage of signage allowed to erect new signage on the exterior of the building. This is an Unlisted Action under SEQR requires a Negative Declaration if the Board decides to approve. If they make a motion to approve the first thing you’re going to have to do is make a motion for a Negative Declaration. If the Board decides to not approve then you just have to simply make a motion to disapprove and get a second. So with that being said the criteria for the area variance if we can go ahead and start the deliberation process the first item that the Board needs to consider is whether the benefit can be achieved by other means feasible to the applicant? Are there other ways that this could be achieved?

Mr. McKelvey: Not if they’re putting them on the building.

Mr. Manley: Okay. Does the Board feel that the granting of the variance may cause an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: I don’t believe so.

Mr. McKelvey: No, I don’t believe so either.

Mr. Bell: No.

Mr. Scalzo: No.

Mr. Manley: Most of the a...

Mr. Levin: It’s business.

Mr. Manley: Commercial.

Mr. McKelvey: Commercial.

Mr. Scalzo: It’s set so far back from the road.

Mr. Bell: Yes.

Mr. Manley: Whether or not the request is substantial? Well I mean...

Mr. Levin: No. I don’t feel so.

Mr. Manley: ...in comparison to the size of the building. Not?

Mr. Levin: Yeah.

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Manley: Whether the request will have adverse physical or environmental effects?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: It’s not affecting any runoff?

Mr. Masten: No.

Mr. Levin: No.

Mr. Manley: Light pollution? The signs are not lit.

Mr. Bell: No, they’re not lit.

Mr. Manley: Whether the alleged difficulty is self-created? It is relevant but it is not completely determinative. Does the Board...having the information before them able to make a motion? Again, if the Board is going to remember if somebody is going to make a motion to approve you have to go to a Negative Declaration first so keep that in mind when you’re making your motions.

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

Mr. Levin: I’ll second.

Mr. Manley: Okay, so we have a motion for a Negative Declaration by Mr. Scalzo and Mr. Levin seconded that. Do we have a Roll Call?

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion is carried. The Negative Declaration is approved. At this point, do we have a motion for approval?

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

Mr. Bell: Second.

Mr. Manley: Okay a motion from Mr. McKelvey and a second from was that Mr. Bell?

Mr. Bell: Yes.

Mr. Manley: Okay, roll call.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion is carried. And the variance for the signage is approved.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:09 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 7:22 PM)

YASSER ALY 300 LAKESIDE ROAD, NBGH

 (50-1-48) R-1 ZONE

Applicant is seeking a Use variance for the maximum of one dwelling unit per lot to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises.

**SAME MINUTES USED FOR BOTH THE USE AND AREA VARIANCE APPLICATIONS.**

Mr. Manley: Moving on to our next Public Hearing for the evening. The next Public Hearing is the application of Yasser Aly, 300 Lakeside Road in Newburgh seeking a Use variance for the maximum of one dwelling unit per lot to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises and also seeking area variances for the minimum lot area, the minimum lot width, the minimum one side yard setback, the minimum combined side yards setbacks, the 1500 sq. ft. minimum floor area and the maximum lot surface coverage to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises. Ms. Gennarelli are all the mailings and postings in order?

Ms. Gennarelli: Yes and this applicant sent out for the use variance and separately for the area variances thirty-eight letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening. Could you introduce yourself for the record please?

Mr. Henderson: Michael Henderson from Hennessey Architects.

Mr. Manley: Are you the one that’s actually be presenting this evening for the applicant?

Mr. Henderson: Yes.

Mr. Manley: Okay, because we don’t have Proxies.

Ms. Gennarelli: Is Mr. Aly here?

Mr. Henderson: Well she is...

Ms. Gennarelli: He...Mr. Aly proxied...

Ms. Molina: (Inaudible)

Ms. Gennarelli: Oh, he is here, okay.

Mr. Manley: Okay.

Ms. Gennarelli: He is the owner.

Ms. Molina: (Inaudible)

Mr. Manley: Hi, are you Mr. Aly?

Mr. Aly: Yes.

Mr. Manley: Hi, if you could just introduce yourself for the record please, to the Board?

Mr. Aly: Sure, I’m Dr. Yasser Aly, I’m a psychotherapist here in a...Orange County a...I work for Olson Mental Health, Creedmoor Psychiatric Center, I’m a good citizen a...I help people on a daily basis...

Mr. Donovan: We really just wanted to know if you authorized this young man to speak on your behalf.

Mr. Aly: Alright, I was just introducing myself. You asked me to introduce myself. Anyway, I reside at 300 Lakeside Road and a...we’re here for the purpose of reconstructing a building, like a garage. It’s a beautiful stone building we want to just reconstruct it and I have my architect here with the plans and that’s about it.

Mr. Manley: And you’re giving consent for him to represent you this evening on behalf of your project, is that correct?

Mr. Aly: Correct.

Mr. Manley: Okay, alright, thank you very much.

Mr. Aly: You’re very welcome.

Mr. Manley: Okay, you may proceed.

Mr. Henderson: (Inaudible)

Ms. Gennarelli: That microphone doesn’t seem to be working very well, let’s try this one. Hello, is it working? Only when I use it?

Mr. Donovan: Only for you Betty.

Ms. Gennarelli: That’s it.

Mr. Henderson: We’re converting a...the existing garage in a...one-story existing garage into a...an accessory apartment, one bedroom for their mother. It’s not going to be up for rent it’s just going to be for the purpose of the mother (Inaudible). Per the code, the zoning code for accessory apartments we meet all of the criteria except for some of the bulk regs the existing lot doesn’t meet. It’s just a...a seven hundred foot a...square a...two-story apartment, the bedroom is on the second floor and the first level is just common space.

Mr. Levin: I assume that building you’re going to renovate existed before a...it looks like it’s part of the house?

Mr. Henderson: Yes, yeah (Inaudible).

Mr. Levin: When was the house built?

Mr. Henderson: 1934. And the first level we’re going to keep all the stone façade and just fix it up.

Mr. Scalzo: Was there any consideration for actually just adding on to the primary dwelling for this?

Mr. Henderson: A...how...it...it didn’t work with the...the current layout. The garage wasn’t really being used... (Inaudible)

Mr. Manley: The present Code now allows for a single family per lot. So what makes this particular lot unique in order to allow for a second dwelling unit when the Code only permits one?

Mr. Henderson: A...it was currently on the house there’s without major renovation it...to have the accessory apartment but because the use of the garage with being on site we’re not increasing the...the footprint of the lot just it’s the same surface coverage and everything except for an additional parking spot for the...the apartment.

Mr. Levin: You’re turning the garage into a...it’s a major renovation.

Mr. Henderson: Yeah, we’re just a...yeah adding one more level for the bedroom.

Mr. Bell: Because you’re actually going up sixteen point eight feet. It that...is that what the height is going to be?

Mr. Henderson: Yeah, the sixteen...yeah that was to the well the top light and then a few more for the...

Mr. Bell: So, you’re basically taking the garage that’s currently there and going up?

Mr. Henderson: Right.

Mr. Bell: So then that’s the second dwelling unit. Wouldn’t that turn it into a second dwelling? That would be a second dwelling on the...on the lot wouldn’t it turn into like...

Mr. Scalzo: Yeah, definitely...

Mr. Bell: ...two homes.

Mr. Scalzo: ...it’s not considered to be accessory.

Mr. Bell: That’s right, it’s not.

Mr. Donovan: Well, if...if I may, Jerry and you know I’m going to put you on the spot here. I just want to...I just want to go over the definition of accessory apartment if I could, right?

Mr. Bell: Okay.

Mr. Donovan: A supplemental dwelling unit within a one-family detached dwelling or a separate dwelling unit accessory to a principal residential or non-residential use. So Code Compliance has made a determination that this does not qualify as a separate dwelling unit accessory to a principal residential or non-residential use...is...?

Mr. Canfield: This is a very unique application a...to be quite frank with you Code Compliance is not one hundred percent certain this is a use variance which as we all know is very difficult to secure. What we’re struggling with is 185-38 in the Zoning Code gives perimeters for accessory apartments. You may recall there’s been other previous applications a...which consisted of garages with this very same type scenario requested to finish the second floor for accessory apartment. The...the issue that make this so unique is that the dimensions...and I believe I heard the applicant’s representative say that this was seven hundred square which is the maximum. 185-38 a...deals with seven hundred square feet gross floor area. If you calculate out the dimensions that are plans before me I come up with about a thousand square feet of gross floor area. Did you net the square footage or gross it out?

Mr. Henderson: A...

Mr. Canfield: Gross would include stairwells, closets and unhabitable space that’s I think the difference. So that thousand square feet a...and...and the language in that 185-38 says shall. Our question that we struggled with was that does this Board have the ability to vary that requirement. The other variances that perhaps may be needed such as area variances I think at this point becomes moot. I think the primary thing to determine is is this a use variance or not. And that’s the issue that we struggled with is the gross floor area of the...a...of the apartment. Keep in mind it’s two-stories...

Mr. Donovan: So then continuing on 185-38-C-5 where it says if the gross floor area exceeds the limit of seven hundred square feet the building shall be deemed a two-family dwelling which is not allowed. Right? So it’s not...no longer arguably...no longer an accessory apartment.

Mr. Canfield: That’s correct. If it becomes...or if the Board makes the determination that it becomes a two-family dwelling there are an entirely different set of perimeters that apply to this which would then be come subject to a planning board application. All two families in the Town of Newburgh now must go before the planning board; there are increased lot areas and different dimensions that apply. So again going back...circling back primarily I think the determination needs to be made that...if this Board is agreeable that this is a use variance or if it’s a variance something other that this Board can grant. And...and the language that we’re struggling with is that very word shall on the maximum square footage. Without that being determined if it...if it does exceed the perimeters of the maximum square footage allowable then it becomes something different than an accessory apartment and that’s what the issue is.

Mr. Donovan: Well you made not you...Code Compliance has made an additional an...an initial determination that a use variance is required so you’re appealing that determination so you either have to...it’s not...it’s not for...the Board hears the appeals so it’s your argument. Not to put you on the spot young man because you’re standing there...I know you’ve got a lot under the collar right now but I didn’t mean to do that a...so you need to convince us either that it’s not a use variance or that you meet the use variance criteria. That’s what you need to do.

Mr. Henderson: Yeah, we’re were just a...yeah, we were just looking to be within the accessory apartment for the seven hundred square feet.

Mr. Donovan: Right just the way this process works...Code Compliance makes a determination and they’ve made that determination. They...Mr. Canfield’s indicated a struggle with that determination but they’ve made it. You’ve appealed it as is your right. We’re the appeal board. Now you have to convince us why you’re entitled to a use variance or you don’t need a use variance.

Mr. Henderson: But this...this project was for her mother which has become sick and they want to bring her here closer to them than down the city. They wanted to bring her up here. She doesn’t have a license and they’re not renting it to try and make money out of it. It’s just a cheaper way to get her up here rather than doing a substantial addition to the house and increasing the footprint on the existing lot. We’re just using the same set footprint and not inc...increasing the non-conform...non-conformity of that.

Mr. Scalzo: Jerry, a...the structure that they intend on improving a...have they submitted plans that verify that the footings are adequate for what they are proposing or we haven’t seen any of that yet?

Mr. Canfield: We haven’t seen that yet. And yes...

Mr. Scalzo: And that’s needed to be...

Mr. Canfield: ...Darrell you...

Mr. Scalzo: ...investigated.

Mr. Henderson: Well, yeah, but once we get an approval then we...that would be the next part of it to see the...

Mr. Scalzo: Okay, but what if we were to find out that the footings a...if the footings were inadequate for the proposed improvements?

Mr. Henderson: Well we would have to...

Mr. Scalzo: Demolish and start... (Inaudible)

Mr. Henderson: (Inaudible)

Mr. Bell: Scratch yeah, bottom up.

Mr. Henderson: Yeah, but still using the same footprint too.

Mr. Scalzo: Has it always been a garage that you’re aware of?

Mr. Henderson: Yes, yeah.

Mr. Manley: Well I think this Board first has to determine whether or not you’re going to make the case whether or not...you’re going to try to meet the threshold for the use variance or whether or not you can provide this Board with some information or facts that would allow us to determine whether or not it’s not a use variance. But we need specific legal perimeters to do that. Unfortunately, you can’t come with a...you know with a situation of well we’re putting an elder parent in there as much as that is a emotional issue we can’t rule on emotion. We have to rule on fact and that’s unfortunately you know we’re bound by the law. So if you could provide us with some items within the Code that this Board can consider then we can go ahead and...and then make a decision as to whether or not we proceed as a use variance or as not as use variance. I think that’s going to be the first...that has to be the...the first step and...

Mr. Henderson: We’re trying to vote that just within the seven hundred, keep it as the accessory apartment.

Mr. Canfield: I...I think the key issue here is the square footage...the seven hundred maximum square footage. If the applicant were to perhaps display that to the Board then it would be a good starting point and then again, if the seven hundred square foot is complied with then we would no longer feel that it’s a use variance because then it does comply with that 185-38 requirement.

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

No response.

Mr. Manley: Does the Board have any comments?

Mr. Levin: I was just wondering if there would be a possible way of making the second floor smaller a...since it’s...it’s up above the...the a...garage to conform to that a...?

Mr. Aly: (Inaudible)

Ms. Gennarelli: You have to speak into the microphone if you are going to talk, sorry.

Mr. Aly: We want to abide by the law so that seven hundred square footage a...is sufficient enough for one person a...and we have to abide by that.

Mr. Scalzo: So perhaps some revisions to the plan that...that could show the accommodation of the Code may be in order. Perhaps you want to come back to us with another plan?

Mr. Levin: Hold it over...open for another month?

Mr. Scalzo: Hold it...hold a...we could hold the meeting open.

Mr. Manley: Before we do that let’s see if there’s anyone here from the public that is here to speak with regard to this application...if you would just state your name and address for the record.

Mr. LaCopola: Hello everyone, John LaCopola, I reside at 302 Lakeside Road which is the house right next door and I just have a few issues that I would like to mention. One is that it’s my interpretation that the zoning regulation is one dwelling unit per lot and this does not meet the requirement. Two, the garage that they’re speaking is right up against the property line and right up against my fence as well. And the third thing is just a question for the Board, do we really want to have this become a precedent within the Town of Newburgh? So just some things to consider for the Board. Any questions? Thank you.

Mr. Manley: Thank you. Is there anyone else that would like to be heard with regard to this application? Yes sir?

Mr. Aly: On the lot next to next to my neighbor a...there was actually several dwellings on the same lot and we have pictures of that as well.

Ms. Molina: That was actually connected to our property.

Mr. Manley: Okay, you can submit those pictures to the...if you want to the Zoning Board Secretary and she’ll make sure that we get copies of them.

Ms. Molina approached with pictures.

Ms. Gennarelli: Thank you.

Mr. Manley: Now does the Board require any further information from the applicant before next month’s meeting? Now would be the time to a...

Mr. Donovan: Well I believe what’s been...I don’t know if...the issue of seven hundred square feet though, right is...?

Mr. Manley: Correct. So the Board is asking for information regarding reworking up the plans to show seven hundred square feet which is what the Code says...

Mr. Henderson: We’ll meet that.

Mr. Manley: ...would be required for an accessory apartment and then the Board then can consider, you know, changing the use variance and then you would only need at that point the area variance (s).

Mr. Scalzo: Well Dave, actually I have a question for Dave, as an accessory apartment you know we may have seen these over a garage but in this case the former...it’s going to be a former garage would no longer act as a garage at all. It would be...

Mr. Bell: Right...

Mr. Scalzo: ...an entire...

Mr. Bell: ...house...

Mr. Scalzo: ...dwelling unit...

Mr. Bell: ...dwelling.

Mr. Scalzo: ...so how do we now consider that to be an accessory apartment when it’s actually a complete separate dwelling unit.

Mr. Donovan: Well that’s I started with the definition Darrin and the definition as I read it allows for a separate dwelling unit accessory to a principal residential...or non-residential use so I read that as to be permitted. Right Jerry...right...? I mean it needs to be accessory so it can’t be the same or larger square footage but you can have a separate dwelling unit accessory. I read that to be a separate structure.

Mr. Canfield: Yes and I...I concur and again it’s been this Board’s previous actions to allow these in separate buildings and I concur with the definition of accessory apartment that this does meet that and an accessory structure...an accessory apartment is permitted.

Mr. Scalzo: Okay, should we continue with this and should all the variances be granted that are required would the criteria be the property owner must reside on the premises that would still remain...?

Mr. Canfield: All the...all the items, the requirements of 185-38 must apply. Yes.

Mr. Scalzo: Okay, so when the doctor sells his place many years from now that has to be a...would that be considered then a deed restriction that because of this variance...?

Mr. Donovan: It’s not a deed restriction cause it’s not...it’s not a private restriction. It’s a...it’s a Town restriction, it’s a requirement just like anyone else who an accessory apartment and recall that they all used to come to us...now they go to Code Compliance and if they meet Code they get their Permit but it’s picked up...I don’t know if you...when you get a title request for a violation search or at some point in time you’re going to pick up the fact that it’s no longer owner occupied I assume.

Mr. Canfield: Right. That’s a grey area. There’s been different legal opinions on that as to a variance goes with the property or people a...but that being aside I’ve seen in the past decisions and resolutions by the Zoning Board that have conditions and I’ve also seen in the past that those conditions have affixed a variance to a person or a family.

Mr. Donovan: So the variance goes with the land, okay? But in this case the variance would allow if the variance was granted and we’re not there yet obviously, but it would allow utilization of...of this detached structure as an accessory apartment subject to the Town requirements and that’s the hook into the requirement that the principal dwelling be owner occupied. So it’s not a condition of the variance it’s a condition of the Town Code.

Mr. Canfield: It’s a requirement of the Town Code.

Mr. Donovan: Correct.

Mr. Canfield: I mean it could be worded compliance with 185-38 as a belt and suspender type thing...

Mr. Donovan: Sure.

Mr. Canfield: ...a...should the Board choose. I’m not suggesting or denying that but should the Board choose so.

Mr. Levin: Wouldn’t you assume that if he sold the home, the principal a...residence would be used by the owner?

Mr. Canfield: Correct.

Mr. Levin: Yeah, okay.

Mr. McKelvey: Yeah, they couldn’t rent it out.

Mr. Bell: So it would have to be sold as one unit.

Mr. Levin: It couldn’t be rented out.

Mr. Donovan: It’s one piece of property.

Mr. Bell: It’s one piece of property so it’s one...there you go.

Mr. Scalzo: And back to the...once the investigation is done into the footings to see if they’re adequate and if we find out that they’re not, at that point, would the applicant be able to request to move that accessory apartment further away from the property line because there is an issue with the neighbor? I mean if you look...I’m looking here there’s only zero point five feet clearance, you know when it comes to maintaining the house a...I don’t know how they could construct that without encroaching on the neighbors’ yard.

Mr. Bell: Right, on one side.

Mr. Levin: You’re right.

Mr. Bell: Yeah.

Mr. Scalzo: I’m just asking, I don’t know.

Mr. Donovan: I’m sorry, what was the question?

Mr. Scalzo: Should they prove that they can achieve the variances they’re requesting and then they find out through the construction process that the footings are inadequate to support the structure they’re intending erecting, what would prevent them from since they already have the variances for this to move the structure itself? If they got to start over why not put it right in the middle of the lot?

Mr. Donovan: Well so long as they don’t need any additional variances. Now also recall that the standard condition of any variance this Board issues is substantial compliance with condition as provided. So a...that would be a determination for Code Compliance it it’s...if it’s suggested to be in a different location as to whether or not it needs to come back to us.

Mr. Scalzo: Okay, so let’s be wise about this. Are...are we able to ask for at least an investigation or an engineering analysis of the footings prior to us...? I...I hope to grant a variance on something that I know can be built. But if we find that it can’t be built then he’s going to be back here again.

Mr. Donovan: So one of the conditions that you have to consider in granting an area variance is whether or not it alters the character of the neighborhood or causes a problem with...

Mr. Scalzo: Right.

Mr. Donovan: ...the character of the neighborhood. If you want to analyze or you’re concerned that perhaps maybe having the garage converted to a dwelling unit may cause an issue can you ask them to investigate putting it someplace else? Is that really...?

Mr. Scalzo: Thank you.

Mr. Donovan: ...could, sure you could.

Mr. McKelvey: Well we’re not...we wouldn’t go into the area variance until we settle the use variance.

Mr. Scalzo: We’re not sure that it...well if he’s under that seven hundred feet John, it appears as though it may not be.

Mr. McKelvey: Yeah.

Mr. Donovan: Correct, right, I think that’s what Code Compliance is indicating that if you don’t exceed the seven hundred gross square feet threshold there is no requirement for a use variance.

Mr. Canfield: Correct. That’s primary, number one...

Mr. Bell: Right.

Mr. Canfield: ...if you eliminate the need for a use variance. So just...

Mr. Donovan: Well...I’m sorry, go ahead.

Mr. Canfield: ...if I may, just thinking out loud, I think a more accurate point Darrin is not so much whether the footings...I mean that’s important but even if there is this is like a six inch between the property line. It’s utterly impossible...

Mr. Scalzo: It is impossible.

Mr. Canfield: ...to construct...

Mr. Bell: It is.

Mr. Canfield: ...that second story without...

Mr. Bell: Yeah.

Mr. Canfield: ...encroaching that property line.

Mr. Scalzo: Unless they’re on a crane and it’s a prefab that they’re just dropping.

Mr. Bell: Yeah, exactly.

Mr. Canfield: Exactly, I don’t know how that’s going to be achieved even to side and sheath the building and you know...

Mr. Bell: Yup.

Mr. Canfield: ...normal...normal construction practices. So again, even down the road should we even get to that point that’s got to be addressed.

Mr. Bell: Yes.

Mr. Canfield: (Inaudible) or some type of agreement with the neighbor. I mean it is utterly impossible. Do you agree? Without encroaching the property line?

Mr. Henderson: Yes. It would be tough.

Ms. Molina: (Inaudible)

Ms. Bell: Can she use the mic if she wants to talk, please? Please use the mic. Yeah.

Mr. Manley: I mean the other thing that the Board needs to consider is the requirements for an area variance and that is...does it change or will the granting of this variance change the essential character of the neighborhood. Are there other currently other accessory apartments within that area, within that particular zone in that neighborhood? Those are things that, you know, the Board will have to...will have to weigh in doing our balancing test for the area variance.

Mr. Bell: And I was going to ask that question because the photos that were submitted are kind of confusing, I mean, trying to understand what these are. I see Lakeside here then I see the dwellings all the way down, I don’t understand what...what point you were trying to make here.

Ms. Molina: (Inaudible)

Ms. Gennarelli: Can you come to the mic please?

Mr. Bell: Yeah, please come up to the mic.

Ms. Molina: There are other dwellings on the lot.

Mr. Levin: Multiple dwellings on the lot?

Ms. Molina: Multiple dwellings on the lot.

Mr. Bell: Okay.

Ms. Molina: 304 Gillespie Drive, wait I think it’s Gillespie Drive, no?

Mr. Bell: Okay.

Ms. Molina: And then Lynn Drive...

Mr. Bell: Yeah, I know the streets pretty well, I do to.

Ms. Molina: Yeah, there are multiple dwellings...

Mr. Bell: Okay, I guess it was just kind of hard for me to kind of figure...to see I just see the tops of dwellings...I don’t know...

Ms. Molina: The little red dot is my house.

Mr. Bell: Okay, that’s your house?

Ms. Molina: And then from there on...

Mr. Bell: Your house...

Ms. Molina: Yeah.

Mr. Bell: ...is the red dot, right, I see that. Okay, do you want to take a look at these? Take a look and see what I’m talking about, it’s just a little...

(Inaudible)

Mr. Bell: Okay, right, I got it. Understand.

Mr. Manley: We don’t have to decide now.

Mr. Scalzo: We’re all obligated to visit the sites that we have...perhaps I need to make another visit out there myself and a...

Mr. Bell: I drive by there a lot.

Mr. Scalzo: ...and take a look at the other accessory buildings around on other lots. I was only focusing on their lot. I wasn’t looking at your neighbors so much as to see if there were other dwelling units...

Mr. Bell: Yeah, that’s what I also needed to do that.

Mr. Levin: Jerry, would it be legal to use the side foundations and bring the whole house four feet forward or three feet forward...so they’re not right on the property line?

Mr. Scalzo: Well if you’re looking at an accessory structure offsets you’re looking at at least five.

Mr. Levin: Five feet?

Mr. Scalzo: Yeah.

Mr. Levin: Yeah, okay. But they’re still using the original foundation...

Mr. Scalzo: Well it has to be proven adequate.

Mr. Levin: Yeah, but they can move it forward?

Mr. Scalzo: It is possible.

Mr. Aly: You know, we’re using the a...the seven hundred square feet so the second floor which going to be one bedroom is going to be completely away from the neighbor’s property line so that’s not an infringe on their privacy or anything like that. It’s going to be closer to inside our property instead of closer to their property...

Mr. Levin: The second floor will moderately it’s the first floor that you can’t construct in that...

Mr. Scalzo: Well it’s pre-existing...if it’s pre-existing now, it’s already there...

Mr. Aly: Right.

Mr. Scalzo: ...but the...again the...

Mr. Aly: The second floor is going to be a one bedroom coming this side, you know...

Mr. Scalzo: I understand what you’re saying sir, I just...you know, I think I need to see a...it on...on paper to understand exactly what...

Mr. Aly: And that has to be modified to meet the requirements and the seven hundred square foot criteria. Thank you.

Mr. Manley: Yes sir?

Mr. LaCopola: Hi I just wanted to mention that the way...the way it’s structured, you have 300 Lakeside Road and then my house is right next door, 302 Lakeside Road and then you have Gillespie Road and that property has recently been sold where they have like smaller cottages on that property but it’s...it’s sort of...it’s where...it’s on Gillespie Road and Lakeside Drive...Lakeside Road so...I just wanted to point that out and...and clarify that.

Mr. Scalzo: Pre-existing...pre-existing, non-conforming...

Mr. LaCopola: That’s correct, yup, that’s exactly correct.

Mr. Scalzo: ...that sounds like what you’re...

Mr. LaCopola: That’s exactly correct.

Mr. Masten: They’re old, pre-existing cottages...from years ago...

Mr. LaCopola: Yes, yup because of Orange Lake and...and that’s...

Mr. Masten: ...exactly what it is and there’s a lot of them out there.

Mr. LaCopola: Yup, so thank you...

Mr. Manley: Thank you.

Mr. LaCopola: ...for giving me the opportunity.

Mr. Scalzo: Thanks.

Mr. Manley: So are we on the same page with what the Board is looking for for our next meeting and that would be for updated plans for seven hundred square feet gross square footage? And if you are going to a...present it have also the a...Mr. Scalzo is there anything else you wanted in the plans shown...before...?

Mr. Scalzo: Well...I...no...that’s...I can’t think of anything now as far as investigation whether the adequacy of you know, the current structure will hold...

Mr. Manley: One thing you may want to look at is you know, and this is optional is...is to see whether or not those footings you know are going to work or not because if you’re able to determine that they’re not then you could come back to the Board and present a different...move the building and then provide us with what you’d want to do...if you...if you move the building forward so that it was away from the property line...those are things that would be, you know, would be an option.

Mr. Scalzo: Yeah, you also wouldn’t bonded to the footprint that size, you know, it could be smaller so it would be easier to get (inaudible)

Mr. Levin: Jim, do we need permission to revisit the property?

Mr. Manley: No, because the actual a...they have to...they have to keep...as long as the Public Hearing is open they have to keep the Notice up...

Mr. Levin: Okay.

Mr. Manley: ...so as long as that Notice is up you have the ability to...

Mr. Levin: I’d like to revisit the property.

Mr. Manley: Very good.

Mr. Scalzo: I’d like to obviously leave the Public Hearing open.

Mr. Masten: Yes.

Mr. McKelvey: Yes.

Mr. Manley: Now for the benefit of the public that’s here for this particular application the Public Hearing being open allows the public and re-comment with regard to new information that’s submitted. So once the applicant has submitted the new information you’ll have an opportunity to review that information and then if there is a question or a comment that you have for the Board you can present those comments for the Board to consider with regard to the application. So with that being said I would look for a motion to keep the Public Hearing open and to schedule it for continuation on Tuesday, November 21st which is our next meeting.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Mr. Manley: I have a motion from Mr. McKelvey and a second from Dave...

Ms. Gennarelli: John Masten? John...?

Mr. Manley: Yes.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: And just...the Board may be out again to do another site inspection at some point throughout the month.

Mr. Henderson: Okay, thank you.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:59 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 7:22 PM)

YASSER ALY 300 LAKESIDE ROAD, NBGH

 (50-1-48) R-1 ZONE

Applicant is seeking Area variances for the minimum lot area, the minimum lot width, the minimum one side yard setback, the minimum combined side yards setbacks, the 1500 sq. ft. minimum floor area and the maximum lot surface coverage to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises.

**SAME MINUTES USED FOR BOTH THE USE AND AREA VARIANCE APPLICATIONS.**

Mr. Manley: Moving on to our next Public Hearing for the evening. The next Public Hearing is the application of Yasser Aly, 300 Lakeside Road in Newburgh seeking a Use variance for the maximum of one dwelling unit per lot to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises and also seeking area variances for the minimum lot area, the minimum lot width, the minimum one side yard setback, the minimum combined side yards setbacks, the 1500 sq. ft. minimum floor area and the maximum lot surface coverage to convert an existing non-conforming accessory building into a second single-family dwelling unit on the premises. Ms. Gennarelli are all the mailings and postings in order?

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Mr. Manley: Now for the benefit of the public that’s here for this particular application the Public Hearing being open allows the public and re-comment with regard to new information that’s submitted. So once the applicant has submitted the new information you’ll have an opportunity to review that information and then if there is a question or a comment that you have for the Board you can present those comments for the Board to consider with regard to the application. So with that being said I would look for a motion to keep the Public Hearing open and to schedule it for continuation on Tuesday, November 21st which is our next meeting.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Mr. Manley: I have a motion from Mr. McKelvey and a second from Dave...

Ms. Gennarelli: John Masten? John...?

Mr. Manley: Yes.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: And just...the Board may be out again to do another site inspection at some point throughout the month.

Mr. Henderson: Okay, thank you.

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 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:59 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 7:59 PM)

RICHARD BERRY/LEON ASHKENAZIE 78 BALMVILLE ROAD, NBGH

 (43-3-47) R-1 ZONE

Applicant is seeking an area variance for no pool shall be in a front yard to install an in-ground pool (20 x 40) in a front yard. (Has two front yards Balmville Road and Grand Avenue)

Mr. Manley: The next Hearing this evening is the application of Richard Berry and Leon Ashkenazie, 78 Balmville Road in Newburgh, seeking an area variance for no pool shall be in a front yard to install an in-ground pool (20 x 40) in a front yard. (Has two front yards Balmville Road and Grand Avenue) Ms. Gennarelli are all the postings and mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Berry: Good evening.

Mr. Manley: Could you introduce yourself for the Board please?

Mr. Berry: Yes, I’m Rick Berry, 78 Balmville Road.

Mr. Manley: Okay can you go over with the Board exactly what it is you’re looking to do and how you plan to achieve that and what it’s impacts will or will not be on your neighbors.

Mr. Berry: Absolutely. So we have frontage...our driveway is off of Balmville Road and the house sits closest to Balmville Road. There’s about...you’ve been to the property I believe, there’s a lot of acreage between our house and Grand Avenue and we actually have a separate lot in there that we’re not planning to develop but a...so there’s acres and acres between our house and Grand Avenue and we’d like to put a pool close in to the house. I know it would be literally acres away from Grand Avenue.

Mr. Manley: So Balmville Road is more your...your front yard?

Mr. Berry: That’s right.

Mr. Manley: And then Grand Avenue is kind of more like the back or the side yard?

Mr. Berry: It would be the back yard I guess.

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

Mr. Levin: I think it’s obvious what he wants to do.

Mr. McKelvey: Got lots of land there.

Mr. Bell: Yes.

Mr. Manley: And if nobody has any questions, are there any questions or comments from the public at all with regard to this application?

No response.

Mr. Manley: Hearing none at this point I would ask that the Board make a motion to close the Public Hearing.

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

Mr. Manley: We have a motion from Mr. Bell.

Mr. Masten: I’ll second.

Mr. Manley: Second from Mr. Masten, roll call.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed. Okay.

 (Time Noted - 8:01PM)

ZBA MEETING – OCTOBER 26, 2017 (Resumption for decision: 9:09 PM)

RICHARD BERRY/LEON ASHKENAZIE 78 BALMVILLE ROAD, NBGH

 (43-3-47) R-1 ZONE

Applicant is seeking an area variance for no pool shall be in a front yard to install an in-ground pool (20 x 40) in a front yard. (Has two front yards Balmville Road and Grand Avenue)

Mr. Manley: The next application before the Board this evening Richard Berry and Leon Ashkenazie, 78 Balmville Road in Newburgh, seeking an area variance for no pool shall be in a front yard to install an in-ground pool (20 x 40) in a front yard. (Has two front yards Balmville Road and Grand Avenue) This is a Type II Action under SEQR. Do we have discussion on the application? Again the area variance criteria the first criteria that the Board shall consider is whether the benefit can be achieved by other means feasible to the applicant?

Mr. Scalzo: Inaudible.

Mr. Levin: I don’t think he can do anything different.

Mr. Manley: So the Board feels that they’re kind of married to that spot?

Mr. Bell: Yes.

Mr. McKelvey: Yes.

Mr. Levin: Yes.

Mr. Manley: Okay, whether or not there will be an undesirable change in the neighborhood character or detriment to any of the nearby properties?

Mr. Levin: Don’t believe so absolutely not.

Mr. McKelvey: No.

Mr. Bell: No, no at all.

Mr. Manley: I will add that the visual a...from Google Earth that I looked at from up above there are some other pools that are located in the...in the area so it wouldn’t be out of character to have an in-ground pool.

Mr. Manley: Whether the request is substantial?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Manley: A 20 x 40 pool, in-ground pool is pretty standard size. Whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Levin: None.

Mr. Manley: And is the difficulty self-created?

Mr. Bell: Yeah.

Mr. Manley: It is self-created but again not something that completely is determinative.

Mr. Bell: No.

Mr. Manley: With those factors in mind does the Board wish to make a motion?

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

Mr. Manley: I have a motion to approve from Mr. Bell.

Mr. Masten: I'll second.

Mr. Manley: And a second from Mr. Masten, Roll Call.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion is carried and the variance is approved.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:11 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 8:01 PM)

RICHARD RINALDO 22 WINDWOOD DRIVE, NBGH

 (90-5-11) R-1 ZONE

Applicant is seeking area variances for an accessory building may be located in any required side or rear yard, the maximum lot building coverage and the maximum lot surface coverage to keep a 12’ x 28’ accessory building (shed) built without a Permit in a front yard (corner lot Windwood Drive and Flamingo Drive).

Mr. Manley: The next application this evening that the Board is going to hear is the application of Richard Rinaldo, 22 Windwood Drive, Newburgh seeking area variances for an accessory building may be located in any required side or rear yard, the maximum lot building coverage and the maximum lot surface coverage to keep a 12’ x 28’ accessory building (shed) built without a Permit in a front yard (corner lot Windwood Drive and Flamingo Drive). Ms. Gennarelli are all the postings and mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening sir.

Mr. Furst: Good evening, my name is John Furst. I’m an attorney at Catania, Mahon, Milligram and Rider I represent the applicant Mr. Rinaldo as well as his wife Lisa. I can go through the application real quick if the Board pleases.

Mr. Manley: If you’d like to certainly.

Mr. Furst: Sure, okay, so essentially they’re looking to a...put a three hundred and thirty-six square foot shed, it’s 12 x 28 a...their lot is almost seventeen thousand square feet and it’s a corner lot. A...this proposal triggers three variances, one the accessory structure the shed is located in the front again because this is a corner lot a...technically it is behind the house a...but it is located a little bit to the side so it’s still over seventeen feet from the property line but since this is a corner lot there’s two fronts a...it’s technically located in the front yard but essentially in essence it’s located in the backyard. Two other variances are in connection in the existing non-conformity for building coverage and lot surface coverage. It’s a two percent (9%/5%) increase from an existing a...pre-existing legal non-conformity. So I’ll go over the five factors real quick for the Board. I’m sure you’re very familiar with them but for this specific application a...there’s no adverse or destructive impacts to the community or the nearby neighbors. Again technically this is in the front yard but really it is in the back yard because it’s behind the main house. It’s also located behind an existing six foot fence a...there’s also some trees towards the rear of the property that will limit the visibility to the neighbors. And again it is set back, it’s still set back seventeen feet a...from the property line and I think it’s approximately twenty-six feet from Flamingo Drive. And as far as the a...the increase in lot surface coverage and building coverage again it’s a minor change two percent (9%/5%) increase due to the size of the shed a...so not many impacts especially given the size of this parcel. Again it’s seventeen, approximately seventeen thousand square feet. As far as alternatives a...Mr. Rinaldo would like to store his equipment...his...what he uses for his yardwork inside rather than outside. It also allows...the location allows for more private space again if they had to push the shed back directly behind the house they would have no private play area for their children and again they have limited alternatives because it is a corner lot and there are two front yards. There’s already a pool a...and...and a deck in the backyard so again they have limited space and the objective is to maintain a backyard and the privacy in their backyard. As far as substantial, you know, this can’t be judged in the abstract a...you have to really look at the true impacts to the neighborhood a...so yes, the shed is closer than the house but again it is still located twenty-six feet from Flamingo Drive. You can’t just look at the numbers especially since there’s no community or environmental impacts a...and as far as substantial with the lot coverage and the building coverage it’s only a minor increase. We’re only looking at a two percent (9%/5%) increase from the existing non-conformity. Environmental impacts; one of the reasons why the Town most likely has this provision is sight distances, they don’t want structures close to, you know, corner lots. They don’t want structures up by the property line cause you have an intersection and you want to make sure people can see when they’re turning the intersection. This shed the location of the shed if you looked at the survey is...is nowhere the intersection. Again I have to emphasize it’s seventeen feet from the property line and approximately twenty-six feet from Flamingo Drive so there’s going to be no interference with sight distances or traffic. It’s not a safety issue. Again it’s still located behind the house and there’s going to be some limited visibility with the existing fence and some trees in the rear portion of the property. And finally, the final factor is whether it’s self-created, I think it’s a unique situation because again we are dealing with a corner lot a...but even if you do find that it is self-created it doesn’t prevent this Board as per statute to grant this variance. So if you have any questions we’re here to answer them.

Mr. Manley: My first was when did the applicant purchase the house...the property?

Mr. Furst: Two thousand...two thousand thirteen. I think there should be a copy of the deed in the application packet.

Mr. Scalzo: September of two thousand thirteen.

Mr. Manley: Has there been any modifications or construction on the property since two thousand thirteen besides the shed?

Ms. Rinaldo: Yes, Lisa Rinaldo, yes we’ve had a...inside the house, not outside the house.

Mr. Manley: Okay, what...what modifications or changes have you made to the home?

Ms. Rinaldo: We converted a half bath to a full bath, that was it, which we’re still working on getting...there was a whole...problem with our...our contractor and he left the C.O. unfulfilled so we’re...we went back, we renewed it and we’re waiting for the Electrical Inspector to come and finish that so we can get the rest of the inspection done...most of it was done originally.

Mr. Manley: Did you obtain a Permit for that?

Ms. Rinaldo: Yes.

Mr. Manley: So you knew at the time you had to take out a Permit to do that work, correct?

Ms. Rinaldo: Yes.

Mr. Manley: So my question is on the application here everything was submitted as if this was a proposed shed but yet the shed is already there so I guess my question is how did the...how did the a...chicken get here before the egg?

Mr. Furst: Right, well actually the original we started working on over the summer a...it wasn’t...the shed wasn’t placed there till I think it was the end of August a...I think they were...is that correct?

Mr. Rinaldo: (Inaudible)

Mr. Furst: Okay, alright so it was even later than that so it was early September. I think you’ve been working with the Building Department since...I mean, I’ve been involved since the summer a...probably since prior to the summer so they purchased the shed, they realized they needed the variances a...for whatever reason the company they purchased the shed from just dropped it on September 9th and placed it there without their...without their consent.

Mr. Manley: Do you have anything from that company that says that they actually did this in error that they actually dropped this off in error?

Mr. Furst: No.

Mr. Manley: So that would be hearsay...the Board would have to take that as hearsay, right?

Mr. Furst: Okay, I didn’t know where...this is a trial but...yeah.

Mr. Manley: I mean we are a quasi-judicial Board.

Mr. Furst: Right. But just to know they...they were appearing and applying before the Building Department well before the shed was dropped...

Mr. Manley: Right, but...

Mr. Furst: ...so they realized they needed a Permit.

Mr. Manley: ...but didn’t have the Permit at the time the shed was dropped. That’s what I was...that’s where I’m going with this.

Mr. Furst: But again they had no knowledge that the company was dropping the shed.

Mr. Manley: What is the other shed used for on the property?

Mr. Furst: They use it for the children as a playhouse...

Mr. Rinaldo: No.

Ms. Rinaldo: No.

Mr. Furst: Oh...what?

Ms. Rinaldo: That shed has just has things from Rich’s mom in there that we’ve stored for her, waiting for her to come get them but...just has regular household equipment in there...old microwave, old air conditioner, things like that.

Mr. Manley: What’s the possibility that whatever you need to store could be stored in that shed if you need some room versus needing that second shed?

Mr. Rinaldo: (Inaudible)

Ms. Rinaldo: Do also the reverse we need a...a bigger space. Our attic is really small as a scuttle so it...it...that becomes the problem. We have five children that we store stuff for so we’re kind of running out of space.

Mr. Manley: And counselor you had said that used is for yard work...that’s what’s stored in that. It would appear to me that on the size of the lot you would a need a shed that large to put yard equipment in that you’re just using to maintain your yard? Is...is that what you’re saying, you need something that big to put yard equipment in?

Mr. Furst: Yes, I think... (Inaudible)

Ms. Gennarelli: Can you get closer to the mic?

Mr. Furst: ...it’s storage for not only stuff that can go in an attic but storage for outdoor stuff as well.

Mr. Manley: Okay, is there any business that’s operated from the premises at all?

Mr. Furst: No.

Mr. Manley: The applicant...is there?

Mr. Rinaldo: No. I recently closed my business. I was at one time running a lawn...lawn business but I’ve had recently ACL surgery and besides my ACL surgery my business kind of went under for other reasons as well so my business is closed so...

Mr. Levin: What was your business, sir?

Mr. Rinaldo: Excuse me?

Mr. Levin: What was your business?

Mr. Rinaldo: It was a lawn...landscaping business so that equipment I do have is industrial size equipment that I still cut my lawn with a...some of it I just haven’t been able to get rid of yet so it’s...I need to store it. I have a storage unit that I’m paying a lot of money for right now and I have no money coming in so I’m trying to limit that...that bill...that...came in every month. So instead of storing it there I’m trying to store it in the shed and some of it’s going to go, some of it and most of it is going to stay because I’m going to use it to cut my own yard with and do my own yard work with.

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

Mr. McKelvey: I...I see the...the trailer being pulled up to your house occasionally though yet.

Mr. Rinaldo: Yeah, yeah it’s...it’s just my trailer. I...as a matter of fact, somebody used my trailer this weekend to do something with. I’m a...you know...there’s nothing...I tried to...I...I try not to have my trailer in front of my house at all. It’s something I don’t even like to do but a...as far as running a business out of my home...no, I...I definitely don’t run a business out of my home a...there’s several other people in...in the neighborhood that do run businesses out of their home but I’m not one of them.

Mr. Levin: When you were in business where was that located?

Mr. Rinaldo: A...my shop is a...on 32 or a...52 rather a...South Plank Road that storage unit is...I have a paid storage unit that I rent there and I store my trailers there and I...

Mr. Levin: Do you still own it?

Mr. Rinaldo: ...still own that. I don’t own it, I...I’m rent...it...it’s a...

Mr. Levin: Yeah, okay.

Mr. Rinaldo: ...it’s the Storage Stop on South Plank Road there. I rent a big storage unit and also a...a couple of parking a...spaces for my trailers.

Mr. Manley: Do you have a contract or something that shows that you rent a month to month space there?

Mr. Rinaldo: A...probably...not with me no. But I can...can get it. I mean it’s...it’s...no big deal. (Inaudible)

Ms. Rinaldo: I don’t, no but I don’t (Inaudible)

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

Mr. Levin: I was just honestly looking at it that’s the biggest shed I ever saw in my life a...

Mr. Rinaldo: They actually make bigger.

Mr. Levin: ...there is something...

Mr. Rinaldo: Yeah, they’re bigger...there’s bigger sheds.

Mr. Levin: That’s huge. I have a shed that’s not even an eighth of the size of that and I can get a lot of things in it. I wondered why you can’t combine it and get rid of that other shed that you have.

Mr. Rinaldo: There’s an extensive amount of equipment that I have right now and there’s also just a lot of stuff like my mom, I moved my mom from Florida, her husband passed away years ago. Moved my mom from Florida years ago and I still have all her stuff, she doesn’t live with me anymore. Not that it’s anybody’s business but she doesn’t live with me anymore but I still have all her stuff. I’m still storing all of her stuff a...as a matter of fact a couple of weeks ago I asked her what she wanted me to do with it all cause I’m trying to liquidate all my stuff. I got attics full; we have another storage...a storage room downstairs that’s full. Our garage has our...our gym equipment in it. It’s just our shed out back is full and there’s a lot of stuff that’s in my storage unit that’s going to fill it up quick. So as far as running a business I don’t run a business anymore.

Mr. Manley: Okay if the Board doesn’t have any further questions I’m going to now open the Public Hearing up to the public. If you could just if you’d like to be called please just raise your hand, we’ll acknowledge you and have you come up. Yes, maam? The lady in the blue please. Good evening.

Ms. Hines: Hi, how are you? My name is Denise Hines; I live across the street from Rich and Lisa. Several things they’re saying is not true. That...that shed could not just be dropped there, there’s a six foot fence that he took down and put up a chain link fence in order for them to put that shed there. It was not dropped there but curiously one day he was there, they rolled back the fence, the shed was put in and that six foot fence was put back up. In addition, that shed is clearly visible from Flamingo Road. It is right next to a dump truck that he has back there as well and when that gate is open you can see snow plows, wheel barrows, sand spreaders. He has been running a business out of his home for years now. A...he parks his trailer in front our house, he parks a trailer on the street making it very difficult for traffic to get around. He says he doesn’t have a business; he has a D.O.T. sticker on his truck that his truck is registered to. He has no name on the side of the truck which is required if you have a D.O.T. registration. There is a...multiple garbage and things in their...on their front lawn there’s wheel barrows on the...not on the front lawn, on the driveway. My issue is this is a residential area. I believe he is running a business whether he can run it now...with that...

Mr. Rinaldo: Your neighbor runs a business out of his house...

Mr. Manley: Excuse me sir.

Ms. Hines: Mr. Presutti runs a business out of his home. You’re allowed to run a business out of your home but you are not allowed to store your equipment for your business at that home. The gentleman on the other side of me also has a business. They both have off site storage for their equipment.

Mr. Rinaldo: As I do.

Ms. Hines: Then why do you need a shed this size for equipment?

Mr. Manley: First of all...

Ms. Hines: The property is flat...

Mr. Manley: ...the way this Board works is that whoever is here to speak to the Board directs their questions and their comments to the Board. The public during such time that a person is in front of the Board is to give that individual the same respect that they’re given when they’re presenting their case to this Board. If you can’t conduct yourself in the manner that is respectful to the Board I would have to ask that you would leave the room. So at this point you may continue, thank you.

Ms. Hines: Alright, thank you. Except now I don’t know where I was. A...I don’t understand why a shed that size is need for mowing any property. It’s a flat property, he has no hills, he has nothing that would present a physical problem to landscaping in his yard in terms of it being set back and not a...a problem for visualization. He’s a landscaper...I’m sorry, he’s a landscaper or he was. The corner of his lot the trees are so overgrown so high you can’t see around the corner to safely turn the corner and when his truck is parked there you can’t...you take your life in your hands going around the corner. I don’t believe a...a shed this size is necessary for personal, private use and again, unfortunately I’m not accustomed to legal proceeding so I do have pictures of the shed when it was put there. I do have pictures from the side, from Flamingo where you can see the dump truck. I don’t know if that’s the right word...name for it but it’s something that he was already cited for once by Code Compliance cause he had it on the front lawn. My concern is for my property value a...if this is allowed to be...to stay there what else is he going to put on this property and how else my property going to be effected by it?

Mr. Manley: Well I don’t know if the Board Members have any questions for you but I just have one question. Could you share with this Board as to whether or not in your development which would be in your...you know, houses within you know, the Colden Park area in your particular neighborhood, can you name off how many sheds are in that development that are of that size?

Ms. Hines: Zero.

Mr. Manley: There are none? You could go through the whole...?

Ms. Hines: On his side...I’m not...I’m a visual person I can show you a picture of the shed. You probably have a better idea dealing with this. This is a monstrous size shed, it’s huge. It cannot even...a reasonable person could not even conceive that this is for personal use. You know it...it...if his lawn equipment is for...if that big trailer that he has...he told Code Compliance that that was his for personal use. Again, it’s got D.O.T. stickers on it. His...his people...he’s right, he knows that we’re watching them, people did come, pick up, leave their truck, take his truck and his trailer off the premises, come back, take the lawn equipment out of that trailer and cut his lawn, put the equipment back in the trailer, gave the keys to him and he...they went off in their truck. So a reasonable person, they’re doing his work because he can’t now because he’s injured. And I’m sorry that he’s injured but he’s running a business out of that home and if it didn’t affect me I could care less. Okay? But I have to look at this trailer, I have to look at this yard and in...in a couple of years I’m retiring, I’m moving, I want my property value to stay where it is.

Mr. McKelvey: We have pictures.

Ms. Hines: Do you John? And I have pictures of the...if you went in there now you might have pictures of it now. I have pictures of when the fence was down and the plot was being prepped for the trailer...or the shed to be delivered.

Mr. Manley: Let me go back to the a...the original question I had about other sheds that...that size. You indicated that a...how long have you lived in the...in the neighborhood? How long have you been a resident?

Ms. Hines: Forty years.

Mr. Manley: So you’ve been a resident for forty years, you’ve obviously seen the...the residents change...people have put on additions...

Ms. Hines: I put on an addition.

Mr. Manley: Could you share with this Board, do you know of any detached garages that have been built in your development and roughly how big they are? Do you recall any in the Windwood, Westwood, Flamingo, that particular area that are de...

Ms. Hines: Detached garages?

Mr. Manley: ...detached that are not attached to the house but that’s a detached garage.

Mr. McKelvey: There’s some.

Ms. Hines: If they are they aren’t anything...I walk the neighborhood all the time, if they are they...I have never seen anything that has caught my eye like this does.

Mr. Manley: Okay.

Mr. McKelvey: I know there’s one on Westwood.

Mr. Manley: So there’s maybe one detached garage in the development.

Mr. McKelvey: Well I don’t know off hand.

Mr. Hines: Can I ask which one of the Board Members did the site visit on Saturday or Sunday?

Mr. Levin: We all did.

Mr. McKelvey: Yeah.

Ms. Hines: So you saw all the...all the other equipment in the backyard. There’s plows, there’s sanders...

Mr. Levin: (Inaudible)

Ms. Hines: (Inaudible) ...put them in the shed.

Mr. Levin: No, I didn’t see that.

Ms. Hines: Well I have a picture of it if you’d like to see it.

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

Ms. Hines: And I...(Inaudible)

Mr. Manley: And the reason for my question about any other garages is because this is the...this particular 12 x 28 is the size of a fairly large detached garage. So that’s kind of why I was asking if you were familiar with any detached garages in the neighborhood a...cause to me this is really you know, we’re calling it a shed but it really is a substantial detached structure a...that is the size of a detached garage. So at this point, does the Board have any other questions for...?

Mr. Levin: No.

Mr. Bell: No.

Mr. Manley: Okay, unless you have anything else to share with the Board I’ll see if there’s anybody else that has any other questions.

Ms. Hines: Thank you.

Mr. Manley: Is there anybody else that has any comments or questions? Yes maam?

Ms. Sarro: My name is Kate Sarro; I’ve been a resident of Colden Park since 1978. I live at the other opposite end of Flamingo Drive. My concern is just it’s a very residential neighborhood and I want to maintain that and the concern is to make sure that this is...that this complies with...make sure it is maintained as a residence not as a business.

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

Mr. Levin: Why do you feel now that it’s not a residential neighborhood?

Ms. Sarro: Because I received...I saw the variance that...I did not receive the letter that came to the neighborhood. I walk my dog past that house on a daily basis and I saw the postings. So that’s how I became apprised of the situation. And I was just...read it and was concerned. I’ve seen the equipment there and was wondering if a business was being run there and adding a shed seemed to enhance that perspective.

Mr. Manley: Okay, thank you very much. Is there anybody else here from the public that has any questions or comments with regard to this application?

No response.

Mr. Manley: Okay, I believe you maybe have a comment.

Mr. Furst: Yes, yeah just to remind the Board. The...the variance is not for the size of the shed a...the variance is for the location of the shed in...in the front property and as well as the increase in the lot coverage and the lot building coverage. And also to note with respect to the lot coverage...lot surface coverage and lot building coverage that calculation does include the large deck that’s attached to their...to their house and underneath that deck I believe it’s...it’s...it’s dirt so it’s not really an impervial surface a...so one of the reasons the calculation or the non-conformity exists is number one because there must have been some type of zoning amendment change where the...where the bulk requirements increased for that zoning district after the house was built and number two part of that calculation does include a...the deck a...so again this is not a variance for the size of the shed. It’s for the location of the shed a...I believe...

Mr. Donovan: If I could just I’m sorry on that...on that topic, right? So you have a building coverage and a surface coverage which takes into account the size of the...

Mr. Furst: Correct.

Mr. Donovan: ...of the building.

Mr. Furst: Right.

Mr. Donovan: So if it...if it was smaller you wouldn’t need the building...?

Mr. Furst: I think no matter what we put down we’d need a variance because it’s a pre-existing non-conformity. A...we could put down a 2 x 2 shed and we would need a variance because a pre-existing non-conformity.

Mr. Donovan: But...but the size of the structure will...that...that’s...

Mr. Furst: Even with the size of the structure it’s only a two percent (9%/5%) increase from what currently is...

Mr. Donovan: But that necessitates the variance, right?

Mr. Furst: Any structure that they put down would require a variance. Any structure that most people put down in that neighborhood is probably going to require a variance because of the zoning changes that were created and created all these pre-existing non-conformities. And the other thing is to think about a...you know, I think one of the purposes of the shed is to make sure to get those objects that are outside and put them inside so it’s not so sightly.

Mr. Donovan: But, do you know the height of the shed or the structure whatever we’re calling it? How tall is it?

Mr. McKelvey: The roof is...the roof is visible from over the fence.

Mr. Manley: I mean you could actually pull a small car in there based on the size of it. I mean...

Mr. Masten: Yeah.

Mr. Manley: ...it it’s like a garage.

Mr. Donovan: I’m just trying to get a feel for relative to...a six foot fence how high is the shed? That’s all...that’s all I want to know. Do we know or we don’t know?

Mr. Furst: One of the picture does show the fence in the background so I think that’ll give you a good idea as far as how high it is. I don’t know exactly how high it is. I think there’s probably a height requirement for accessory structures so that wasn’t raised as a...a necessary variance.

Mr. Donovan: Okay. And...

Mr. Furst: Whatever it is it complies with the Code.

Mr. Donovan: If Ernie Johnson has a...he’s the surveyor, he’s indicated that he’s completed his field survey July 14th. I...I think I heard before the structure was placed on September 9th I mean...he’s got some pretty detailed a...

Mr. Furst: Yeah, that was revised after the shed...

Mr. Donovan: ...twenty-one point seven feet, I mean it...it says proposed...I...I just want to know is that really where it is or is it not...?

Mr. Furst: There should be a revision date on that survey.

Mr. Scalzo: Yeah it says 9/26/17 added dimensions.

Mr. Furst: Right.

Mr. Scalzo: It doesn’t say field update.

Mr. Furst: Right, he added the dimensions when the shed was put...

Mr. Donovan: But...but did Ernie go back out there and verify that or...?

Mr. Scalzo: It...it doesn’t...it would...the revision block would indicate no. The revision block only indicates that he added the dimensions. It doesn’t say that it was an as built field update. But it could be Dave...

Mr. Donovan: Yeah, I understood, understood, yeah.

Mr. Furst: My understanding is that he did but if you want to make that a condition of the approval?

Ms. Hines: If I may, I’ll just ask one other question?

Mr. Manley: Yes.

Ms. Hines: If the intent is to store stuff it’s been there September 9th why is it not there now?

Mr. Manley: Okay, that’s a point well taken, thank you. Yes, sir?

Mr. Canfield: I have one question for the applicant or its representative. This it is a pre-fab shed is this a wooden floor? It is?

Mr. Furst: The applicant has indicated that it is.

Mr. Canfield: That’s okay, if there’s a storage of any combustible or flammable materials in there it needs to be a non-combustible floor should you get to that point of approval. A wood floor is not good for storing of lawn mowers and stuff...just a Building Code point of view.

Mr. Manley: Counselor, the applicant had actually had a...testified to the Board that he would be keeping his a...scuttled business’s equipment inside of it...lawn mowers, probably gas trimmers a...with the information that’s been presented by our Code Compliance how is that going to impact the a...request at this point?

Mr. Furst: Are you sure that the a...equipment itself or the tanks storing it?

Mr. Canfield: Any fluids.

Mr. Furst: Even if it’s in a gas tank inside of a mower? Well I’d have to check the Building Code to confirm... (Inaudible) That’s the first I’ve heard of it but I’m not a Building Inspector.

Mr. Canfield: And I’m not an attorney.

Mr. Donovan: And you’re so thankful, right Jerry?

Mr. Canfield: But if counsel wishes I can provide you with a Section of the Code so you can, you know, review it yourself. Okay. And at the time that we reviewed the application I don’t believe Mr. Mattina knew, you know, what the actual configuration or what it was of the shed or I’m sure he would have brought that to your attention.

Mr. Manley: Does the Board have any other questions for the applicant’s representative or the applicant?

No response.

Mr. Manley: If there’s nothing further at this point does the Board wish to make a motion? Do they need further information? What would the Board like to do?

No response.

Mr. Donovan: I would just say nothing is not an option so you need to do something.

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

Mr. Scalzo: Well actually you know what before a...I...well no he...

Mr. Manley: There’s no second to his motion.

Mr. Scalzo: Alright, there’s no second. I...I...as I look at this and Dave recognized it as well are we sure that that shed is exactly where that shed is indicated on the map? It could be. I’m not sure.

(Inaudible)

Mr. Furst: The applicant went out there today right and confirmed the dimensions?

Mr. Scalzo: Well I...I’m...regarding Ernie Johnson’s certification that the dimensions...

Mr. Furst: Right.

Mr. Scalzo: ...that I’m reading are indicative of the relation to the property line.

(Inaudible)

Mr. Scalzo: He...he meets the five set offset for the access (inaudible) I know that’s not why we’re here but a...

(Inaudible)

Mr. Scalzo: ...it’s...it’s not a show stopper for me.

Mr. Donovan: Well I just raised the issue because the...the dates were...it didn’t say re-verified date by field survey. If the applicant’s indicating that that’s where it is on the map then that’s what he’s got to live with.

Mr. Scalzo: Right, okay.

Mr. Donovan: And I’m not saying that you’re not right. I’m just saying that that’s what you’ve got to live with, that’s all.

Mr. Scalzo: And I defer to Mr. Bell.

Mr. Manley: Now part of the...the issue and I don’t what the rest of the Board has but from a visual perspective and character of the neighborhood a...the one thing that I’m looking at and the testimony of the...the neighbors was that there are really no large accessory structures in the Colden Park area so this would certainly not be within the character of the neighborhood and that is certainly one of the characteristics that we look at when we make our determination...

Mr. Scalzo: Right.

Mr. Manley: ...so the Board...you know at this point, if you don’t need anything further information to make a decision...

Mr. Scalzo: Or...or perhaps we can revisit the neighborhood to verify anything...

Mr. Rinaldo: Yeah, I was going to say you may I mean that’s going off of one persons’ word, I mean, I...I don’t think any of us know that there’s really any other sheds of that size or bigger there. I mean, I’m not saying there’s not but I’m also saying that...

Mr. Manley: Well it’s also incumbent on the applicant to provide us with something if there are four or five other ones in the neighborhood that’s...that’s part of the...and in fact your counsel even went through the...the test with us and what we need to consider...

Mr. Rinaldo: I...

Mr. Manley: ...so...

Mr. Rinaldo: ...I understand your...your point but we weren’t...we weren’t told to walk the neighborhood to see if there was any sheds of that size. We...we...we’ve tried to do everything like...I mean, I’ve closed my business. My business is closed it...like...I took my...my sign off my truck because my business is closed because I don’t want to have any issues. My numbers I just didn’t take them off. I...it’s not a big deal like they’re D.O.T. numbers. I pulled my trailer. I don’t want to have a problem with D.O.T. I follow D.O.T. guidelines when I put my stuff in my trailer, I strap it down, I make sure I’m...I follow the rules. I...I’m not trying to give anybody problems. I’m not trying to bring the neighborhood down. I’m trying to store my stuff like she said I do have wheel barrows out front. I have a couple of pieces of stuff that I don’t...I can’t put at the storage unit so they’re scattered throughout my yard. I do want to put them in...away and out of sight. I don’t want my yard looking like trash. I...I don’t and that’s...that’s why...that’s the reason for the shed so...

Mr. Furst: And also just to remind the Board again the size of the shed is not the specific issue here but I believe one of the Board Members had mentioned that there was a detached garage a...of similar size.

Mr. McKelvey: No, not similar size.

Mr. Furst: Okay. Smaller?

Mr. McKelvey: Yeah, it’s smaller. I’ve noticed...I live in Colden Park.

Mr. Furst: I...I mean if the Board wants us to try to get some information together as far as similar size sheds again my feeling is the size of the shed is not the issue here...a...but if the Board feels like that’s important to them as far as community character a...then, you know, if we can try to produce some information for next month’s meeting and hopefully show the Board that you know, there are other similar size structures. Again, with the caveat that you know, the size of the shed is not at issue here.

Mr. Manley: The individual that had their hand up I caught somebody in my...eye...does somebody have a question or comment, they had their hand up? No?

No response.

Mr. Manley: Okay, what is the Board’s pleasure? Does the Board wish to...?

Mr. Donovan: Right now there’s a motion to close the Public Hearing which has not received a second. That’s what’s going on so far.

Mr. Scalzo: Then I make a motion to leave the Public Hearing open pending re-visitation of the neighborhood so we can verify the character.

Mr. Manley: Okay, so we have a motion to keep the Public Hearing open, we have motion to close the Public Hearing. Do we have a second to one of those?

Mr. Masten: I’ll second the one for...to keep it open.

Mr. Donovan: And just to be clear, what’s the date again, Betty?

Ms. Gennarelli: The 21st, Tuesday the 21st.

Mr. Donovan: So the motion is to keep the Public Hearing open until Tuesday, November 21st.

Mr. Manley: What is the purpose of the Board keeping the Public Hearing open? Just so the applicant is clear and the public knows what to expect.

Mr. Scalzo: I would like to...I was in Colden Park today driving around and I went to the site today. I would like to visit the site again looking at the other aspects or other...basing this applicant on the character of the neighborhood. I wasn’t looking for any accessory structures. I did come around the corner and you know, saw two and a half feet above the fence.

Mr. Levin: Can they supply us with the information that we’re requesting?

Mr. Furst: That’s fine.

Mr. Levin: For our next meeting.

Mr. Donovan: Well...yeah...they can...they can supply us...

Mr. Rinaldo: The height comment...

Mr. Donovan: ...with whatever...

Mr. Scalzo: No it’s not an issue.

Mr. Donovan: ...information they think it’s going to be...

Mr. Rinaldo: Yeah I was going to say all sheds are pretty much the same aren’t they?

Mr. Scalzo: No that’s not the...

Mr. Rinaldo: Alright.

Mr. Scalzo: I might just want to see...

(Inaudible)

Mr. Scalzo: ...the neighborhood again just to see if this is in character with everything else that’s going on.

Mr. Manley: So at this point you want some extra time and the applicant is also going to do some further due diligence with respect to finding other sheds of similar size within Colden Park. Is that...?

Mr. Rinaldo: Yes.

Mr. Furst: The caveat that again size is not the issue here but...we’ll see what we can dig up.

Mr. Manley: Well for you it may not be but for the Board that may be one of our...our factors of consideration.

Mr. Donovan: I think the fact that you want to build an accessory structure is the issue.

Mr. Furst: In the front yard, yes.

Mr. Donovan: Correct.

Mr. Manley: The public just so that you’re aware the Board is going to postpone and continue the Hearing till next month on the 21st, you will not be re-noticed of the Public Hearing so just make sure that if you wish to come back to hear the additional information that the applicant is going to present and also the findings of the Board going out to Colden Park and looking at other similar detached structures be here next month, November 21st at 7PM, the Board will continue the Hearing. There is a question from someone in the public? Yes?

Audience Member: In view of the proximity to Thanksgiving will the Board receive written comments and additional responses from the public that can be read into the next meeting?

Mr. Manley: That...that...as long as the Public Hearing is open you’re more than welcome to submit stuff to the Board in writing and we would be more than happy to read it into the record.

Audience Member: Thank you.

Mr. Scalzo: Mr. Chairman, did we actually have a roll call on it?

Mr. Levin: We didn’t have the vote on it.

Ms. Gennarelli: We didn’t have the roll call.

Mr. Bell: Not yet.

Mr. Manley: So at this point, Ms. Gennarelli will you call the roll?

Ms. Gennarelli: Yes.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is continued to next month.

Mr. Furst: Thank you very much.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:42 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted – 8:42 PM)

DEAN MULLINGS 1671 ROUTE 300, NBGH

 (16-5-2) R-2 ZONE

Applicant is seeking an area variance for 185-38-C-2 - The lot must meet the minimum area for a single family dwelling to build a 670 sq. ft. accessory apartment in the basement of the premises.

Mr. Manley: The next item is the Public Hearing held open from September 28th, the application of Dean Mullings, 1671 Route 300 in Newburgh seeking an area variance for 185-38-C-2 - The lot must meet the minimum area for a single family dwelling to build a 670 sq. ft. accessory apartment in the basement of the premises. At this point I would like to read into the record the notice from the Orange County Department of Planning, dated September 25th, the Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. County recommendation is Local Determination. At this point does the Board have any further questions for the applicant’s representative or the applicant?

No response.

Mr. Manley: If not, I would look for a motion to close the Public Hearing.

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

Mr. Manley: A motion from Mr. Scalzo do we have as second?

Mr. Bell: I’ll second it.

Mr. Manley: We have a second from Mr. Bell. Roll call.

Ms. Gennarelli:

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Levin: (Inaudible)

Mr. Donovan: I was going to say that was without a doubt the best presentation I’ve ever heard.

Mr. Manley: We still have to vote. You do know that?

(Inaudible)

 (Time Noted - 8:44 PM)

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ZBA MEETING – OCTOBER 26, 2017 (Resumption for decision: 9:11 PM)

DEAN MULLINGS 1671 ROUTE 300, NBGH

 (16-5-2) R-2 ZONE

Applicant is seeking an area variance for 185-38-C-2 - The lot must meet the minimum area for a single family dwelling to build a 670 sq. ft. accessory apartment in the basement of the premises.

Mr. Manley: Moving right along from the Hearing last month September 28th that was closed this month the application of Dean Mullings, 1671 Route 300 in Newburgh seeking an area variance for 185-38-C-2 - The lot must meet the minimum area for a single family dwelling to build a 670 sq. ft. accessory apartment in the basement of the premises. Type II Action under SEQR, do we have discussion with regard to the area variance criteria? The first being whether the benefit can be achieved by other means feasible to the applicant?

Mr. Levin: I don’t think so.

Mr. Bell: No.

Mr. Manley: Whether the approval of the application will create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Scalzo: No.

Mr. Manley: Whether the request is substantial?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Bell: Not at all.

Mr. Manley: And it’s under the 700 sq. ft. Whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: And finally, the...whether the request is self-created? Again it’s relevant but not determinative.

Mr. Bell: Right.

Mr. Manley: With those items in mind and going through the criteria does the Board wish to make a motion regarding this application?

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

Mr. Levin: I’ll second it.

Mr. Manley: Motion from Mr. McKelvey to approve, second from Mr. Levin. Roll call vote.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion carried, the variance is granted.

Mr. Cella: Thank you.

Mr. Mullings: Thank you gentlemen and Happy Thanksgiving.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:13 PM)

ZBA MEETING – OCTOBER 26, 2017 (Time Noted: 8:44 PM)

MELISSA COSTA-TAYLOR & JOHN 1 DISANO DRIVE, NBGH

 TAYLOR (34-1-1.2) R-1 ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory buildings and the maximum allowed storage of no more than (4) four vehicles to build an accessory building (50 x 34 x 27’6”)

Mr. Manley: The next item is a Reserved Decision from the September 28, 2017 meeting...

Ms. Gennarelli: Jim, will that be done at the end, no?

Mr. Manley: Yes. Which...that’s right because we don’t have any well; I was going to ask...

Ms. Gennarelli: Oh, okay.

Mr. Manley: Was there any information received with regard to this?

Ms. Gennarelli: No.

Mr. Manley: Okay, just for the Board’s knowledge there was no additional information received. At this point the Board is going to take a short adjournment in order to confer with Counsel regarding tonight’s legal questions raised by the applications this evening. In the interest of time I would ask that you wait in the hallway and then we’ll call you back in shortly as soon as we have finished with Counsel.

 (Time Noted: 8:47 PM)

Audience Members Inaudible

Mr. McKelvey: We asked for it (10) ten days before.

Mr. Scalzo: I wanted to see it plotted to scale on your survey.

Ms. Costa-Taylor: We have it.

Mr. Scalzo: Okay, and...and so we will...we will need them and need time to evaluate them.

Ms. Costa-Taylor: That’s fine.

Mr. Scalzo: So I don’t know that we can... Well at this point, are we running out of time or...?

Ms. Costa-Taylor: Well I get it...I mean, we were here, we waited the last time, we were last at the meeting. I...I understand but like I work full time...I travel for a living so getting all this stuff together for the Board to start with was tough getting the architect...architecture you know, to get involved with another process. They don’t... (Inaudible)

Mr. Taylor: That’s more money, it’s not like they just do it for nothing.

Ms. Costa-Taylor: Exactly.

Mr. Scalzo: I...I understand.

Ms. Costa-Taylor: I mean but we’re spending a lot of money...

Ms. Gennarelli: They’re going to need to speak into the microphone.

(Inaudible)

Ms. Costa-Taylor: We do know that you guys approved a garage at the same height on Lakeside Road I went... (Inaudible)

Mr. Taylor: Which was one inch...one inch lower...your biggest hang up with our garage was the height difference. And there’s a garage just like our garage...

Mr. Scalzo: Should they be up here talking if...if...?

Ms. Gennarelli: Well the Public Hearing is closed...

Mr. Donovan: You can always hear from the applicant.

Mr. Scalzo: Yeah, we you can always hear from the applicant. So as you indicated...

Ms. Gennarelli: But then come to the microphone...

Mr. Scalzo: ...that you had saw we just approved something so if you’ve read the meeting minutes then you’re pretty familiar with how I typically vote for things that are very high.

Ms. Costa-Taylor: We already know you’re the no. We know you’re the no.

Mr. Taylor: That’s...we already know you’re the no that’s...that’s...he already said that you were the no.

Ms. Costa-Taylor: We got that.

Mr. Scalzo: He...who?

Mr. Taylor: The gentleman on Lakeside Road.

Ms. Costa-Taylor: (Inaudible) on Lakeside Road that got his garage.

Mr. Scalzo: Oh, okay.

Ms. Costa-Taylor: He said you had the same hang-up with the height restrictions on his. We stopped by, I happened to see the garage, it looked huge, I went to the yard sale and I was like oh my God so the guy was outside and I said can you talk to me about your garage, we’re trying to do the same exact thing by our house. His garage is actually a little bit taller than his house which ours would not be because of the slope of our driveway and the setback of it. His sits right up there on the hill wide open. So I think that, you know, we tried to do the best we could get these plans if you want to look at them you can. If you don’t want to look at them...I mean...

Mr. Scalzo: But we need to. We need to see them.

Ms. Costa-Taylor: I understand.

Mr. Scalzo: That’s yeah...

Ms. Costa-Taylor: I willing to go up there and hand them to you and you guys should look at them.

Mr. Scalzo: Yeah.

Mr. Levin: We’re still going to vote tonight...?

Mr. Scalzo: Oh, that I don’t know.

Mr. McKelvey: We don’t know.

Ms. Costa-Taylor: So I mean, you know it’s just a...I understand the point behind it but at the end of the day we’re looking to store vehicles before winter. We’re already at a place where we can barely break ground at this point and then complete it by winter so we’re trying to get to a, you know, a resolution. This is our third time here we were here a year ago...

Mr. Scalzo: Well actually, you know, if you heard me earlier in the night you know, we were talking about that first action where we were talking about a variance or an easement that was going to run through and hit a building, you were the people I was referring to for the first time you were here.

Ms. Costa-Taylor: Right...

Mr. Scalzo: And if...

Ms. Costa-Taylor: ...yeah, we got you.

Mr. Scalzo: Yeah.

Mr. Taylor: But that’s why we (Inaudible) remove stuff and we fixed stuff and now we’re having to spend more money on...more architectural plans so it’s... It’s like...just coming here is not free...

Mr. Donovan: Yeah, but understand you don’t...you don’t meet the Code. Right? So you’re asking for a variance.

Ms. Cost-Taylor: We understand that. So if you met...if you met the Code you wouldn’t have to spend the money to come here. Right?

Mr. Taylor: Right.

Ms. Costa-Taylor: We understand that. We do.

Mr. Donovan: So it’s not...it’s not like...so...so the folks up here have a job to do. Right?

Mr. Taylor: Correct.

Mr. Donovan: So they have a job to do so I wouldn’t be critical of them for trying to do their job well.

Ms. Costa-Taylor: I’m not critical.

Mr. Donovan: No, no you are. You are, you are, frankly you are.

Ms. Costa-Taylor: We’re trying to get the papers in. Well I think that we’re trying...

Mr. Taylor: Well to most people that come they’re are pretty critical yes.

Mr. Donovan: But understand we do...

Mr. Taylor: They’re here for a reason that’s all.

Mr. Donovan: ...there’s...there’s rules. Right?

Mr. Taylor: Absolutely.

Ms. Costa-Taylor: Yes.

Mr. Donovan: And so...so this Board has an obligation and they do a pretty good job with their due diligence before...

Mr. Taylor: One hundred percent.

Ms. Costa-Taylor: Inaudible.

Mr. Donovan: ...before they...so...

Mr. Taylor: Correct.

Mr. Donovan: So we’re all understood...that’s all.

Mr. Taylor: Absolutely.

Ms. Costa-Taylor approached the Board with the plans submission.

Ms. Costa-Taylor: I think it’s page three, I don’t know, and the other one was the septic.

Mr. Scalzo: That’s the one I wanted to see. That’s the...really the big one I wanted to see.

Ms. Costa-Taylor: Well the other one you asked for was specific heights of the garage to the...

Mr. Scalzo: Right, well actually the...I think the way it...actually here it’s in front of me.

Ms. Costa-Taylor: Inaudible.

Mr. Scalzo: I...I...my...I said if you could also just reevaluate, if you were married to that (27) twenty-seven foot height and I asked you to consider it. And...and since you did your homework and know how I typically look at these...

Ms. Costa-Taylor: We did...but since the other...we’re...we’re married to it when the garage down the street was approved at one inch lower than us.

Mr. Scalzo: Did you happen to speak with your neighbor that was...that was disapproved?

Ms. Costa-Taylor: Yes, I didn’t speak to Mr. Abrams but I know that his garage was massive in size...

Mr. Taylor: His was huge, his was like a 60 x 40 (Inaudible).

Ms. Costa-Taylor: I know that he wanted to cover a lot of property with pavement back to it. So we did hear, I mean...

Mr. Taylor: That’s only because he didn’t want to cut the grass so I mean...that’s a huge difference than what we’re trying to do.

Ms. Costa-Taylor: I mean there is a garage on our street at 14 Disano which was approved years ago. It’s tall and (Inaudible)...

Mr. Scalzo: Is that across the street from you?

Mr. Taylor: No, it’s all the way down the end near the second house on the right.

Ms. Costa-Taylor: On the right.

Mr. Bell: He’s on the right.

Mr. Taylor: The last house on the right which is Visbeck’s house, they have a huge four bay garage attached to the garage...the house obviously...

Mr. Scalzo: Believe it or not makes a difference...

Mr. Taylor: But it’s attached. Yes.

Mr. Bell: Yes, they do have it, I saw it.

Mr. Scalzo: Is your neighbor’s house on the market or is yours?

Ms. Costa-Taylor: Ours is on the market pending the decision. I mean, we have the need of a garage.

Mr. Scalzo: Oh, right.

Mr. Taylor: We’re kind of...we’re kind of in limbo right now that’s kind of...kind of where we’re at.

Mr. Scalzo: Got you. Well you can’t address this but... anybody else...shall we go into executive session at this point or...?

Mr. Donovan: Well you go into attorney-client privilege that’s what you typically do and then you come back.

Mr. Scalzo: Right, but does anybody else here have any questions for the applicants, other than me, at this point?

Mr. McKelvey: No.

Ms. Gennarelli: Darrin, there is no executive session. You are just going into talk with you’re a...

Mr. Scalzo: Oh, oh, alright, sorry.

Ms. Gennarelli: ...that’s the wrong term.

Mr. Scalzo: Sorry, that’s the wrong term, I apologize.

Mr. Donovan: I thought I just said that.

Mr. Manley: You did.

Mr. Scalzo: Well Betty corrected me.

Ms. Gennarelli: I’m sorry Dave, I didn’t hear.

Mr. Donovan: It sounded better coming from Betty then?

Ms. Gennarelli: Yes, it’s just not executive...

Mr. Scalzo: Okay, can you give us a few...thanks.

(Time Noted: 8:54 PM)

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(Resumption for decision: 9:13 PM)

Mr. Manley: And this last application I am going to recuse myself and Mr. McKelvey will Chair the meeting.

Mr. McKelvey: Betty.

Ms. Gennarelli: Okay, just give me one second John. Okay this is a Reserved Decision for Melissa Costa-Taylor and John Taylor, 1 Disano Drive and it’s for area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory buildings and the maximum allowed storage of no more than (4) four vehicles to build an accessory building (50 x 34 x 27’6”).

Mr. McKelvey: Do you want to go over the five points?

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

Mr. Bell: No.

Mr. Scalzo: Reduction in size is the only thing I am looking but I am but one person here.

Mr. Bell: Inaudible.

Mr. Scalzo: The applicant did bring...I tell you it was very valuable information though to be able to see to scale what we are looking at here.

Ms. Gennarelli: Okay.

Mr. Scalzo: It’s quite a large septics field. It’s a big one.

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

Mr. Scalzo: You really don’t see it.

Mr. Bell: You can’t see it from the road.

Mr. Levin: No.

Mr. Bell: It sits down, so far down that...

Mr. Masten: Down in the valley there.

Mr. Bell: ...you really can’t, it’s not going to...no.

Ms. Gennarelli: Whether the request is substantial?

Mr. Levin: I think I would say it is substantial.

Mr. Scalzo: I believe it is.

Mr. McKelvey: I believe it is too.

Mr. Bell: Yeah.

Mr. Levin: Yeah.

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

Mr. Levin: I don’t believe so.

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

Mr. Bell: It is but you’re right it’s not determinative.

Mr. McKelvey: Any discussion?

Mr. Donovan: I just note for the Board this is a Type II Action under SEQR.

Ms. Gennarelli: Thank you Dave.

Mr. McKelvey: Hearing no discussion, do we have a motion?

Mr. Levin: A motion to approve.

Mr. McKelvey: We have a motion to approve.

Mr. Bell: I’ll second.

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

Mr. Levin: I’ll second.

Ms. Gennarelli: Who was the first on that? I’m sorry.

Mr. Donovan: Take your pick. Mr. Masten...

Ms. Gennarelli: Richard...Richard said first...

Mr. Donovan: He did very, very quietly.

Ms. Gennarelli: Very quietly.

Mr. Donovan: So Mr. Masten and then Mr. Levin seconded.

Ms. Gennarelli: Okay, okay. So we’ll reverse that okay. Mr. Masten was the first and Mr. Levin was the second.

Mr. Bell: Right.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: No

Ms. Gennarelli: Michael Maher, oh, I’m sorry I forgot to cross him out.

 John Masten: Yes

 Darrin Scalzo: No

John McKelvey: No

Ms. Gennarelli: Okay, so that’s two no...three no and two yes.

Mr. Donovan: So the variance is denied. The motion fails, the variance is denied.

Mr. McKelvey: The variance is denied.

Ms. Gennarelli: Okay, should I call Jim back in?

Mr. McKelvey: Call Jim back in.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY - RECUSED

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:18 PM)

ZBA MEETING – OCTOBER 26, 2017

END OF MEETING (Time Noted – 9:18 PM)

Mr. Manley: Okay, has everyone had a opportunity to review the August and September minutes?

Mr. McKelvey: Yes.

Mr. Levin: Yes.

Mr. Bell: Yes.

Mr. Manley: So at this point it would be nice to get a motion to approve those minutes if everybody feels so comfortable in doing so. Do we have a motion and a second to approve the minutes?

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

Mr. Manley: Mr. McKelvey makes the motion.

Mr. Bell: Second.

Mr. Manley: Second from Mr. Bell. All in favor?

Aye - All

Mr. Manley: Opposed?

No response.

Mr. Manley: The minutes are passed as presented. I think that’s it, right?

Ms. Gennarelli: Any other business?

Mr. Manley: I don’t know does anybody have any...? A report from our Zoning Board Secretary on her trip to Hawaii.

Ms. Gennarelli: Absolutely fabulous.

Mr. Manley: Let the record show that she says it was fabulous. Is there any other business that the Board wishes to bring up or...? Then at this point I would make a motion to adjourn?

Mr. Masten: I make a motion to adjourn.

Mr. Manley: We have a motion from Mr. Masten and a second?

Mr. McKelvey: Second.

Ms. Gennarelli: Richard, Richard...

Mr. Manley: Richard is still...

Ms. Gennarelli: Richard is talking. Richard...

Mr. Donovan: We can’t adjourn, we can’t go home.

Mr. Levin: I’m sorry, I’m sorry.

Mr. Manley: Don’t worry Richard we’ll wait for you.

Ms. Gennarelli: We have a motion and a second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is closed until next month.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE (Time Noted – 9:21 PM)