ZONING BOARD OF APPEALS

MEETING – OCTOBER 25, 2012

(Time Noted – 7:00 PM)

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

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 7:02 PM)

ZBA MEETING – OCTOBER 25, 2012 (Time Noted – 7:02 PM)

BRIAN R. MOREHEAD 137 POWELTON CIRCLE, NBGH

 (80-4-1.22) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to build a rear addition raising the roof on the residence.

Mr. McKelvey: The first applicant Brian R. Morehead area variance for increasing the degree of non-conformity of the front yard setback to build a rear addition raising the roof of the residence.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Tuesday, October 16th and in the Mid-Hudson Times on Wednesday, October 17th. This applicant sent out nineteen registered letters, sixteen were returned. All the mailings and publications are in order.

Mr. Barley: Good evening.

Mr. McKelvey: State your name for the record.

Mr. Barley: My name is George Barley representing Brian Morehead. We’re looking for a front yard variance. It’s my understanding when the house was built it met all the setbacks, zoning has changed. We are not adding anything to the front yard whatsoever. We’re raising the roof and putting a dormer on the front of the house and the addition on the back of the house doesn’t require a variance. We’re…I’m just looking to get a variance to bring it up to Code at this time.

Mr. McKelvey: Any questions from the Board?

Mr. Hughes: Are you the builder?

Mr. Barley: Yes.

Ms. Drake: Are you on sewer?

Mr. Barley: Excuse me?

Ms. Drake: Are you on sewer there?

Mr. Barley: I…I didn’t hear what you said.

Ms. Drake: Are you on Town sewer or septic system?

Mr. Barley: It’s a septic system with Town water I believe.

Ms. Drake: And are you increasing the number of bedrooms?

Mr. Barley: No. The number of bedrooms, the number of bathrooms remaining the same.

Ms. Drake: Thank you.

Mr. Barley: You’re welcome.

Mr. McKelvey: Any other questions? Any questions from the public? I have the report from the County its Local Determination.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. Barley: Thank you.

Ms. Gennarelli: Let the record show that Mr. Canfield joined the meeting at 7:03.

 (Time Noted – 7:05 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:03 PM)

BRIAN R. MOREHEAD 137 POWELTON CIRCLE, NBGH

 (80-4-1.22) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to build a rear addition raising the roof on the residence.

Mr. McKelvey: The Board is ready to resume the meeting. The first item we are going to discuss is area variance of Brian Morehead, area variance for increasing the degree of non-conformity of the front yard setback to build a rear addition raising the roof on the residence. Any discussion?

Mr. Hughes: I’ll move it.

Ms. Drake: Second.

Mr. Maher: Just…just one note if I could? Just obviously you’re quite close to the side yard setback there so I would just implore a marker.

Mr. Barley: (Inaudible) surveys.

Mr. Maher: Just because I didn’t want to see you come back because we had an issue there.

Mr. Barley: (Inaudible)

Mr. McKelvey: Guess we’re ready for a roll call.

Mr. McKelvey: This is a…

Mr. Donovan: Type II Action under SEQRA.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:05 PM)

ZBA MEETING – OCTOBER 25, 2012 (Time Noted – 7:06 PM)

ALAN McGUIRE 61 TAFT AVENUE, NBGH

 (73-5-21.1) R-3 ZONE

Applicant is seeking area variance for the maximum lot building coverage, maximum lot surface coverage and front yard setback to raise the existing roof of residence. Variance granted in 2011 but plans were not followed.

Mr. McKelvey: Next is Alan McGuire, an area variance for the maximum lot building coverage, maximum lot surface coverage and front yard setback to raise the existing roof on residence. (Variance granted in 2011 but plans were not followed).

Ms. Gennarelli: This applicant sent out thirty-seven registered letters, twenty-four were returned. All the mailings and publications are in order.

Mr. McKelvey: Questions from the Board?

Mr. Hughes: The reason you’re back here is because it wasn’t exactly what the print showed?

Mr. McGuire: Yes.

Mr. Hughes: To what degree?

Mr. McGuire: Just the shape of the roof, I put a straight gable roof instead of the two dormers that were on the original plan.

Mr. Hughes: So instead of the two dormers you have a roof across the whole…

Mr. McGuire: Straight across.

Mr. Hughes: And that’s why you’re in the penalty box to come back here?

Mr. McGuire: Yeah, yes.

Mr. Hughes: Any other variances or any other changes that went on with the design you were approved for?

Mr. McGuire: Nothing at all.

Mr. Hughes: I thought you looked familiar and I was wondering why.

Ms. Gennarelli: If you could just identify yourself for the record? It’s being recorded.

Mr. McGuire: Alan McGuire.

Ms. Gennarelli: Thank you.

Mr. Hughes: Thank you for answering those questions. I have nothing else.

Mr. McKelvey: Anything from the public?

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. McGuire: Thank you.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

 (Time Noted – 7:07 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:05 PM)

ALAN McGUIRE 61 TAFT AVENUE, NBGH

 (73-5-21.1) R-3 ZONE

Applicant is seeking area variances for the maximum lot building coverage, maximum lot surface coverage and front yard setback to raise the existing roof on residence. (Variance granted 11-22-2011 plans not followed).

Mr. McKelvey: The next one is Alan McGuire, area variance for the maximum lot building coverage, maximum lot surface coverage and front yard setback to raise the existing roof of the residence. (Variance granted 11-22-2011 plans not followed). Discussion?

Mr. Hughes: Joe, do guys…is he in compliance with everything else?

Mr. Mattina: Yes, yes. We’ve done a framing inspection there were some issues. His engineer took care of it and we’re set to go.

Mr. Hughes: I’ll move it.

Mr. Manley: Second.

Mr. Donovan: Just…this is also a Type II Action under SEQRA.

Ms. Gennarelli:

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:06 PM)

ZBA MEETING – OCTOBER 25, 2012 (Time Noted – 7:07 PM)

JAMES & SANDI ZEKO 185 GARDNERTOWN ROAD, NBGH

 (69-4-2) R-3 ZONE

Applicant is seeking an area variance for the side yard setback and the combined side yards setback to keep a prior built rear deck.

Mr. McKelvey: Next is James and Sandi Zeko an area variance for the side yard setback and the combined side yards setback to keep a prior built rear deck.

Ms. Gennarelli: This applicant sent out twelve registered letters, nine were returned. All the mailings and publications are in order.

Mr. McKelvey: Say your name.

Ms. Zeko: Sandi Zeko.

Mr. McKelvey: And what you’re here for.

Ms. Zeko: I’m here to get a variance passed for a deck in the back of our yard for side and combined side yard variance for area.

Ms. Drake: You can tilt the mic down.

Ms. Gennarelli: You can just tilt it down towards you.

Ms. Zeko: For short people.

Ms. Gennarelli: Thank you.

Ms. Drake: When was the deck installed?

Ms. Zeko: The deck was installed last year, July.

Ms. Drake: And you didn’t get any Permits or didn’t know?

Ms. Zeko: My husband did not, no.

Mr. Donovan: So how come he’s not here tonight? But he sent you?

Ms. Zeko: Yes, he did.

Mr. Donovan: That’s not right. Sorry.

Mr. McKelvey: Any further questions? Anything, anybody from the public?

Mr. Manley: Just a…how did it get discovered that you had to come for a variance? What prompted it?

Ms. Zeko: A…we got a notice on our door.

Mr. Manley: From the Town?

Ms. Zeko: Yes.

Mr. Manley: Okay.

Ms. Drake: Building Department, is there any issues with being able to do inspections?

Mr. Mattina: No…

Ms. Gennarelli: Joe, you don’t have a microphone. I’m sorry. Thanks.

Mr. Mattina: Yes, there will be no issues if the variance is granted.

Ms. Drake: Thank you.

Mr. Maher: Was this Town generated or a…neighbor generated?

Mr. Mattina: It was generated from the Assessor’s Office.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Ms. Zeko: Thank you.

 (Time Noted – 7:09 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:07 PM)

JAMES & SANDI ZEKO 185 GARDNERTOWN ROAD, NBGH

 (69-4-2) R-3 ZONE

Applicant is seeking an area variance for the side yard setback and the combined side yards setback to keep a prior built rear deck.

Mr. McKelvey: James and Sandi Zeko, area variance for the side yard setback and the combined side yards setback to keep a prior built rear deck. Do we have a discussion?

Mr. Donovan: This is also a Type II Action under SEQRA.

Mr. McKelvey: Type II, yes.

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:08 PM)

ZBA MEETING – OCTOBER 25, 2012 (Time Noted – 7:09 PM)

HDL ROUTE 17K, LLC. 160 ROUTE 17K, NBGH

 (89-1-67) I / B – A OVERLAY ZONE

Applicant is seeking an area variance for the maximum allowed amount of signage to erect a sign on the building.

Mr. McKelvey: The next is HDL Route 17K, LLC.

Ms. Gennarelli: This applicant sent out five registered letters, four were returned. All the mailings and publications are in order.

Mr. McKelvey: The report from the County is Local Determination.

Mr. Cordisco: Good evening everyone, I’m Dominic Cordisco from the law firm of Drake, Loeb and I’m pleased to be before you tonight on behalf of HDL Newburgh LLC. and we are here with Greg Shaw, our project engineer as well the owner of the site and his project managers who are all here and are prepared to answer any questions that you may have. We…this…this project you may be familiar with, it’s on 17K, it’s currently under construction. It is the new Toyota dealership that’s going in on 17K across from the airport and a…we received previously site plan approval. At the time we applied for site plan approval the final signage design was not finalized a…and as part of a…our process in…in getting ready to open we finalized the sign design and a…as…as you know the signage requirements in the Town are related to the amount of a…lineal feet of frontage along a road. The amount that we’re permitted by the Code is three hundred and twelve feet. What we have is proposed three-hundred and seventy-five feet so we have an excess of about sixty-three feet, sixty-three, sixty-four feet. I think its sixty-three point eight feet is a...what a…we a…are a…over the what…what the Code allows. A…what…what knocks us over the Code in particular is our Scion sign. Toyota dealerships are also Scion dealerships and a…Toyota corporate is requiring that we put a Scion sign on the building because Scion cars will be sold inside the building. With that said I’d like to turn it over now to a…Mr. Shaw who could describe the sign for you and the building and we also have a copy of the site plan in case you have any questions regarding that.

Mr. Shaw: I’d like to first very…

Mr. McKelvey: Identify yourself first.

Mr. Shaw: I’m sorry, Gregory Shaw from Shaw Engineering. A…very quickly I’d like to go over the signage that is proposed for this building. As Dominic said it’s not only a…a Toyota dealership but it’s also a Scion dealership and that sign alone represents approximately ninety square feet of signage and also as Dominic brought out we’re allowed one half a square foot for every lineal foot of frontage and with that comes a deficiency. A…and that is why we’re before this Board to get a variance a…not specifically for the Scion but for the…but for the a…signage in its entirety. I’d just like to take the plan and turn it over and show you the site plan and I’d like to point out a…and I’m sure that the…the Town fathers when they wrote this Ordinance was concerned about the streetscapes being cluttered with too much signage as you rode the streets of Town of Newburgh. The building is quite large. It’s a…over one acre in size about forty-five thousand square feet a…it has many different aspects to it. It has new car delivery. It has showrooms, it has service, it has parts, and the majority of these are identified by signage on the building. That’s why we need them. But the orientation of the building is…is a little unique. As you are driving in a westerly direction and you look at the building that sits on the hill you are looking at the easterly side of the building. There is no signage there. The signage is on the southerly side of the building so again as you are driving east, all right and you happen to look at the building you have a very steep embankment in front of you. Again that signage is going to be blocked out. All right? Or at least the majority of it is going to be blocked as you are heading in a westerly direction. A…conversely as you are heading in an easterly direction the topography of the adjacent parcel is relatively low and yes, you will see the southerly elevation of the building. So I’d like to at least point out to the Board that as you are traveling westerly the signage isn’t going to be that visual a…so the apparent clutter that the Town fathers probably wanted to avoid is…is really not going to be apparent. It’s really the signage that you are going to see and again the question is whether sixty some square feet of signage, okay, is excessive with a building of this size and with a building with so many different departments and also manufacturers? Thank you.

Mr. McKelvey: That is the only sign that is going to be on the building?

Ms. Gennarelli: You have to use the microphone, Greg; you have to use the microphone.

Mr. McKelvey: There’s not going to be a sign on the front of the building? That’s what I’m asking.

Mr. Shaw: All of the signs that you see Service, Newburgh, Toyota, Scion they will all be on the front side of the building, on the south side. Everyone that you see here is in our computations for the maximum signage that’s…that’s going to be on…on the building. That in addition to a pedestal sign, a double pedestal sign which is going to be located adjacent to Route 17K.

Ms. Drake: Can you show us on the site plan where those signs will be?

Mr. Shaw: Where the signs are going to be? Sure. They are going to be on this wall. The signage that you see in this elevation here is if you are standing right here looking at the building.

Ms. Drake: Okay and where’s the pylon going?

Mr. Shaw: The pedestal sign is going to be down here.

Ms. Drake: Thank you.

Mr. Shaw: That’s ground mounted, that’s not up in the air.

Mr. McKelvey: That’s going to be on…below the hill.

Mr. Shaw: Correct.

Mr. Manley: So the only way that somebody that is traveling from east to west will be able to identify that as being the Toyota building would be the pedestal sign on 17K, correct?

Mr. Shaw: For the most part, yes.

Mr. McKelvey: Because this building is not really facing directly at 17K anyhow, it’s off on an angle.

Mr. Shaw: Correct, it is at on an angle. It’s a…parallel to its westerly property line.

Mr. Hughes: Is your pedestal sign included in the computation for the overage?

Mr. Shaw: Yes it is.

Mr. Hughes: So this is the complete package that covers what’s on the building and is sixty-three feet over?

Mr. Shaw: Correct.

Mr. Hughes: And wouldn’t it be true that the inversely so would see less than of those signs coming from the City of Newburgh?

Mr. Shaw: You would see less of the signs on the building coming from the City, yes.

Mr. Hughes: (Inaudible) in both directions.

Mr. Shaw: Yes.

Mr. Manley: I believe the speed limit there is…is at least 45 if not 55 through there, so I mean…

Mr. Hughes: It’s just starting into 55 when you get in front of that.

Mr. Shaw: And there will be a left-hand turn there which is going to be part of the construction which a…a…we were required to obtain that permit from the D.O.T.

Mr. Hughes: It’s not an issue but how it get to this point without the Planning Board putting there seal of approval…?

Ms. Gennarelli: Ron, I’m sorry, can you pull your mic in, it’s not picking up at all.

Mr. Hughes: Sure. Was it a…did they over it or…?

Mr. Shaw: No, I don’t believe at that time the Scion sign was part of the signage application to the Board. Everything else was.

Mr. Hughes: And they had no objections to it because you were under then…?

Mr. Shaw: Correct, we were under at that point.

Mr. Hughes: …until that other sign it came over.

Mr. Shaw: And once Scion came on board a…we tripped the threshold and we’re before your Board.

Mr. Donovan: Yeah, Ron you weren’t here last month and but we actually had the opportunity to visit that issue in terms of the building signage on an approved site plan because that was one of the issues that the Board was concerned about with regard to the Choppers’ application and a…in speaking to my…my partner in terms of a site review the Planning Board is interested in freestanding signs. If it’s a building mounted sign they leave that up to the Building Department. They’re not interested in that from a site plan point of view.

Mr. Hughes: Thank you for answering those questions.

Mr. Donovan: And I wonder if you could tell me, if you know the answer to this, I’m just kind of curious. In terms of the overall mass of the building front where the signs will be do you know what the percentage of the signs will be on…on those building a…frontages?

Mr. Shaw: They’re looking at the elevation which is at the top of the drawing, again you have Scion, Toyota, Newburgh, Service, Service, Service and the Toyota symbol, visually (15) fifteen to (20) twenty percent.

Mr. Maher: Well I…I guess my question would be, the Newburgh…

Mr. Shaw: Yes.

Mr. Maher: Why do they have it labeled as not counted?

Mr. Shaw: Can I refer that over to you?

Mr. Mattina: Yeah, basically with all the signage Permits have been issued except for the Newburgh which has never been calculated in for anything and no Permits have been applied for for the Newburgh portion of that sign.

Mr. Hughes: And what’s the square footage of Newburgh sign?

Mr. Mattina: It’s never said, it’s never said.

Mr. Hughes: So we’re going to add a few more onto that?

Mr. Mattina: If they come back with the Newburgh application they will have to come back to the Zoning Board once again.

Mr. Cordisco: If I may I’d like to address that, if I may? A…that was an item that actually came up during the Planning Board review because the Planning Board granted architectural review board approval for the project. The signs except for the Scion were shown at that time and there was a discussion at the Planning Board level that the Newburgh because it was a description rather than a marketing sign was not counted towards our signage calculation.

Mr. Maher: Right, but you labeled it as a Dealer name not as a description on the plans.

Mr. Cordisco: Well it’s labeled as Newburgh I mean it doesn’t…

Mr. Maher: No, no but on your plans, on your delineation for signs you have Dealer name located as Newburgh not location or descriptions so you in essence identified it as being a Dealer name and not a location in the description.

Mr. Cordisco: Yeah, I’m not…I’m not sure that there’s a…there’s a difference there a…in the sense that the…the description it reads Newburgh because…

Mr. Maher: No I understand it also is a Dealer name, correct?

Mr. Cordisco: Understood, yeah.

Mr. Maher: I mean if he…if he had Newburgh Scion, Newburgh would still be…

Mr. Cordisco: Correct.

Mr. Maher: …be part of that.

Mr. Cordisco: Correct. I mean, I think the only distinction I’d like to make it doesn’t say Dominic’s Toyota.

Mr. Maher: But if it did it would be counted, correct?

Mr. Cordisco: If it said Dominic’s Toyota it would be counted that…and that was the essence of the conversation at the Planning Board but…

Mr. Maher: If it said New Windsor would it be counted?

Mr. Cordisco: A…well…since we’re not in New Windsor I would say yes it would be counted a...but since it said Newburgh the…the Planning Board was of the opinion at that time and…and that’s part of their architectural review board approval so that it didn’t count toward our signage. So that’s why it’s listed as not being counted at this time.

Mr. Manley: We also have in…in the Town of Newburgh, you have Newburgh Nissan and that is part of their schematic with their sign that is inclusive the dealership.

Mr. Cordisco: I didn’t represent them.

Mr. Manley: That’s a good call.

Mr. Hughes: Back to the ARC approval that’s to be in sync, if you will, with the genres of the rest of the community in that area, they’re not really entitled to rule on that kind of stuff that’s for over here and at this juncture I’m not comfortable with including Newburgh as an abstract and not countable. I think it should be counted and I’ll seek upon our Counsel to advise us. Can we include that here the way the application has been presented so that they don’t have to come back here for that additional or do we dare not do that?

Mr. Donovan: No, no you could. You could include that. I mean the…the nature of the variance is…is the signage variance so anyone in the public who is interested appearing because of the sign variance if we increase the square footage of the…of the request to include that it would not be…it’s not like we’re multiplying by a factor of ten so I don’t know what if anything we’ve done in the past for instance, you know, Canfield’s of Newburgh of Mattina’s of…of Newburgh if we would include that or not. I don’t know if you have any history of that in the Building Department or…or you don’t.

Mr. Hughes: What is the dimension of the Newburgh soft portion of it?

Ms. Gennarelli: He needs the microphone. Ron, is your mic on?

Mr. Hughes: I believe it is.

Ms. Gennarelli: I…I don’t think so.

Mr. Shaw: The drawing does not…

Ms. Gennarelli: Now it is.

Mr. Shaw: …have dimensions on it. The best I can surmise by just looking at the scale of the letters as opposed to say, Scion would be about forty to forty-five square feet.

Mr. Hughes: So now we’re a hundred and three square feet over for the total figure and if you’re allowed three twelve and you have four hundred you’re twenty-five percent over.

Mr. Maher: Thirty.

Mr. Hughes: Thirty percent over? He’s our human calculator. And we’re not too sure about the human part. He can add though.

Mr. Maher: One question, Joe I know in the past we’ve had discussion time and time again about the signage end of that. On…on the large Toyota on the front of the building and the Toyota symbol above it…

Ms. Gennarelli: Greg, could you give Joe the mic? Thanks.

Mr. Mattina: Yes?

Mr. Maher: They have it broken down into two separate signs…

Mr. Mattina: Yes.

Mr. Maher: Is that the way that you would calculate it?

Mr. Mattina: Exactly. They squared it off.

Mr. Maher: Joe, I just want to make sure what it is because sometimes I know you may be drawing a big box around the whole thing, I just want to sure we’re on the same…

Mr. Mattina: Right, well that’s basically what they did. They ran from outside corner to outside corner.

Mr. Maher: No, I understand, I just…I was hoping you…thinking that you may have drawn one large box around it versus…

Mr. Mattina: No.

Mr. Maher: …okay, that’s fine as long as we’re all on the same page.

Mr. Mattina: That’s correct.

Mr. Hughes: So now you’ve mentioned earlier in your a…presentation the Scion is corporate and all that. My question is, is that black area have to be that big or can you reduce the size of that black area and put yourself in a better light for reducing all of those things and adding the Newburgh sign to it so what we’re through one night and done with it all.

Mr. Shaw: I’ll defer that to you (Mr. Cordisco) because I can’t answer that.

Mr. Cordisco: Yeah.

Mr. Hughes: Counsel, can we dare do something like that?

Mr. Donovan: Well, I…I think the question is, is this a corporate requirement that you have the Scion with that…with that…the Scion name with that background?

Mr. Cordisco: That’s correct. It’s a corporate requirement. It’s not something that’s customizable, to answer your question.

Mr. Hughes: So they got one guy that’s making the sign and they’re pumping them on the truck?

Mr. Cordisco: Correct.

Mr. Hughes: So you’re going to get that at the shop no matter what happens?

Mr. Cordisco: Correct, correct because it’s a…it’s a branding issue.

Mr. Manley: I think the only issue for me is how many square feet do we need to add for the Newburgh so that you don’t have to come back? Because if you say fifty and it ends up to being sixty-two and they go and measure it and its off you’re having to come back which…

Mr. Maher: Well I think looking at…

Mr. Manley: …would be…

Mr. Maher: …the Toyota sign to the left of it that Toyota sign to the left of it is twenty-seven feet correct?

Mr. Cordisco: The Newburgh unlike the Scion sign which…which comes…unlike the Scion sign which comes according to a standard template a…created by…by Toyota and Scion, the Newburgh sign is one our manufacture. We will commit to making it no larger than forty-five square feet. So if you add the forty-five square feet in addition to the sixty-three point eight square feet, I’m bad at math…

Mr. Hughes: Well I think you’re actually a hundred and eight point eight.

Mr. Maher: Well looking…if you’re looking at…just to clarify the Toyota sign directly to the left of it that’s showing forty-five square feet, I’m sorry twenty-seven square feet. So I’m going to say the Newburgh sign is consistent with that…

Mr. Canfield: Excuse me. If I may?

Mr. Cordisco: It is drawn to scale.

Mr. Maher: Right.

Mr. Canfield: We scaled the sign, the Newburgh sign, it’s a…twelve feet by twenty inches or one point eight feet. We calc’d that out; it’s a total of twenty-one point six square feet for the Newburgh sign. My suggestion to the Board should be then if you choose to approve this just add the twenty-one point six feet to the variance and it would be simply handled and then everything’s covered.

Mr. Hughes: Counsel, we can add that twenty-one square foot on there to this application in this forum? It would be okay with that?

Mr. Donovan: Do you have any objection to that?

Mr. Cordisco: No objection.

Mr. Donovan: So are we going to say twenty-one point six or are we going to say twenty-two?

Mr. Hughes: Shall we say twenty-five? So if it’s a little more we have it covered.

Mr. Donovan: That’s the way I bill so that’s fine with me.

Mr. Hughes: Is the applicant and the engineer satisfied with those opportunities?

Mr. Shaw: That’s fine.

Mr. Cordisco: Yes, we are. Thank you.

Mr. Hughes: Thank you. That’s why we ask so many questions. I have nothing else. Thank you for answering all those questions.

Mr. McKelvey: What figure are you using?

Mr. Hughes: Twenty-five.

Mr. Maher: We go with eighty-nine square feet total. That kind of rounds it out and makes it a little easier I guess.

Mr. McKelvey: Okay. Do we have anything from the public?

Mr. Hughes: Well you only have a couple of neighbors there, the farm and the airport.

Mr. McKelvey: It is a big building.

Mr. Hughes: Yes. Thank you for answering all those questions gentlemen.

Mr. Cordisco: Thank you.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Hughes: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Ms. Gennarelli: Thank you.

 (Time Noted – 7:29 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:08 PM)

HDL ROUTE 17K, LLC. 160 ROUTE 17K, NBGH

 (89-1-67) I / B – A OVERLAY ZONE

Applicant is seeking an area variance for the maximum allowed amount of signage to erect a sign on the building.

Mr. McKelvey: HDL Route 17K, LLC, 160 Route 17K, an area variance for the maximum allowed amount of signage to erect a sign on the building.

Mr. Donovan: This is an Unlisted Action and needs a Negative Declaration.

Ms. Drake: I'll make a motion for a Negative Declaration.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. Manley: I'll make a motion that we approve based on the square footage that we discussed during the a…Public Hearing adding an additional twenty-five square feet to the applicant’s request to take into account the a…the sign for Newburgh.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:09 PM)

ZBA MEETING – OCTOBER 25, 2012 (Time Noted – 7:29 PM)

DAWN & ROBERT GREEN 48 CRONK ROAD, WALLKILL

 (1-1-39.51) A / R ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, accessory building shall not project closer to the fronting street than the front of the main building, the maximum allowed height and the storage of more than (4) four vehicles to build an accessory building.

Mr. McKelvey: The next applicant Dawn and Robert Green an area variance for the maximum allowed square footage of accessory buildings, accessory building shall not project closer to the fronting street than the front of the main building, the maximum allowed height and the storage of more than (4) four vehicles to build an accessory building.

Ms. Gennarelli: This applicant sent out sixteen registered letters, eleven were returned. All the mailings and publications are in order.

Mr. Green: Good evening everybody. I believe you just read off my variances that we’re looking for the a…

Mr. McKelvey: Could you identify yourself?

Mr. Green: My name is Robert Green, 48 Cronk Road.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Just state your reason that you are here.

Mr. Green: Okay, the first part of it is we’re looking for a variance for the square footage. I believe its a thousand square foot, for the Town of Newburgh this is a twelve hundred square foot building. A…the other part of the variance is that we’re looking to build it to the front…front of the a…house a…because of the lot we’re on. We’re on a flag lot. The house is all the way to the back. We’re back almost a quarter of a mile off the road. It fits where we want to put it really nicely kind of away from everything and a…and it’s flat there too so that’s the other reason. And the other is is we have a two-car garage underneath the house at this time and a…we know there’s a variance we’re supposed to be able to store four vehicles. So a thirty by forty is the size of the building so it’s a little bit larger than that.

Mr. McKelvey: I…I…that seal coating van that was there, are you running a business from there?

Mr. Green: What’s that?

Mr. McKelvey: The seal coating…

Mr. Green: No, I don’t have a seal coating business.

Mr. McKelvey: There was a…

Mr. Green: That was a race car trailer.

Mr. McKelvey: Oh, okay. I just saw the seal coating.

Mr. Green: Yeah, no, that’s not mine. I got enough work.

Ms. Drake: What’s the purpose of the building?

Mr. Green: It’s a…I…I played around with dirt race cars my whole life pretty much and a…actually I’ve kind of stepped away, I got my two sons are picking up for me so a…it’s my older son is running and we’re looking to expand to my younger son is going to be getting into it hopefully here, in the next year and a…always worked on all my race cars underneath the house. In the Town I worked my whole life and I always wanted before I end up in the ground I’ll end up with a decent size shop to work in and that’s what it’s for.

Mr. Hughes: What’s your height variance you’re looking for?

Mr. Green: Its sixteen foot and the variance is for a foot, it’s fifteen.

Mr. Hughes: I read that on the thing and I thought it was a misprint.

Mr. Green: Yeah, it’s just a foot.

Mr. Donovan: How many dirt race cars are we talking about?

Mr. Green: Two.

Mr. Donovan: And how many vehicles do you have? Does that fall in the def…before I look in the book or I guess I can do that myself but what’s the definition of a vehicle? Does a dirt race car fall in the definition of a vehicle?

Ms. Gennarelli: Joe, do you have a microphone?

Mr. Donovan: Sorry Joe, I could have done that myself. Sorry.

Mr. Hughes: We’re back to the age old discussion with the square footage and the number of cars you can park in it.

Ms. Drake: Right.

Mr. Hughes: What are you going to use it for and if you have a twelve hundred square foot building you probably could park eight of them in there.

Mr. Green: Right.

Mr. Hughes: But this man and what he’s trying to do and his use you’ll probably have no more than two cars or maybe three in there at any one time.

Mr. Green: A…right.

Mr. Hughes: Pulling an engine out of one and putting in another or whatever.

Mr. Green: Yup, that type of…

Mr. Hughes: That might not be necessary we’re…this is the discussion about the ruler and the number of cars, we get into this all the time.

Mr. Maher: Yeah, I believe its vehicles anyway, correct?

Mr. Hughes: Probably.

Mr. Mattina: It just says storage of four vehicles.

Mr. Maher: Okay.

Mr. Mattina: It doesn’t specify what kind of vehicles.

Mr. Hughes: Probably inside you don’t have to have them registered, outside you do.

Mr. Mattina: Well the property maintenance code says anything more than two is a junk yard.

Mr. Hughes: Oh.

Mr. Maher: That’s why we don’t have junk yards.

Mr. Hughes: Probably everybody. So that’s it that was the total number of variances that you were…

Mr. Green: Yup.

Mr. Hughes: …the three? I have nothing else.

Mr. Donovan: I don’t see a definition of a vehicle, right?

Mr. Mattina: No there is not.

Mr. Hughes: There isn’t?

Mr. Canfield: (Inaudible)

Mr. Donovan: In our Code, there probably is in a…Motor Vehicle, the State Motor Vehicle probably does but…

Mr. McKelvey: And you say you have two…two-car garage on the house?

Mr. Green: Yes, yeah actually I work on the cars in there now and I use the whole entire basement and its damn near the same size and that’s what I was…that’s how kind of came up with the size I wanted to go with. It’s actually a tad smaller than the house.

Mr. Donovan: Let me ask the question a different way. Are you requesting a variance for more than four cars?

Mr. Green: No.

Mr. Donovan: Okay.

Mr. Hughes: This come up because of the measurement.

Mr. Donovan: Yeah, okay.

Mr. Hughes: I have nothing else. Thank you for answering those questions.

Mr. McKelvey: Anyone from the public?

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. Green: Thank you everybody.

Mr. McKelvey: In order of time we’d ask you to step out into the hall and we’ll call you back so we can talk with Counsel..

 (Time Noted – 7:34 PM)

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ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:09 PM)

DAWN & ROBERT GREEN 48 CRONK ROAD, WALLKILL

 (1-1-39.51) A / R ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, accessory building shall not project closer to the fronting street than the front of the main building, the maximum allowed height and the storage of more than (4) four vehicles to build an accessory building.

Mr. McKelvey: Next is Dawn and Robert Green, area variance for the maximum allowed square footage of accessory buildings, accessory building shall not project closer to the fronting street than the front of the main building, the maximum allowed height and the storage of more than (4) four vehicles to build an accessory building.

Mr. Donovan: This is a Type II Action.

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

Mr. Hughes: So moved.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. McKelvey: The motion is carried.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:10 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:09 PM)

NELLA’S NEST NORTH CORP. 1430 ROUTE 300, NBGH

 (60-3-24) I / B ZONE

Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Mr. McKelvey: We have Other Board Business, on the reserved decision on Nella’s Nest North Corporation area variance for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign. This was a Reserved Decision from last month.

Ms. Drake: Is this an Unlisted or…?

Mr. Donovan: This is an Unlisted Action. I think we should just explore for a second the a…the original Violation by Code Compliance did not take into consideration a…the trucks that are used for signage. And I think when the applicant was first before us in August we had a discussion about the signs on the trucks but we indicated at that time if he removed certain signage which I think amounted to eighty-four square feet that he would be in compliance a…not taking into account, not addressing if you will the signs on the trucks and that he only would in that event need a variance from the requirement the distance from the centerline of Union Avenue and the other lot line variance. I think that Code Compliance has identified other deficiencies regarding the signs on the trucks a…but unfortunately I think that would need a new Violation and he would have to come back here again. I think we can only rule on the application that’s in front of us which would not…which would simply indicate relative to the sign variance is they remove the one and we’re not addressing at this time the signs on the…the alleged signs on the trucks. So the only variance before the Board is the centerline of Union Avenue and the other lot line variance.

Mr. McKelvey: And the a…report from the County is Local Determination.

Mr. Donovan: And this is an Unlisted Action given that it is not a residential structure.

Ms. Drake: I’ll make a motion for a Negative Declaration.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

Mr. Hughes: I…I have a couple of questions for Code Compliance if you will. Are there other things moving with this other than the variances? Does he have open tickets with Compliance and Building Permits or…?

Mr. Mattina: Well he has the open legal issue with the accessory building in the rear yard and the signage.

Mr. Donovan: Because we denied his application for a…that variance for the accessory structure in the rear.

Mr. Mattina: Correct.

Mr. Hughes: The…the…I don’t want to use the word games but it looks as though that every day there is a new circus out there. It’s a different truck, it’s a different sign, its…in essence you guys would have to go out there and tag him every day to get it pinned down and we’d always be on the conveyor belt and behind the clock. Is the applicant making a genuine attempt to become in compliance?

Mr. Mattina: I would say at this point no because every day we go out there there’s more trucks, different trucks, different signage.

Mr. Hughes: So after he left this Board on our advisement he removed the sign from the building and figured that would cover everything when we didn’t have the square footage of the trucks that are there every day now? So obviously it’s a little…

Mr. Donovan: No, no we only…we covered the a…

Mr. Hughes: Only the sign.

Mr. McKelvey: The sign, yeah.

Mr. Donovan: Yes.

Mr. Hughes: Yeah, maybe I misspoke. I hope I didn’t but what I’m saying is that these trucks are out there every day and it’s a different number of trucks and the signs are always different. It’s never the same two trucks.

Mr. Donovan: Well I think that was the original problem is that you really didn’t know what to violate them on.

Mr. Mattina: Correct.

Mr. Hughes: Yeah.

Mr. Mattina: You can’t…you can’t violate them one day and come here with specific evidence because tomorrow is going to be different, yesterday is different.

Mr. Hughes: Yeah.

Mr. Mattina: So there is no way to narrow it down to a specific number.

Mr. Donovan: And the issue or the reason for my advice to the Board is that that’s understandable but the Violation in front of us was for…didn’t bring into account those signs. So I’m just saying we can’t rule on that not that their not Violations but he’d have to be Violated on those additional signs and then either he chooses to come back here or ends up in Court unfortunately, however that may go.

Mr. Hughes: Well would it be irregular or unusual for the applicant to take a position on this and tell us what he is going to do ultimately and have him come back here or send him over to the judge?

Mr. Donovan: Well that’s up to him, that’s up to him. He can fight it in Court or he can make an application to us. Go ahead Jerry.

Mr. Canfield: If I may? A…this applicant is already before the Courts a…the applicant has indicated to the Courts he would like to exercise his Constitutional Right to come before this Board. So this Board’s findal…final decision will then allow the Code Compliance Department to go back to the Courts with your decision. A…I realize and understand that a pending an Enforcement Action should not sway or a…weigh in in any reasoning for your decision but however in this case we do need a decision from your Board a…so we can go back to the Courts and say, yes your Honor they did effectively go before the Board, Zoning Board and this is their decision and then the Courts can then take an action.

Mr. McKelvey: But the only thing we can rule on is this.

Mr. Hughes: The application before us.

Mr. McKelvey: Before us.

Mr. Donovan: Well the original Violation indicating that there was a hundred and twenty square feet of signage and if I recall Joe’s advice to us back on that first night in August was that he didn’t calculate the trucks because he really couldn’t calculate the trucks because it was not an easy thing to do. So what I’m suggesting to the Board is our decision would be you…you now that you have removed the one sign you’re in compliance however, we’re not passing judgment on any of…any additional signage on…on the property, just what was identified in the…in the hundred and twenty square feet based upon the referral to us. Actually, gee Joe, it looks like it’s back in, well not the referral to us but the original denial back in early…early this year. Is that…is that going to work for you Jerry or is that a problem?

Mr. Canfield: A…yes that’s going to work for us providing you do make a decision a...nothing in the variance before you has changed a…to my understanding. Last time the applicant was before you I think the Board asked our department to calculate the signage on the vehicles and bring that back to you which Joe has provided. So nothing other has changed.

Mr. Donovan: Okay, I guess the question was, he had indicated to us…I think Mike had suggested that he take down one of his signs. I just have it sign on the front, the Roberts sign.

And he came back to us in September and said he took the sign down. And is that true or not true?

Mr. Hughes: It is true.

Mr. Mattina: Yes.

Mr. Donovan: So based upon the…the analysis you did back in February that…that would put him in compliance exclusive of the signage on the trucks.

Mr. Canfield: That’s correct.

Mr. Donovan: Okay.

Mr. Mattina: And the location from the street and the centerline.

Mr. Donovan: Correct those two items we need to vote on. All I’m suggesting is that if he has in fact removed the one sign and he is in compliance from the analysis done in February then we…we could rule on that and specifically state in our decision that we are not passing judgment on any additional signage not included in the February analysis specifically the signs on the trucks which would give you, should you deem it appropriate, the ability to re-violate that…I’m sorry, not re-violate, violate that in the future.

Mr. Canfield: Yes, understood.

Mr. Donovan: Is that okay?

Mr. Maher: (Inaudible)

Mr. Canfield: And I agree, yes.

Mr. Maher: (Inaudible) the maximum allowable signage would be the one sixty one which what the…what they are allowed to have based on the linear footage of frontage.

Mr. Mattina: Yes.

Mr. Canfield: Fixed on the buildings, yes.

Mr. Maher: So then, right, there’d be…there would be no additional signage, no variance given for any signage if in fact they are over that then that gives you the right to…

Mr. Canfield: Yes, that’s correct.

Mr. Maher: …do what’s necessary.

Mr. Donovan: Got that?

Mr. Manley: I would then be willing to a…make a motion that we grant the side yard which was the fifteen feet from the street line to keep the prior build free-standing sign and also recognize that in lieu of the applicant removing the actual sign off of the building that it now brings him…that the Board recognizes it brings him within compliance of the required signage which alleviates that one variance. Correct?

Mr. Donovan: Specifically not…not addressing the issue of any signage on trucks and the other two variances, the center line from Union Avenue 80-feet required, 40-feet provided and the lot fifteen feet required, nine feet provided.

Mr. Manley: So I would…I would so move that and recognize that in the calculation we have not included any vehicles.

Mr. Donovan: Right.

Ms. Drake: I’ll second that motion.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Yes

 Michael Maher: Yes

 James Manley: Yes

 John McKelvey: Yes

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:19 PM)

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:19 PM)

CELESTE RIJO-PENA 16 WANDERING DRIVE, NBGH

 (102-2-20) R-1 ZONE

Applicant is seeking a use variance for an unspecified use. (Any use not specifically permitted shall be deemed to be prohibited) to keep the pigeons in the 10 x 8 prior built pigeon coop (shed).

Mr. McKelvey: The next Reserved Decision from last month is Celeste Rijo-Pena, a use variance for an unspecified use. (Any use not specifically permitted shall be deemed to be prohibited) to keep the pigeons in the 10 x 8 pigeon coop (shed). Do we have any discussion?

Mr. Hughes: I wasn’t at the last meeting and I read the minutes of what was reflected into the record and I just want the public and my colleagues to understand I may abstain during this. I’m not sure yet unless there is further discussion. To me it is very difficult to obtain a use variance.

Mr. Donovan: If I…if…either you abstain or you don’t. You can’t say your piece and then abstain.

Mr. Hughes: Okay, I’ll leave it at that then.

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

(No response)

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

Ms. Drake: I'll make a motion for disapproval because he had created his own hardship and therefore you can’t this. We can’t grant this variance.

Mr. Donovan: This use variance.

Ms. Drake: This use variance, yes, thank you.

Mr. Hughes: Counsel, if maybe for the benefit for the public and the applicant you could describe what is necessary with that?

Mr. Donovan: Yes, I did it actually last month.

Mr. Hughes: Okay.

Mr. Hughes: I saw that in the minutes but…

Mr. Donovan: Yeah, okay. Did you get that far?

Mr. Hughes: Yes, I did.

Mr. Donovan: Sorry.

Mr. McKelvey: Do we have a second?

Mr. Manley: I am going to go ahead and second the motion a…kind of with a heavy heart that I…that I second that motion. I understand the applicant’s situation a…but the biggest concern is creating a precedence in, you know, in the Town and allowing a use variance when you really haven’t met the threshold. It’s extremely difficult to meet a use variance and a…based on that alone a…really unfortunately disqualifies the applicant.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Ronald Hughes: Abstain

 Michael Maher: No

 James Manley: Yes

 John McKelvey: Yes

Mr. Donovan: So the motion to disapprove because this is a seven member Board you need four affirmative votes so the motion to disapprove fails. Now that does not constitute an approval.

Mr. Hughes: At this juncture if the applicant were to further pursue this another application is the only thing that I see that could possibly knock it through the goal post but not in the form of a use variance.

Mr. Donovan: But the use isn’t allowed what’s the...we spent a fair amount of time analyzing at the last meeting, you know, as the accessory use he…he and as we all learned a…pigeons are not fowl so we couldn’t fit it into the area variance category so it’s a use variance. He’s beyond the allowable number that’s permitted for an accessory use and therefore it is a…it becomes a use variance so a…I don’t think we can make it into an area variance.

Mr. McKelvey: He was the one that said they’re birds.

Mr. Manley: The only other way that this could fly at some point would be through a legislative action of the Town to change the a...the zoning to allow for perhaps a Special Use Permit or to incorporate it into an area variance by changing the law.

Mr. Hughes: If there were zoning legislation provided to allow such a thing. Hasn’t the numbers of this thing been reduced a lot as well or are we stilling with the same number of birds?

Mr. McKelvey: He said he was willing to go down to twenty birds.

Mr. Hughes: So again if the legislation and the zoning were changed to accommodate this need subservient to a Special Permit where there would be an annual inspection so if there was compliance with cleanliness and everything to go with it, I realize these birds are used for therapeutic purposes in children and such and it’s…it’s a good program but because we‘re held by the conscription of the law maybe the applicant can take another wing at this from another angle. I agree with what you guys did tonight. I don’t see that you could ever get a use variance on something like this.

Mr. Donovan: You talk more when you abstain.

Mr. Hughes: I do. Alright I just…I…I want to be neutral on this and I want to bring all the things around the peripheria that could or should happen with it and a…if…if there were such a thing as a Special Use attached to an approval as with an area variance then maybe you could control it without making a precedent that would be uncontrollable and unenforceable. This is a difficult thing for Code Compliance. It’s almost on the verge of livestock. So…thank you for listening to what I had to say.

Mr. Pena: May I say something?

Mr. McKelvey: Yes.

Mr. Pena: (Inaudible)

Ms. Gennarelli: Could you step to the microphone?

Mr. Pena: I’m appreciative, you know, you guys trying the best…

Mr. McKelvey: Please identify yourself for the record.

Mr. Pena: My name is John Pena living at 16 Wandering Drive and you know the story I’ve had pigeons twelve years and I got up here and I kind of stepped on people’s toes and stuff but I had…my time was so limited that at twelve years and twenty minutes it’s a little tough to share everything that happens and a…I understand about the variances and everything and I…I’m kind of sorry that you know, that I put you guys in this situation that you had to make this, you know, a…decision.

Mr. McKelvey: Like I said I think it was a hard decision but a…the law is the law, we can’t…

Mr. Pena: I know. You know it was brought up maybe ten pigeons. I’m not looking at, like I said I’ve have fifty, sixty of them. I said twenty, maybe ten, you know, because I can show you pictures right now we’ve had kids from, you know, foster care over the weekend, I got pictures. The first thing they gravitate is to the pigeons, you know, then we…that’s when we do our best counseling with the pigeons and you know. So I just, you know, put it out there again hopefully that you would understand and it’s a…it’s a big tool that…that I use with these foster kids. It’s not just a little tool or tool, it’s a real big tool that I use and I get a…results, you know, we get results and I a…I just feel, you know, kind of just it’s a tough situation, you know, and I just wanted to say those words. I’m thankful that you guys took time out, you know, and a…

Mr. McKelvey: You could…you could do what Jim suggested.

Mr. Manley: You could definitely petition…you could petition the Town…

Mr. Pena: Okay.

Mr. Manley: …Board to adopt some changes to the zoning law if they are willing to make those changes that would accommodate that.

Mr. Pena: Yeah.

Mr. Manley: And, you know, they could regulate, they could put in the zoning code that pigeons are allowed as long as you keep no more than “X” amount of pigeons…

Mr. Pena: Yeah. They did…they did it at a school of a…next to Chester, they opened up a program and they did it there. So that’s what I’ll do then. Right?

Mr. Hughes: Good luck.

Mr. Pena: Okay, thank you very much.

Mr. McKelvey: Good luck.

Mr. Pena: Okay.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:32 PM)

ZBA MEETING – OCTOBER 25, 2012

END OF MEETING (Time Noted – 8:33 PM)

Mr. McKelvey: Everybody had copies of last month’s meeting? Can I have a motion on them?

Mr. Manley: I’ll make a motion we adopt the minutes as presented.

Ms. Drake: Second.

Mr. McKelvey: All those in favor say Aye?

Aye - All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: Motion to adjourn?

Ms. Drake: So moved.

Mr. Maher: Second.

Mr. McKelvey: All in favor say Aye?

Aye All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: The motion is carried. The meeting is adjourned.

PRESENT ARE:

 JOHN MC KELVEY

 BRENDA DRAKE

 RONALD HUGHES

 MICHAEL MAHER

 JAMES MANLEY

ABSENT:

 GRACE CARDONE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:35 PM)