

ZONING BOARD OF APPEALS

MEETING – APRIL 26, 2018

(Time Noted – 7:04 PM)

Mr. Scalzo: Good evening, 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 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 cell phones to please turn it off or it on silent and when speaking, speak directly into the microphone it is being recorded. Roll call please.

PRESENT ARE:

- RICHARD LEVIN
- ANTHONY MARINO
- JOHN MASTEN
- JOHN MC KELVEY
- PETER OLYMPIA
- DARRIN SCALZO

ABSENT:

- DARRELL BELL

ALSO PRESENT:

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

Pledge of Allegiance to the Flag led by Richard Levin

(Time Noted – 7:06 PM)

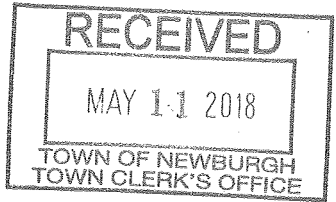
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ZBA MEETING – APRIL 26, 2018

(Time Noted – 7:06 PM)

EXR LLC.

71 HY VUE DRIVE, NBGH
(41-4-1.2) R-3 ZONE



Applicant is seeking an area variance increasing the degree of non-conformity of the front yard setback (Edgewood Drive) to keep the porch converted into habitable space without approvals or Permits.

Mr. Scalzo: Our first applicant this evening is EXR LLC. at 71 Hy Vue Drive in Newburgh. They are requesting an area variance increasing the degree of non-conformity of the front yard setback to keep the front porch converted into a habitable space without approvals or Permits. Ms. Gennarelli?

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

Mr. Scalzo: Thank you very much.

Ms. Gennarelli: You're welcome.

Mr. Scalzo: Mr. Cella, if you could state your name and...?

Mr. Cella: Jonathan Cella, I'm the engineer for the applicant a...for the owner (Inaudible) a...we're here for a existing lot at the northwest corner of Hy Vue Drive and Edgewood Drive North...

Ms. Gennarelli: Excuse me, Jonathan, could you just see if the light is on on that (mic)? It would be on the top because I'm not hearing you.

Mr. Cella: The green light is on.

Ms. Gennarelli: Okay if you could just get a little closer to the mic then?

Mr. Cella: We're here for...is that better?

Ms. Gennarelli: Just a little closer.

Mr. Cella: We're here for an existing single family residence located on the northwest corner of Hy Vue Drive and Edgewood Drive North. The current application is covert...to receive an area variance for a conversion of an existing enclosed front porch into a finished space. The...what the existing...the front...front porch is existing and we researched the property cards which show that it was historically existing a...the previous owner had converted this into finished space illegally and then the current owner bought

it unknowingly that way and now we're looking to legalize it. We submitted a Building Permit Applications with a...plans updating the...the finished...the 2015 Residential Code. There's a required forty foot front yard setback...it's a corner lot so we have the two front yards, one from Hy Vue and one from Edgewood Drive North. Forty foot is required and we're providing thirty-two foot from Edgewood Drive North and sixty-two feet from Hy Vue. The current owner bought the house and he a...did some cleanup of the yard and made some other non-conforming issues conforming. He had a relocated an existing accessory shed so that it met the required setbacks and he cleaned up the lot in general. We filled out all the applications and we feel that since the a...fifty...the enclosed porch was existing it does not a...substantially change the neighborhood, it doesn't increase any additional run off a...therefore a...not increasing any environmental impacts.

Mr. Scalzo: Very good, thank you. Before we continue I'd just like the audience to know that the Members of the Zoning Board of Appeals all visit the properties for the applicant's so we are all personally familiar with each site. Jonathan the front porch that was pre-existing a...had he not have been enclosed it would still be in non-conformance, correct?

Mr. Cella: Correct. (Inaudible)

Mr. Scalzo: Okay a...

Mr. Cella: And...and it was historically it was enclosed it was a...just converted...it was an enclosed sun room historically.

Mr. Scalzo: Very good, thank you. I'm going to go to the Board. Mr. Olympia do you have any comments?

Mr. Olympia: No I visited the site it looked fine to me.

Mr. Scalzo: Thank you. Mr. McKelvey?

Mr. McKelvey: The property looks very neat.

Mr. Scalzo: Thank you. Mr. Levin?

Mr. Levin: A...I wonder if you got approval for the pool? It seems to be in a front yard.

Mr. Cella: It's a pre-existing non-conforming...

Mr. Keyer: There's Permits for the pool. I'm George Keyer a...helping EXR out on this. I brought Jonathan in to...to handle the situation. A...yes, the pool is Permitted, there's no issues with the pool, everything, decks, everything like that it's all been Permitted. That was not a Violation...

Mr. Levin: Not a Violation?

Mr. Keyer: Not a Violation. The only violations we had were the...was the shed which we moved forward to meet the setbacks and this non-conforming a...porch.

Mr. McKelvey: I talked to Joe and...and he said it could have been before that was put in the Code on the...on...on the pool.

Mr. Scalzo: Mr. Masten any comments?

Mr. Masten: No I don't.

Mr. Scalzo: Thank you, Mr. Marino?

Mr. Marino: I hope...I hope it works...just to get to the crux of the matter basically all you want to do is do the work inside the addition that it's already there. You're not adding anything on the outside?

Mr. Keyer: That's correct.

Mr. Marino: You're just changing the inside that was put on some time back?

Mr. Keyer: Now we...well with a Permit we will need to add a...a landing and stairs. We're not going to change the footprint because it's an existing concrete structure...steps that don't meet today's Code so we're going to have to put a landing and steps to go down. We're going to try to stay within that footprint a...if you could see the pictures or if you've been to the site...

Mr. Marino: Yeah, I have been.

Mr. Keyer: ...a it...it's just to meet today's Code we'll have to put up the landing...

Mr. Marino: Okay.

Mr. Keyer: ...before...a...not having steps right out the front door.

Mr. Cella: And those steps will a...fall in the set...the required setbacks.

Mr. Scalzo: Okay.

Mr. Cella: It will be on top of the existing steps and fall in the existing setbacks.

Mr. Scalzo: Thank you. Any other questions from the Board?

No response.

Mr. Scalzo: Hearing none, I will open this up to any member of the public who is here to speak for this action.

No response.

Mr. Scalzo: Hearing none, turn back to the Board for one last opportunity. If not...

Mr. Donovan: If I can Mr. Chairman just on question? Jonathan the thirty-two feet is measured from your...the house to the property line?

Mr. Cella: The property line along Edgewood Drive North.

Mr. Donovan: So what would be the distance to the edge of pavement at Edgewood Drive?

Mr. Cella: Probably closer to forty feet. I don't have my scale with me but a...

Mr. Donovan: You can't...you don't have calibrated eyes? (Inaudible)

Mr. Scalzo: If you'd like Dave I could...if you give me one moment.

Inaudible

Mr. Scalzo: We're looking at...to the front corner of the dwelling from the edge of pavement on Edgewood it appears to be close to...just about fifty feet and to the porch it would approximately be forty-nine feet. So hearing no other comments I'd look to the Board to make a motion...

Mr. Masten: I'll make a motion.

Mr. McKelvey: I'll second.

Mr. Scalzo: ...to close the Hearing.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Cella: Thank you.

Mr. Scalzo: Thank you.

(Time Noted - 7:12 PM)

ZBA MEETING – APRIL 26, 2018 (Resumption for decision: 9:52 PM)

EXR LLC.

71 HY VUE DRIVE, NBGH
(41-4-1.2) R-3 ZONE

Applicant is seeking an area variance increasing the degree of non-conformity of the front yard setback to keep the porch converted into habitable space without approvals or Permits.

Mr. Scalzo: Okay, for those of you who have stuck around we will resume the meeting. At this point, we have closed the Public Hearings for the following applicants and are prepared to discuss and vote. The applicant EXR LLC. seeking an area variance increasing the degree of non-conformity of the front yard setback to keep the porch converted into habitable space without approvals or Permits. I will poll the Board are there any further questions at this point regarding this application?

Mr. Levin: No.

Mr. Marino: No

Mr. Olympia: No.

Mr. McKelvey: No.

Mr. Scalzo: Okay, then I will...alright we will go through the area variance criteria and discuss the five factors that you are weighing. The first one being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Scalzo: No I agree the structure itself has not moved. Anyone else? No? Alright, the second, if there is an undesirable change to the neighborhood character or a detriment to nearby properties?

Mr. McKelvey: No

Mr. Scalzo: I don't think anyone that anyone would notice that. The third, whether the request is substantial? Again I would say no.

Mr. McKelvey: No

Mr. Levin: No

Mr. Scalzo: The fourth, whether the request will have adverse physical or environmental effects?

Mr. McKelvey: No

Mr. Levin: No

Mr. Scalzo: And the fifth, whether the alleged difficulty is self-created? Relevant but not determinative. It was not self-created the pre-existing structure. So I will look to the Board for a motion.

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

Mr. Masten: I'll second it.

Mr. Scalzo: Alright, we have a motion for approval from Mr. McKelvey. We have a second from Mr. Masten.

Ms. Gennarelli: Okay, roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The motion carried.

PRESENT ARE:

RICHARD LEVIN

ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

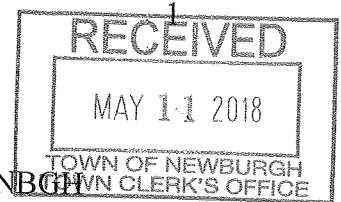
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 9:55 PM)

BS 5/11/18

ZBA MEETING – APRIL 26, 2018

(Time Noted – 7:12 PM)



KATHY FELICELLO

89 CRONOMER HEIGHTS DRIVE, NBCH
(75-1-34.14) R-2 ZONE

Applicant is seeking an area variance for no pool shall be located in a front yard to keep a 36 ft. in-ground pool built without a Permit and an area variance for accessory buildings shall be located in a side or rear yard to keep an accessory building (8 x 10) built without a Permit on the premises.

Mr. Scalzo: Our second applicant this evening is Kathy Felicello, 89 Cronomer Heights Drive seeking an area variance for no pool shall be located in a front yard to keep a 36 ft. in-ground pool built without a Permit and an area variance for accessory buildings shall be located in a side or rear yard to keep an accessory building (8 x 10) built without a Permit on the premises. Ms. Gennarelli?

Ms. Gennarelli: Yes and this applicant sent out nineteen letters. All the mailings, publications and postings were in order.

Mr. Brown: Thank you; I'm Charles Brown, the engineer for the applicant which is a lot, a single family lot Cronomer Heights Drive which is a private road. Cronomer Heights Drive loops around essentially two sides of the lot part of the driveway comes in via the right-of-way to another part of Cronomer Heights Drive. So the front of the house actually faces the driveway, the pool and the shed are...are existing. They're...the pool you can't even see from Cronomer Heights Drive because of the...the topography. The shed actually a...has a little nice architectural trim on it. We're here to request that a...they...is permitted to remain as they're existing they will not impact the environments and this is pretty much in character with a lot of the houses in this neighborhood. A lot of them have pools and sheds very similar in nature. That...that's it.

Mr. Scalzo: Thank you.

Mr. McKelvey: Do they own all the property down the hill?

Mr. Brown: Yes, they own actually right to the edge of pavement of Cronomer Heights Drive.

Mr. McKelvey: Okay.

Mr. Levin: They have two front yards?

Mr. Brown: Yeah, a...yeah, yeah.

Mr. Scalzo: Okay, Charlie, I'm going to read you something you probably already know but the Members of the Board do not. It is from the New York State Health Department Manual, Chapter 9, 9.3, Design Criteria regarding the trenches that are underneath the fill

area of the pool. Trenches shall be installed parallel to the ground contours and as shallow as possible. I'm going to skip ahead. The aggregate shall be covered with a material that prevents backfill soil from entering the aggregate and permit air and moisture to pass through. Skipping ahead again. Earth cover above the aggregate shall be between six and twelve inches to enhance natural aeration and nitrate uptake by plant life. Trench bottom depths shall be as shallow as possible but not less than eighteen inches or more than thirty inches above...or below ground subsurface. Under the construction end of it heavy equipment used in the designated absorption system area should be minimized to prevent soil permeability reduction due to compaction...I'm not sure what equipment was used during the installation of the pool. Skipping ahead again. At least six inches of aggregate is placed in the trenches as gently as possible to avoid compaction. And then further on, following sediment the entire area should be graded without the use of heavy equipment that can cause compaction, trench cave in or distributor pipe misalignment or breakage. Heavy equipment shall not enter the absorption facility area or the proposed expansion area after the system has been constructed. The entire area must be seeded with grass as soon possible establishing a grass cover, stabilize the soil sheds and absorbs rainwater, provide some nutrient uptake and insulates the absorption area. For the Members of the Board that statement also is going to come into play in a subsequent action tonight or applicant tonight so you could...I can read it again later. But a...as I say Charlie, I'm sure you're aware of that...

Mr. Brown: Yes.

Mr. Scalzo: ...and having visited the site and seeing the fill area that probably goes over at least two of those laterals a...in accordance with the Health Department Manual that septic system is currently out of conformity.

Mr. Brown: A...understood, it is functioning adequately right now a...I have been out there a...we do have a reserve area that's shown downhill...from the primary area which is the laterals that you're speaking of a...we could certainly re-route two laterals into that a...reserve area, those two that you were referring to...

Mr. Scalzo: Well Charlie, I also noticed the house is for sale so the a...potential purchaser of this home needs to be aware of this or this mitigative effort needs to occur prior to...well I don't know how it's going to roll out for the rest of this evening but a...I would believe a mitigative effort needs to at least be discussed and proposed...as it is there.

Mr. Brown: Okay I...I mean...I...I would be okay with a...making a condition of a variance reloc...relocating those two laterals you referred to. A...to again...to this...this area away from the pool a...downhill from the existing laterals. A...we could use the same outlets for the D box but a...then because of the terrain I think we could go right from...from the a...the (Inaudible) right underneath the other two laterals.

Mr. Scalzo: Okay, what about verification to the depth of...of the existing system? I'm guessing it's only the first two laterals on the a...right side as I look at the map but it could be more.

Mr. Brown: Understood. A...but the pool is at a much higher elevation than the a...septic field so there's no possible chance of a contamination from the septic into the pool so that was what I was more concerned about.

Mr. Scalzo: Right but as the Health Department Manual does indicate everybody thinks everything goes into the ground but there is some consideration for evaporation in a septic system.

Mr. Brown: I'm aware of that.

Mr. Scalzo: Yeah.

Mr. Brown: Okay?

Mr. Scalzo: Alright, I'm going to go to the Members of the Board. Mr. Olympia do you have any questions?

Mr. Olympia: I do not.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No, no questions.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No, I have none.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Nope.

Mr. Scalzo: Hearing no other comments from the Board, I'll open this up to the members of the public. Anybody have any questions or comments for the applicant?

No response.

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

No response.

Mr. Scalzo: If not may I have a motion to close the Public Hearing?

Mr. Olympia: I vote we close the Public Hearing.

Mr. Masten: I'll second it.

Mr. Scalzo: We have a motion from Mr. Olympia, we have a second from Mr. Masten.

Ms. Gennarelli: Okay. Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Brown: Thank you.

(Time Noted - 7:20 PM)

ZBA MEETING – APRIL 26, 2018 (Resumption for decision: 9:55 PM)

KATHY FELICELLO 89 CRONOMER HEIGHTS DRIVE, NBGH
(75-1-34.14) R-2 ZONE

Applicant is seeking an area variance for no pool shall be located in a front yard to keep a 36 ft. in-ground pool built without a Permit and an area variance for accessory buildings shall be located in a side or rear yard to keep an accessory building (8 x 10) built without a Permit on the premises.

Mr. Scalzo: The second applicant is Kathy Felicello, 89 Cronomer Heights Drive, the area variance for no pool shall be located in a front yard to keep a 36 ft. in-ground pool built without a Permit and an area variance for accessory buildings shall be located in a side or rear yard to keep an accessory building (8 x 10) built without a Permit on the premises. Do we have discussion on the application?

No response.

Mr. Scalzo: Keeping in mind that the issues that I had brought up regarding the sanitary disposal system are not part of the application. It's not what the applicant is asking for. So we are determining whether or not the pool can remain in place and the shed.

Mr. McKelvey: Where that house is it's really no man's land.

Mr. Scalzo: That is correct.

Mr. Levin: Yes, it's two front yards too.

Mr. Scalzo: Yeah, yup, yup. Alright, so I'm going to go through the a...the criteria, the area variance criteria and discuss the five factors. The first one being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. Levin: No

Mr. Scalzo: Well we're already there at that point so I would say no. Second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Masten: No.

Mr. McKelvey: No.

Mr. Marino: No

Mr. Scalzo: No, I would say no, it a...very characteristic of the neighborhood. The third, whether the request is substantial? I don't believe it is.

Mr. McKelvey: No

Mr. Masten: I don't think so.

Mr. Scalzo: The fourth, whether the request will have adverse physical or environmental effects?

Mr. McKelvey: No

Mr. Levin: No

Mr. Scalzo: Now that's where I would a...that is a potential environmental effect with regards to the sanitary disposal system however, a...if the engineer...the applicant's engineer can verify or...utilize other laterals and plan for an expansion...

Mr. Donovan: Well perhaps we could say insure that the Orange County or County Health Department or State Health Department requirements are satisfied relative to the sanitary disposal system.

Mr. Scalzo: Thank you Dave.

Mr. Scalzo: And the fifth, whether the alleged difficulty is self-created? This is relevant but not determinative. Of course it's self-created they asked for permission...forgiveness after not getting a Permit however...

Mr. Olympia: We are where we are.

Mr. Scalzo: ...so that being said...

Mr. McKelvey: The house is for sale.

Mr. Scalzo: Yeah, the house is for sale. That being said we'll look to the Board for a motion with any conditions.

Mr. Marino: I think motion we approve with the condition that Dave said.

Mr. Olympia: I'll second.

Mr. Scalzo: We have a motion to approve from Mr. Marino, a second from Mr. Olympia.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The motion is carried.

PRESENT ARE:

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN

JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

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

(Time Noted – 9:59 PM)

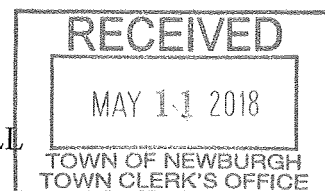
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ZBA MEETING – APRIL 26, 2018

(Time Noted – 7:20 PM)

CHARLES & LYNN WHITEHOUSE

778 ORCHARD DRIVE, WALLKILL
(1-1-42.11) A/R ZONE



Applicant is seeking an area variance for the maximum allowed square footage by formula of accessory structures to keep an 8 x 20 overhang added to an accessory structure without a Permit and to build a new accessory structure (16 x 16) on the premises.

Mr. Scalzo: The next applicant Charles and Lynn Whitehouse, 778 Orchard Drive in Wallkill, they are seeking an area variance for the maximum allowed square footage by formula of accessory structures to keep an 8 x 20 overhang added to an accessory structure without a Permit and to build a new accessory structure (16 x 16) on the premises. Ms. Gennarelli?

Ms. Gennarelli: And this applicant sent out eighteen letters. All the mailings, publications and postings were in order.

Mr. Scalzo: Good evening, if you could state your name for the record?

Mr. Whitehouse: My name is Charles Whitehouse. Sorry I don't have a nice picture to put up on that board but a...so we're looking for more storage. Our house is one of the smaller ones on the block a...looking to raise the variance because of the shed we have and the garage. The overhang was put on without a Permit. I didn't realize just a little overhang that we added but...that's about it.

Mr. Scalzo: Okay.

Mr. Whitehouse: The family has two...two teenagers... (Inaudible)

Mr. Scalzo: I understand. I'm going to turn to the Members of the Board for any comments at this point. Mr. Olympia?

Mr. Olympia: Are you in love with the overhang?

Mr. Whitehouse: Yeah. My...my kayaks underneath that.

Mr. Olympia: It...it's not particularly attractive and it faces your neighbor also...in the back.

Mr. Whitehouse: The neighbor that's a...the house is vacant...

Mr. Olympia: It is vacant?

Mr. Whitehouse: ...I actually have extra room and that's why I left those trees there so those trees will kind of give it a buffer zone. That's why the fence is moved in. I kept that trees. And that house wasn't there when I built...when I put that shed in originally a...so...I didn't think you really see it much.

Mr. Olympia: The shrubs mask that overhang.

Mr. Whitehouse: Except in the wintertime.

Ms. Whitehouse: And our property line is not at the fence.

Mr. Olympia: Right, right.

Mr. Whitehouse: Yeah, that stonewall is the property line.

Mr. Olympia: Thank you.

Mr. McKelvey: How close is the overhang to the fence?

Mr. Whitehouse: The overhang is to the fence but the property line...it's off the property line fifteen feet.

Mr. Scalzo: Thank you, the minimum setback for accessory structures is five feet which that would include the overhang. Looking at your sketch on...from prepared by Mr. Yanosh it appears that the garage was sketched on by you folks as well as your pool. Scaling can be difficult when prepare those I understand that not that this would be just a matter of record for when the Code Compliance folks read this a...total lot coverage you know, including impervious surfaces, the shale drive, the garage, if they could just check that at a later date but that has nothing to do with your application. Moving on, Mr. McKelvey any other comments?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Good, thank you. We'll now open it up to the members of the public that may want to comment on this application.

No response. (Audience member's GPS giving directions)

Mr. Scalzo: Hearing nothing but directions, I apparently need to leave. Hearing none one more chance for the Board to comment.

No response.

Mr. Scalzo: Hearing none if I could hear a motion to close the Public Hearing?

Mr. Masten: I make a motion.

Mr. Scalzo: First by Mr. Masten.

Mr. McKelvey: I'll second.

Mr. Scalzo: Second by Mr. McKelvey.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The Public Hearing is closed. Thank you.

(Time Noted - 7:25 PM)

ZBA MEETING – APRIL 26, 2018 (Resumption for decision: 9:59 PM)

CHARLES & LYNN WHITEHOUSE 778 ORCHARD DRIVE, WALLKILL
(1-1-42.11) A/R ZONE

Applicant is seeking an area variance for the maximum allowed square footage by formula of accessory structures to keep an 8 x 20 overhang added to an accessory structure without a Permit and to build a new accessory structure (16 x 16) on the premises.

Mr. Scalzo: The next applicant is Charles and Lynn Whitehouse, 778 Orchard Drive, Wallkill area variance for the maximum allowed square footage by formula of accessory structures to keep an 8 x 20 overhang added to an accessory structure without a Permit and to build a new accessory structure (16 x 16) on the premises. Is there any discussion before we hit the criteria?

No response.

Mr. Scalzo: No, alright the first criteria being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. Marino: No, I'd say no.

Mr. McKelvey: No

Mr. Scalzo: No. The second, is there an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Olympia: No.

Mr. McKelvey: No

Mr. Marino: No.

Mr. Scalzo: The third, whether the request is substantial?

Mr. McKelvey: No

Mr. Olympia: I don't think so.

Mr. Scalzo: The fourth, whether the request will have adverse physical or environmental effects? No. And the fifth, whether the alleged difficulty is self-created? Relevant but not determinative. Yes it is self-created a...we heard no testimony from anyone from the public.

Mr. Marino: We got a letter though.

Ms. Gennarelli: Oh, yes, we go a letter.

Mr. Scalzo: We got a letter, thank you Mr. Marino. Supporting the applicant?

Mr. Marino: Yes, yes.

Mr. Scalzo: So, you know, that's a nice thing to have. Therefore I'll look to the Board for a motion.

Mr. Masten: I'll make a motion.

Mr. Scalzo: We have a motion to approve from Mr. Masten, do we have a second?

Mr. Marino: Second.

Mr. Scalzo: Second from Mr. Marino.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Ms. Gennarelli: The motion is carried.

Mr. Scalzo: Thank you for being patient. This is one of our longer meetings.

PRESENT ARE:

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

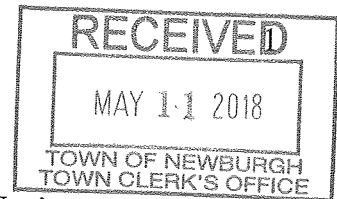
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 10:01 PM)

BS 5/11/18

ZBA MEETING – APRIL 26, 2018

(Time Noted – 7:25 PM)



Same Minutes Used for Both the Interpretation and the Use Variance

WCC TANK TECHNOLOGY, INC.
(2102 PARTNERS, LLC.)

2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
(3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation that the use and proposed indoor parking of so-called "hydrovac" trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for the new garage.

Mr. Scalzo: The next applicant is WCC Tank Technology, Inc. (2102 Partners, LLC.), 2102 Route 300 & Plank Road, N. They are seeking an Interpretation that the use and proposed indoor parking of so-called "hydrovac" trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for the new garage. Now this has a few spots on our agenda this evening...they are also seeking... well can I move ahead...?

Mr. Donovan: So in the alternative...not to speak for the applicant but in the alternative if the interpretation is not favorably looked upon you are requesting a use variance to allow you the same relief you are requesting, correct?

Mr. Gaba: That is correct.

Mr. Scalzo: Alright and if I could just read into the record the second application here is for a use variance permitting a change of the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. This request is submitted in the event that the applicant simultaneous interpretation seeking a determination that the use and parking of said hydrovac trucks is permitted under the previously issued 1982 use variance is denied by the Zoning Board of Appeals. We have received numerous letters to this which will all be part of the record a...do I need to read every one of those Dave?

Mr. Donovan: No.

Mr. Scalzo: No, good. Thank you. They were all published on-line at the Town of Newburgh's website. So...

Ms. Gennarelli: Before you start...

Mr. Scalzo: Thanks Betty.

Ms. Gennarelli: ...regarding the mailings and postings. This applicant sent out twenty-nine letters for the interpretation and twenty-nine letters for the use variance application. All the mailings, publications and postings are in order. Okay.

Mr. Scalzo: Thank you very much.

Ms. Gennarelli: You're welcome.

Mr. Gaba: Thank you Chairman Scalzo, my name is Steven Gaba and I'm with the law firm of Drake, Loeb and I represent the applicant WCC Tank Technology's and with me here this evening is Ira Conklin. He is a principal at WCC, along with Mike Bodendorf who is our engineer and we also have our accountant Tom Weddell. The notice that you just read is a mouthful but I think by the time we're done you're going to find this is actually a very simple application not that complicated. I'm sure the Board is familiar with the property. It's four acres, almost five in the A/R district a...it's the present home of WCC Tank Technology and it has been since 1982 when this board gave them a use variance to allow a commercial use on the property. WCC has operated continuously on the property and what you need to understand is that in the course of a...tank lining repair, tank lining work that this company does excavation is a part you have to dig up the tanks. And in the past, when they started back in the '80's they used probably shovels, backhoes, what have you...mechanical means to excavate the tanks. That was the until about 2003 when so-called...they called them hydrovac trucks for short but the real name is hydro...hydroevacuation trucks, more on that technology for you in a little bit. And they started using those as a means of digging up tanks (Inaudible) hydrovacuation truck are much superior than mechanical or hand means of digging up thing like tanks with petroleum in them as they (Inaudible) energy tanks with lines around them. Like I say this happened all the way back in 2003. Now WCC's owners have a sister company. It is called Hydrovac. Hydrovac is not engaged in tank removal. Hydrovac is engaged in excavation using hydroevacuation trucks and WCC purchased...a...a...leased and purchased four trucks not from...not from Hydrovac from the manufacturers of hydro...a...evacuation trucks. They were WCC's trucks and WCC used them in the tank lining business that it operates just the same as used backhoe or any other means of excavating but because their main business is tank repair, tank lining and not excavation they would allow or lease the properties to Hydrovac and so there was this cross pollination, cross use of the trucks. Only four of the trucks belong to WCC, the rest were for that other company Hydrovac and in hindsight perhaps it wasn't such a hot idea. In 2015 the Hydrovac Company moved onto the site. WCC shared it with Hydrovac put up the Hydrovac sign, put in the offices for Hydrovac, put the Hydrovac trucks on the property and in all candor a...some of the Hydrovac truck operations took place on the property. There's a...a...a...soil pump, I think they call it slurry...

Mr. Conklin: Spoils.

Mr. Gaba: Spoils pardon me spoils and there was some placement of spoils on the property. Again, water under the bridge now but maybe it wasn't such a hot idea. In 2017 based on complaints of neighbors the Building Inspector brought an application before this Board seeking an interpretation. They said the 2000...a...the 1980 a...variance isn't real clear as to limitations of what a tank lining business is and can do and there are no conditions in the variance saying that you can't expand your business or you can't put more trucks on there or anything like that and so they asked you for guidance as to whether the Hydrovac business...and hydrovac trucks that were operating on the property could be considered part of the 1980 variance. I was not here for that variance. Last year you were so you know better than I what occurred but that's my reading of it. And this Board rendered a decision that said no Hydrovac. You want to run WCC, run WCC, you can't put a

second business on the property engaged in a business other than tank lining. So Hydrovac is off the property, Hydrovac's sign is down, Hydrovac's offices are out. In fact, Mr. Conklin is no longer involved in the Hydrovac business. He's...he's...he's not...he's not running it. Okay? All that's there now is WCC and that's all that we want there now. Now we've asked for an interpretation and a variance and what the interpretation and the variance are are simply this and I'll have Mike Bodendorf come up in a minute and explain a little bit more as to what the a...site changes would be. But see the little...rectangular (Inaudible) there that's an addition to our existing building. It's going to be thirty-seven by fifty (37 x 50) and we're only going to keep four trucks. The four trucks that we own, the hydrovac trucks that are used in WCC's business, we're going to park two of them there and we're going to park two of them in our main building. That's it. We want to keep four trucks on. We want to build that addition. We think and we'll get into some of that that under the 1980 variance we're allowed to do that because the trucks are being used in WCC's business not a separate business. And we think we're allowed to enlarge this building a...as a matter of right under the nineteen a...eighty variance (Inaudible) I'll point you to the section that I'm referencing. But before we get into legalities of it if I could just let you understand a little bit about what we want to do on the property. So...so Mike if you could just very briefly explain to the Board what...

Mr. Bodendorf: Good evening, Mike Bodendorf, Hudson Land Design Engineers, engineer for the applicant. As Steve mentioned, it will...will be located on the a...the northwest corner of the existing building. Trucks will enter in and out of the building through the front of it as they do in the existing building now. Site access will stay the same through the existing driveway a...the building is far within the existing setbacks. It's just slightly closer to the rear property line and more or less thirty-seven feet closer to the westerly property line. To give you an indication of what the building would look like...you've heard some elevations of the building, its first elevation is the south elevation or front elevation as you look into the site. Here's the new addition, the darker shaded building. The roofline will match with the existing roofline. This gabled roof is a higher roof that's located in the back of the existing building and then this lower roof is in the front of the building. If we move on to the west elevation this piece would be jutting out from the existing building here and then the north elevation this is looking at the back of the building, the new addition would be flush with the existing building and then we're just...you know, we're just tie it right into the existing roofline. That's generally the... I guess interior wise we'll have a...a door that would a...connect the two buildings just inside this right-hand side here a...we're going to provide proper fire separation between the two buildings and we don't believe that this new addition will need sprinkler because it's less than five thousand square feet. Does anybody have any questions?

Mr. Scalzo: Yes, I do. As you heard in the previous applicant about septic systems and you are an engineer and I am certain you are aware of all of the requirements for them and while this may play into the variance request or not I have in my hands Filed Map #9809 filed on February 8, 1990 for the Lands of Conkin. If I could ask you to take a look at this? And it's going to show you that the septic is underneath your proposed building. And actually I've taken the time to sketch it out on yours and to show you that...

Mr. Bodendorf: (Inaudible)

Mr. Scalzo: Well actually it's...it is an approximate septic area but I also happen to own the records of George Stevenson who was a...an exempted land surveyor who did septic designs as well who showed septic on the original four lot subdivision very close to where that one is.

Mr. Bodendorf: Okay, I'm not disagreeing with you. According to Mr. Conklin that septic is located a little bit closer to the front of the parcel a...as it's shown on that map so that would sit probably right in here somewhere.

Mr. Scalzo: That's quite possible then it was not installed as per originally approved.

Mr. Gaba: I'm...I'm sure you understand Chairman Scalzo...

Mr. Scalzo: I understand...that's...

Mr. Gaba: (Inaudible)

Mr. Scalzo: ...that's not what we were here for I get it... but...

Mr. Gaba: ...and it would be a site plan issue however, you're absolutely right about that...

Mr. Scalzo: Correct.

Mr. Gaba: ...when they go before the planning board that will have to be addressed. Alright was that it for the engineer? (Inaudible) So I don't know about the Board... (Inaudible)...

Mr. Scalzo gave Mr. Bodendorf a copy of the Map for his records.

Mr. Bodendorf: Thank you.

Mr. Gaba: ...but I heard WCC's name before so I knew there was such a thing as a tank technologies company but to be honest with you I did not know the...or did not until this what a tank technologies company did and before this matter came up I was happily unaware of the existence of hydrovac trucks altogether now I go down the road I actually look to see if I could see one. But I think it would be helpful to the Board if a...we had Ira explain to you just very, very briefly and I...I don't to drag this out what the tank technology business, what it entails, what a hydrovac truck is and how it's involved in the on-going operations of WCC. It will not take up a lot of your time, just, just very briefly. Well tell them what they are first and then ask... (Inaudible)...

Mr. Conklin: My name is Ira Conklin a...back in the a...late 1976 my dad and my uncle started the...at the time IDC tank lining business and a...it was...it's...it was ahead of its time at that time and you would travel, you would leave the yard, travel to a...a service station or a hospital or a...an area that has an oil...apartment that has an oil tank or a gas tank...we'd uncover the top of the tank, we defume the tank, cut it open, clean it, sand blast it and then put a polyester lining inside, put a manway on it and a...test the tank and system and then backfill it. And a...and that's...that technology is used today a...I'm...right now about thirty years ago the...the tanks were double wall tanks and from the new ethanols and a...biodiesel fuels the actual interior tank is being...it's being

eaten out by these chemicals so we are, you know, still in the business of...of lining...interior lining both steel and fiberglass double wall tanks. And a...and again these tanks, you know, when we uncover them now they're double wall fiberglass tanks with flexible hose piping on top of them, pea gravel backfill and we use the hydrovac trucks for that. We can also use the a...hydrovac trucks to...remotely...we can work up to six hundred feet away where we were in, you know, New York City or Philadelphia and we have a...a hospital where it's...it's around the back of the building you can't get a...a larger piece of equipment in we can actually, you know, run the hose around the...back and then uncover the tanks that way. And then as far as the hydrovac trucks I've got some photos. Am I allowed to show you...pass the photos around?

Mr. Conklin approached the Board with the photos.

Mr. Conklin: Those are...that's the photo of a hydrovac truck and it is a...they can be used both wet and dry so you can...you can use a...high pressure, low volume water to agitate the soil and...and vacuum it up into the truck. And anything that it encounters a...you just vacuum around it and clean around it...you know without doing damage and we've been on a...various yards even the...the small...the invisible dog fence a...you know doesn't get broken by this piece of equipment and it's a truck and two men.

Mr. Olympia: What happens to the spoils?

Mr. Conklin: A...the spoils are...are dumped in various locations if they're a...from a gasoline station or...or a petroleum area they're dumped on-site...on plastic. If they're...you know, if we're working for a utility company and then they usually have their a...like Central Hudson has yards where they...where we bring the material to.

Mr. Gaba: (Inaudible)

Mr. Conklin: Well the four trucks on the property we...we...the...our trucks are empty on the property when they come in. When they leave in the morning, they have water on Board and they're emptied and the...and the rear tank is empty. We travel out to various sites a...you know, various gas stations or a...jobs that we have and a...and then when we're done with the trucks are dumped and we refuel at a...a...you know, various gas stations around town and then we come back into the yard, water up and park the trucks. So the trucks are empty when they leave and they're empty when they come home.

Mr. Gaba: (Inaudible)

Mr. Conklin: Yes, and they are only going to be parked inside.

Mr. McKelvey: You're not going to dump any of this liquid like you...

Mr. Conklin: No.

Mr. McKelvey: ...that you did before?

Mr. Conklin: Absolutely not. We were asked at the last Board meeting by the...by Jerry (Canfield) to not do that and we have...we have not dumped any...any spoils on the property since.

Mr. Olympia: Besides parking the equipment on the premises what other type of activities take place there?

Mr. Conklin: We don't really do too much other activity on the property. We do some like a...like a local firehouse or fire station...we can repair the...the water tank on the...on the truck. We'll even put a fiberglass bed inside of that on the truck. So we do some...some very minor work on the property but we don't do...a...you know, there's no...no major tank work done on the property.

Mr. McKelvey: They were...they were complaining before of when you were doing work on the property that it was noisy.

Mr. Conklin: With...with the dumping of the...of the dumping of the materials, yes.

Mr. McKelvey: No, working on your equipment.

(Inaudible): What do you mean equipment?

Mr. Conklin: A...

Mr. McKelvey: There was complaints.

Mr. Masten: Yes.

Mr. Gaba: What equipment (Inaudible) property in?

Mr. Conklin: A...I mean just...I guess wash our truck down I guess...

Mr. Gaba: (Inaudible)

Ms. Gennarelli: Mr. Gaba if you are going to speak you have to speak into the microphone. This is being recorded.

Mr. Gaba: (Inaudible)

Mr. McKelvey: Mr. Gaba why don't you take the other mic?

Mr. Gaba: (Inaudible)

Mr. McKelvey: You have to, you have to.

Mr. Masten: Got to be...being recorded.

Mr. Gaba: (Inaudible)

Ms. Gennarelli: You don't have to but it's being recorded so we need to get you on...on tape.

Mr. Gaba: I have no problem at all.

Ms. Gennarelli: Thank you.

Mr. Gaba: All I was asking Ira was if there was noisy a...repair work being done before...is it being done now?

Mr. Conklin: I would say no.

Mr. Gaba: Well is it or isn't it?

Mr. Conklin: It's not.

Mr. Gaba: Okay. And are you going to do it going forward?

Mr. Conklin: No.

Mr. McKelvey: There was complaining before about banging on metal...

Mr. Gaba: There was a lot of stuff that went on before.

Mr. Masten: Yes. Yes.

Mr. Scalzo: During the discharge operation I believe is where the mechanical sounds are coming from.

Mr. Conklin: The...believe me the dumping the trucks is very noisy, the vibrator on the trucks the the...the...the door coming down and slapping but that has not happened you know, since a...whatever was the meeting of January or something like that so...

Mr. Gaba: And I...I don't have this Board's decision quite memorized. I remember quite a bit of it. I think...that it was found that dumping spoils was not allowed under the existing variance so I think that would be prohibited activity if they did engage in that which they say they're not going to the Building Inspector could come and cite them. And say, 'hey, you're in Violation'. I...I...I'd have to look again but I...pretty sure it said that in there.

Mr. Donovan: No that's correct, it did say that. It did say that it was not...not encompassed by the 1982 use variance. Correct.

Mr. Scalzo: And not that it came up during our interpretation a year ago Mr. Conklin I believe a...and it's probably in the meeting minutes that...that you had made a promise to restore the area with top soil and seed. And I was out there last week and it doesn't look like it's been top soiled, seeded or anything in a year.

Mr. Conklin: Yeah, no, I haven't...I haven't done anything. Where you cut the front is...is all been cut up but a...you know, where you drive around the...around the building you know, it's not going to be grass there. You know, but up on the...on the back...on the back part of it towards the wall we could...we could definitely do that.

Mr. Scalzo: Okay, and Mr. Gaba, you may want to grab the microphone again, because I'm going to ask you your words when we first started a...the four trucks that WCC owns they would perhaps lease them to Hydrovac...well that's a truck leasing business to me. That's a totally separate business going on that's a...

Mr. Gaba: It's not proposed to lease the trucks. It's just proposed to use them in WCC's business.

Mr. Scalzo: It's in your application sir and your letter that...

Mr. Gaba: To lease them? I don't think so.

Mr. Scalzo: Well let me go back to the letter.

Mr. Marino: Are you going to have any other equipment on the property like backhoes, dozers and things like that?

Mr. Gaba: Well we don't now but we would still like to reserve the right to do that. I think it extremely unlikely with these hydrovacs that we're going to want dozers or backhoes but I can't rule it out (Inaudible)...

Mr. Marino: How would you get them from there to the site where they have to work?

Mr. Gaba: We got to put them on a...on a...truck.

Mr. Marino: Another truck. You need other trucks.

Mr. Gaba: Yeah.

Mr. Marino: Besides the four...

Mr. Gaba: We have other trucks.

Mr. Marino: They're not there now though on the property.

Mr. Gaba: Well, we got pickups...what else you got?

Mr. Conklin: (Inaudible) We just have a...a one...two one-ton dump trucks and a...two pickups and a van right now...and two vans.

Mr. Scalzo: Mr. Gaba, you're letter...you were correct. I stand corrected. WCC periodically lends them to Hydrovac is...is...that's the words in your letter. So it's a free thing? They just...their very friendly and they lend the trucks?

Mr. Gaba: (Inaudible) Hydrovac...that's what they were doing when Hydrovac was on the property. They're not doing it anymore and believe me there's no love lost between Hydrovac and WCC. That's not going to happen anymore. That's not part of this application.

Mr. Scalzo: Okay.

Mr. Gaba: It's not proposed.

Mr. Donovan: And just to...

Mr. Gaba: In fact if you want to impose it as a condition of granting relieve we'd be happy to accept it.

Mr. Donovan: It...the letter though, Darrin, does say...Steve's letter does say that WCC may in addition from time to time lease or lend the trucks to Hydrovac.

Mr. Gaba: Well that's what we were doing but we're not doing it now.

Mr. Donovan: So...okay. Because it says here you propose to do that. So you don't propose that anymore?

Mr. Gaba: No what we propose to do and I'll...I'll get to it in a minute is use the hydrovac trucks again not as our primary business just from time to time as work may become available for excavation...other...off site mind you, other than tank lining if we have an opportunity to help them with telephone poles or excavate a gas line or something like that. We have our hydrovac trucks and we're going to get to that when we talk about use variance we need to supplement this business. There just isn't that much money in it, candidly, in doing tank lining. It will not support an on-going business limited to that and we think, under the variance, we're entitled to expand our business. And I'll be happy to address that now I think I'm pretty much done with Ira unless you guys have more questions.

Mr. Donovan: If I can? Just for a point of clarification I don't know if this is a mistake or...Code Compliance's letter of February 1, 2018, it's addressed to Mr. Conklin. In the letter it says a Building Permit application has been submitted to Code Compliance by Hydrovac Excavating Inc. for the addition. Is that accurate or inaccurate? Is that a mistake? Is that true?

Mr. Gaba: If that's accurate in that we were operating Hydrovac as well at the time, or at least involved in the operation of it. We are not now. Once we talked with the Building Department we realized we could not continue to operate. Even though they're related going as far as the types of business they did the other business Hydrovac on the property and then all we could operate was WCC and when we came to understand that Hydrovac was gone. They aren't there anymore. We're

not going to lease to them anymore. Hydrovacs off the property, forget about Hydrovac, they're out of the picture. So if my letter is ambiguous on that point I apologize. This is...

Mr. Donovan: Well that's actually Code Compliance so I...I just wanted to clarify...

Mr. Gaba: Well Code Compliance is right because when we were going to put up the building we were still operating Hydrovac on the property and we were going to put the trucks in to be used periodically by Hydro...and that is not the case anymore, just WCC, WCC's trucks, WCC's building, WCC's problem.

Mr. McKelvey: Let me ask Mr. Conklin a question. A month or two ago you've been doing work for Central Hudson...?

Mr. Conklin: Yes.

Mr. McKelvey: ...because I...I know you did it on my property because my shutoff valve at the curb was leaking. Which company did that? Which one was that Hydrovac or...?

Mr. Conklin: Up until two weeks ago it was Hydrovac...or three weeks ago, April 6th.

Mr. McKelvey: It made the work for Central Hudson a lot easier I know that.

Mr. Conklin: Can I pass this? This...this is for your eyes.

Mr. Conklin approached the Board with paperwork.

Mr. Conklin: Just for the record, it's a termination of my employment at Hydrovac.

Mr. Levin: Ira, I...I have a question and it would probably be answered by the people out here but you were here last time and you didn't do the speaking, somebody else, a relative spoke a...of yours...

Mr. Conklin: I spoke a little bit, yeah.

Mr. Levin: You spoke a little bit? A...the main complaint was noise...

Mr. Conklin: Yes.

Mr. Levin: ...and now you're saying there is no noise?

Mr. Conklin: Correct. The...the noise comes from dumping the...we were dumping the spoils when we would bring back the spoils to our yard to dump. My original intention was to...to raise that area up about eight or ten inches so we could eventually have a lawn over there on the side but once the...once they said, you know, the neighbors were saying there's too much noise, too...you know, concerned about what was coming in...we...we have not a...dumped there since. And there is...so when the truck comes in whatever the noise the engine of a truck would make to come in and you

know, and whether it's a tank lining truck or not it's...it...you know, an engine is an engine so that's...that's the noise you're going to get when a truck comes in or out of there. And you know, to me if it's you know, Dawes Septic Systems and then they want to use their equipment to put in a water line I mean it's...you know you're trying...you're trying to keep the business, you know, we're trying to make a living. We hire local guys, we have ten full time guys there and you know, we should be able to...to let the business survive, you know, the tank lining business is...is fading a little bit and a...we're doing the best we can, we're traveling all the way down to South Carolina and North Carolina to do tank work and a...you know, we...we're...we're good at what we do but...but you know we need...we need to use all avenues of a...that we have to...to be able to survive.

Mr. McKelvey: When you go down there you do the dumping down there?

Mr. Conklin: Where's that? A...when we go for tank work it's dumped on-site, on plastic, so yes, that would be...that would be there.

Mr. Olympia: Any portion of the property wetlands? Designated wetlands?

Mr. Scalzo: Well the ponds are out front, I don't know if they're classified as DEC or Army Corp of Engineers.

Mr. Conklin: They're not...they're not in...we checked that they're not in classified in there as a wetland. It's the...the closest one is to our...is to our a...east on the other side of the...of the a...portion.

Mr. Scalzo: You can point on the map.

Mr. Conklin: So it would be a...

Mr. Scalzo: On the other side of Forest Road?

Mr. Conklin: On the other side of Forest Road, yeah.

Mr. Marino: If you were asked to do so would you be willing to put up a solid line fencing or bushes of some type that might grow to a height of six or eight feet...?

Mr. Conklin: Yes.

Mr. Marino: ...in the...in the appropriate location to block your neighbors?

Mr. Conklin: Yes, as a matter of fact in 1982 my uncle was asked to do the same and he did and now those pine trees are about sixty to eighty feet tall but we would definitely be willing to a...put any...

Mr. Marino: Put something.

Mr. Conklin: ...put some screening up of whatever the choice would be.

Mr. Scalzo: Yes, the '82 variance required a visual screen and yes, those pine trees are there. The green portion is very high and it's...down low it's pretty easy to see through. Mr. Conklin, obviously you are familiar from this a...with this property from the get-go. Would you say the character of the lot and the way you operate has changed and since 1982?

Mr. Conklin: No. We do all of our work off-site. We don't do any work on...on-site. The trucks are empty when they're...when they're on-site and they're empty when they...when they leave and they're empty when they come back on so, no.

Mr. Scalzo: Any further questions from the Board for Mr. Conklin? Mr. Olympia?

Mr. Olympia: No.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No, none.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Nothing right no.

Mr. Scalzo: Mr. Marino?

Mr. Marino: No. I might have something later.

Mr. Scalzo: Mr. Gaba back to you.

Mr. Gaba: Okay, well very briefly, a...I submitted with our application a letter in which I laid out the law as far as I understand it in regard to use variances as opposed to legal non-conforming uses. Not to beat a dead horse as far as that goes the difference is a legal non-conforming use preexists applicable zoning and under your Code if you have a legal non-conforming it cannot be expanded or at least beyond that limited amount that's allowed by the Code. A use variance on the other hand and I stated the applicable law is a horse of a different color. A use variance unless the Board imposes limitations or conditions which limit the expansion of the use can be expanded, both physically as far buildings and as far as the volume of the existing use after a use variance is granted. Now the 1980 variance was, as this Board went over at last go around on this, not exactly tight as far as conditions and limitations and certainly it did include with it in a statement that the business will be confined to a number of employees that existed in the '80's and can't be expanded. We can have more trucks or anything along those lines. In fact...on page five of the variance under Item 3; it says the pole building shall be located as shown on the accompanying site plan. The size

of which may be increased if needed by the applicant. Well need for increasing building would be of course because you have more things to put in the building and I think that it naturally follows that under the variance this business was allowed to expand and certainly the building on the property was expressly allowed to expand. So we're seeking two interpretations from this Board in regard to that. Now the first one is that we're allowed to build that building. And the second one is that we're allowed to park hydrovac trucks...hydroexcavation trucks used solely by WCC in that building because we don't see a difference between a hydrovac truck and a shovel or a backhoe or an excavator of any kind. Could have used those in the 80's, we can use hydrovac trucks now it's a natural expansion of our business and we think under the (Inaudible) law allow it. Now the twist of this is like were you too early. The twist is this, you're going to hear in a minute from our accountant and you can hear more from Ira if you want but we can't make a go of it under the tank lining business. We need to enlarge it, we need to expand it and to some extent not...not to lose the principal use of a tank lining business mind you, we're still running North Carolina and around here and anywhere that's going to be our...it's our bread and butter but...but we need to diversify. And by diversify I don't mean bring in other businesses. We're not...we're not going to be selling retail. We're not gonna...we're not gonna, you know, bring in something else altogether but we want to use the tools that we use in our business for closely related activity in this case of course as...Mr. Macelvey eluded to excavation for Central Hudson, for the State. Just for the limited purposes to supplement our existing use. Now it's not as clear that that's allowed under the 1980 variance. We think it's a natural progression of our business but this Board could find and...and be...be led by it, you could find that going into excavation even on a limited basis constitutes a change in use and a change in use is very different from expanded use. So if you find that and...and again, we urge you not to...we really think it's a natural organic expansion of our tank lining business but if you do then we would need a use variance from you, a use variance to modify our existing use under the use variance that was previously granted. Now, that's a very limited use variance. I'm...I've just explained to you the terms of it as far as that goes. The change in the property is going to be negligible. If you find the first part of our interpretation is correct and we can trucks solely for WCC's business the tank excavation I mean, the property is going to look exactly the same, the only difference is the trucks from time to time will be going out on business other than tank excavation...to be excavating gas lines, telephone polls, whatever it is. The building will look the same a...the use of the property, impact on the neighbors in all respects to be the same. Look as use variances go this is not as being de minimus as you can get. Now I know technically in order to grant a use variance the Board needs to go through the four factors that we can't realize a reasonable return, that it's unique the hardship and doesn't apply to the character of the neighborhood generally, a...that it doesn't alter the essential nature of the neighborhood and that it's not self-created. Now I would argue that this Board found in 1980's that all those criteria met for those variance that under the American Red Cross case you're pretty much bound to make those same findings for a de minimis change like this but if you feel this is different enough we'd be happy to go through those factors again. Certainly it's unique and doesn't apply to the neighborhood generally. It's a residential strip made up of mostly residential neighborhood...nobody has buildings like us; we're an existing long term use like us which is different. A...won't alter the nature of the neighborhood I just went over that I won't belabor the point. And it's not self-created. This is a variance we got back in the eighties and the economy has changed I guess it goes without saying, the nature of business in the area, heck the area has changed since the eighties substantially, that's just the nature of the country, the economy whatever you want to call. It's not something that we did to decrease our tank lining business. We haven't laid off

people, we haven't slacked off. We...we go out there, trying to make a go of it. This is not self-created, the fact that we need to supplement our business by using the trucks for thing other than tanks. So that leaves the one area that I'm not...I'm not suitable to address and that is, financial hardship. And to address that point, we brought with us our accountant who will go over you know, again, we're not gonna take up too much of your time, just briefly to show you that what our financial situation is, our accountant Tom Weddell.

Mr. Scalzo: Actually before...I just as you're speaking other questions came to my mind. The building was expanded once before I understand there are permits for that. The original building was a 50 x 60 structure now it's a hundred feet. Correct Mr. Conklin?

Mr. Conklin: Yes.

Mr. Scalzo: Okay, so with the a...diminishing activity in tank lining a...that's a hundred foot by sixty or a hundred foot by fifty? Certainly you could get four hydrovac trucks in that already. You know, I understand, I've been to the site I've seen you've got storage boxes outside which is another Code issue that could be discussed later. But just what is in this building that you couldn't fit all your stuff?

Mr. Conklin: Well we can fit the...we can fit four trucks in there but we can't do anything else in the...in the garage like we would normally do, maintenance on a pickup truck or a...a plow or a...or again work on a you know, a fire truck or a water truck, you know that...that would be what...we would do that in...you know, indoors.

Mr. Scalzo: Thank you.

Mr. Levin: Ira, at the last meeting...I'm sorry, I call Ira...I can't call you Mr. Conklin but a...your...your uncle or is it your cousin...

Mr. Conklin: My cousin...my cousin Julie.

Mr. Levin: He said offsite premises that you were cleaning these trucks in a Marlboro was it?

Mr. Masten: Yeah, in Marlboro on 9W.

Mr. Levin: Yeah, on 9W...a...are you still...do you still have access to that property?

Mr. Conklin: In...I'm not sure what you...to clean the trucks?

Mr. Levin: Yes, we were...we were talking about the noise and you brought this to this location it was in...

Mr. Conklin: Yeah, we...we...we rented for a time a...Hydrovac did, rented a...a...a garage on Lattintown Road, yes. And that's up to Hydrovac to do whatever they are going to do with that building. I have nothing to do with Hydrovac, absolutely nothing to do with it.

Mr. Levin: When you were here last time did you...you were still with them, right?

Mr. Conklin: A...cor...I was with them until April 6th I know the day very well.

Mr. Weddell: I have to give you some...it's a letter and the reason I'm asked here cause I'm a certified public accountant with the accounting firm of RBT CPAs so I'm trying to lend some credibility to the numbers that you see here. They are not made up by Ira. They're actually we do the numbers on this account and had have been his accountant for a number of years and I just wanted to share that with you. Would that be alright?

Mr. Weddell approached the Board with paperwork

Mr. Weddell: So let me a...let me start with the...the top part of this and what we did is go back for five years I think 5 years is...I could have gone back further if you...you would really need that but to show you the gross sales volume for each one of the years for thirteen, fourteen, fifteen and if you notice fifteen is kind of broken down between January to July and the August to December. In August 1st Ira Conklin became a partner in WCC and then at the end of the year he actually became the sole owner of the WCC we had so many partners there retired and you can see the volume and I...below that is total for two fifteen and you can see below the line there is totals and the net income for each one of the years. Two thousand seventeen has not been completed yet. It's in process of being completed but you can see we do have the gross volume. We do not have the bottom line. You can see the...the numbers that are there a...for each one of the years. So, that's not a very great return yet and that's what he's been trying to find more resources to...to do the lining and everything. He's done a great job in trying increase that but you can still see it's not really a huge number a...there that would make anybody excited about doing that. Down below that I listed for you a...the cost that related to the properties that are there a...and what we've done over the course and you can see each year summary there and again for two thousand fifteen it was split before and then after Ira became part of this. You can see what the costs are there to run a property and I thought we'd share that with you a...so that you would understand that. Is there...do you have any questions at all...what I got there that I can explain for you?

Mr. Olympia: Tom a...who is the rent paid to?

Mr. Weddell: The rent is...is the...2102 is the name of the...that owns the property that's there.

Mr. Olympia: It's common ownership I would assume?

Mr. Weddell: It's common ownership, yes, it is.

Mr. Scalzo: I have no questions however, I am not an accountant and I would certainly need time to evaluate this to...I...I couldn't possibly come up with every question that I would have by five minutes' worth of...glancing at this.

Mr. Weddell: (Inaudible) That's fine.

Mr. Gaba: Thank you. So in a nut shell that's it a...we want the interpretation that we can build this building. We think we're allowed to build this addition onto the building under the 1980 variance. We want to keep four trucks and only four trucks, on the property, two parked in the main building, two parked in there. The trucks would be used exclusively in WCCs (Inaudible) And the third item of relief that we want besides and we think it should be part of the interpretation but if not there it (Inaudible) by the alternative use variance to let us use our trucks for something other than excavating a...tanks and again we will stipulate that that will not become the principal business of WCC tank. It will strictly be an ancillary activity supplementing. I remind you that this has to go before the planning board for a...you know site plan approval and (Inaudible) site plan approval and if this Board feels in addition to that level of review you'd like to request other conditions or stipulations as far as, you know, notes on the site plan or specific indications in the variance we would certainly be willing (Inaudible)

Mr. Scalzo: Thank you. Any further questions from the Board at this time? Mr. Olympia?

Mr. Olympia: I have none.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: None.

Mr. Scalzo: Mr. Masten?

Mr. Masten: Not right now.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Just, just one question. You will not have any other equipment on that property other than the four hydrovac trucks and perhaps a pickup truck or two? Not...we're not looking at dozers and backhoes running here during the day?

Mr. Conklin: No, but if I rent one and to...to bring it into our yard for three days or four days or something you know but no not to have a construction yard with a...you know excavators all over and bull dozers but again, my...my goal is to...my goal is to stay in business and...and you know, we're not looking to do anything on site. We're looking to do it off site so all the work we would do is off site. We're not looking to make a construction yard if that's...that's what you're eluding to...but there may be a time we need to...we need to have bull dozer there for something for a couple of days or move in to a job and you know, we're...we need to be allowed to do that and...and the same with a...you know, we do...this winter we had a lot of emergencies, the City of Poughkeepsie was out of electric for...for several hours and we...we had to go out in the middle of the night and we had to go...you know, we dig around high voltage electric lines also. And we do it safely and we know what we're doing with that and it's part of the...all the guys that work on the tank lining

trucks, they can also work on the...on the hydro trucks and you know, with...with the two companies working together we can keep everybody working pretty much full time and we're not having to lay guys off and retrain them and I mean that there's a lot...a lot goes into getting these guys trained to do the tank work and...and also the hydro work.

Mr. Scalzo: At this time we are going to open to members the public, please raise your hands and be orderly. Sir?

Ms. Gennarelli: And we have...also we have if you could just sign in on that and write your name and address on there.

Mr. Dietz: My name is Bob Dietz, I live at 348 Rock Cut Road, been a Town resident my whole life. I've worked for WCC Tank Technology for going on forty years, currently the president, I was the previous owner and all I can say is that I understand a neighbor's complaint but it started when you allowed the variance to begin with. They hated you. It wasn't this particular bunch of board...board members but it was you. I've then taken shots from the neighbors as thinking I was a Conklin had my name viciously attacked. But I have always honored every complaint and I think no matter what my neighbors say if they had came to me with a valid complaint, all except one, that I would do my best and apologize for the inconvenience and take care of it. What...you...you bring up the...the...the noise factor and when these trucks come in they're outrageously noisy that is resolved. There was a new...it was new we were learning we have off-site dumpsites now. We've done just about everything we can and we're in the process of doing a lot further as far as the appearance. We've upgraded that building considerably it's all...out buildings are painted to match the building, that's all fresh, new windows, new doors. A...for years we were operating on a shoestring. We didn't have the money to do that. So the property is well maintained. The septic tank is out of the way. We're not stupid. We won't build our...put a building over our septic tank.

Mr. Scalzo: It's the field I was concerned with.

Mr. Dietz: Yeah, and a...in the future we will still honor any neighbor's complaint long...be polite and we'll do what we can...to rectify it. Some things you can't rectify. A call in the middle of the night and a truck has to go out the most noise that's going to make is the backup alarms, they're nerve racking but that's the Federal government. You got to take that out on them. We can't disconnect em. We have never...we've been stopped from sandblasting turns out not because it was a legal issue even though it was tried to be put on us that it was...we've done so many things and it's funny because the tank lining business itself is a very aggressive business. Compressors are roaring, venturiers are running taking vapors out of a tank putting them in the air, sandblasting creating dust and in the spray process takes those same vapors and puts it the atmosphere and locals have to smell that until it cures. But yet we're allowed to go everyplace in the state; hospitals, schools, anywhere it's needed it's allowed. Mr. McKelvey said the truck was in front of your house one day taking care of a project for you...or for the Central Hudson. Having said that it's ironic that I can do the work physically anywhere but I can't have it on my own property because it...the...the neighbors are complaining about it. It doesn't make sense and a...we can address it, we stopped our...our...our improvements because what was at first everything was okay with...with...the Inspector. Can't find nothing wrong here, he would say, nothing wrong here I don't understand what the problem is...when we were right in the middle of doing everything then all of a sudden that

stopped. So there's an outside force somewhere coming in saying 'hey, you get over there and tell them they can't do that'. That didn't come from Canfield that wasn't his own decision that came from higher up. I don't know why. But we haven't been given the chance to rectify it...which we would be glad to do. So we will continue, we will do anything necessary except allow you to put us out of business. After forty years I can't...I just can't lay back and let that happen. It's not right. It's not right. And a...that's all I got to say. Thank you...thank you for listening.

Mr. Scalzo: Thank you.

Mr. Dietz: And if you have any question for me I would love to hear it.

Mr. Levin: I have a question, is it possible to move the business to a different location?

Mr. Dietz: Anything is possible but no, we can't move that now. I'm too old to move it.

Mr. Levin: You are an industrial vac...a...location?

Mr. Dietz: Do you have one for us to go to?

Mr. Levin: I haven't looked...honestly but there seems to be...

Mr. Dietz: Oh but mean...

Mr. Levin: ...land available but go ahead...I...

Mr. Dietz: ...we...we've actually looked into that but it's a long term process, very long term. And we're not doing the business on the property. I mean the fire trucks you have right up on...on Forest Road, there's a firehouse. Right? Middle of the night that goes out, sirens blasting, no one complains about that noise. It's a necessary fact. And we're not making any more noise on a routine basis than a fire company is or when the dump trucks in...come in and take the garbage and leave...when the snow plows go down the road in the middle...you know, all hours of the day. That's just normal life, that's normal life, we're only crea...we only have normal going on over there, nothing outrageous. Neighbor the other day had her whole yard bushwhacked, all day long, bushwacker...brmm, brrrm, rmmm, okay, nobody complained. I had neighbors behind me would call up and complain if we were burning, okay...and this was a long time ago. The burn barrel is still in her backyard. We don't have a burn barrel; we haven't done it in fifteen years. We had people in the town pull tanks without a permit that sat right here with you guys. No permit. All of ours is done legitimate, government papers, everything, right to we have books, paperwork, everything a hundred percent. I need to worry about pollution coming from the neighbors. I'm on the low spot. We're not sending any pollution uphill but we've been just harassed to death. And it just doesn't seem right and thank you for hearing me out.

Mr. Scalzo: The gentleman in the second row.

Mr. Conklin: Me?

Mr. Scalzo: Yes.

Mr. Conklin: Hi, my name is Ira Conklin, I guess I'm the a...originator of all the problems here. Back in a...well I'm running Ira D. Conklin & Sons since 1952 and a...my brother and I started the a...tank lining business and a...in the '70's, early '70's and a...at...at that time it was called Armor Shield of New York. But the reason we stayed in business, Ira D. Conklin & Sons, and I left there in a...2001, retired and a...it was because we stayed up with all technology and stuff. If we needed a...a new type of excavator for excavating for tanks or the new type of piping or a...tools to a...do the job and do it right, we bought 'em. And we went up...we kept up with the technology and a...I just wanted to say the...the hydrovac truck is a new...is a new shovel. That's it. Thank you.

Mr. Scalzo: Thank you very much. Anyone else from the public? Mr. Bloom...

Mr. Bloom: Good evening, ladies and gentlemen, my name is Dan Bloom, I'm with the law firm of Bloom & Bloom in New Windsor and I have been retained to represent James Manley who is a neighbor. And permit me to open up my remarks...if I can lower this I guess I can't...

Ms. Gennarelli: You can...you can turn it down just bend it down...

Mr. Bloom: Just turn it down.

Ms. Gennarelli: Just bend it down; yeah, just bend it down.

Mr. Bloom: Thank you.

Mr. Donovan: Or you could grow taller.

Ms. Gennarelli: There you go, there you go.

Mr. Bloom: If I may open up my remarks first of all by saying that Ira Conklin and the Conklins are good honorable people and are hardworking people and they've made a tremendous contribution to this community and we all know that. But I respectfully suggest that that's not the issue before the...the panel this evening. The issue is this, the issue really is whether or not the people of the State of New York have the right to make the plans for the rest of their lives by selecting a place to live based upon zoning and an anticipated quiet and peace and quiet in their existence with their family life. And when you look at the variance that was granted here back in 1982 I think it's very significant to understand that it was granted to Mr. Conklin who resided at the property. That's a significant distinction on any variance in my opinion because if...if the person who is exercising the benefits of the variance must reside with the results of the variance in all likelihood every effort will be made to diminish the impact for the whole community and everybody here knows this is a very bucolic, beautiful area of the Town of Newburgh we're talking about. And people, the neighbors love their homes like everybody does and they...and they're concerned about the peace and quiet. Now that variance was granted in 1982 and there may have been small brush fires I'm not aware of them, I wouldn't be but the only real cataclysmic assault here occurred about a year ago, year and a half ago when we were before the Board at that time. And the Board ruled that these hydrovac trucks have no place under this Code or that variance at this location. Now we're not saying that the

Conklin family, the Conklin business should suffer to a lack of technology. What we are saying is though that before you embark upon such a drastic change in the variance that was granted in 1982 come before this Board and get an interpretation but they didn't do that. They bought the trucks and they operated the trucks and they were dropping slurry all over the property until this Board stepped in and said...stop. And if you follow the logic, you have to say to yourself well it was necessary to compete, it was necessary to make a profit in a poor economy well what's to stop that reasoning at any point in the line at this point. Suppose it becomes, suppose the technology becomes enhanced a year from now and the enhancement is such as it makes it totally unlivable in this area to utilize that type of technology. Shouldn't that proposed technology come before this Board first for an interpretation or an approval before it's bought, purchased, placed on the property and then the neighbors are put in the posture of having to spend money on attorneys to bring Article 78's and what have you? That's not right. I think there's room for everybody here. I think the Conklins as I said, are very honorable people, they're hardworking people. They're...they are what the United States stands for but let's do it the right way. Let's do it in a respectful way and a way that respects all of our neighbors and respects this Board and this Town's laws. And they've asked for an interpretation and then they say but if you don't agree with this then we want a use variance. Well I won't bore you with the requirements of a Use variance which have been cursorily referenced but I respectfully submit that the testimony of a CPA who is not an independent witness is less than cogent testimony at a trial court in this State. And I'll just leave you with a one final comment which is...his Board ruled that you couldn't park a hydrovac truck on this property a year ago and now we have the argument well we'll park it inside. I respectfully suggest that that's a distinction without a difference. Thank you.

Mr. Scalzo: Thank you.

Mr. Gaba: Chairman Scalzo, if I may, I'd just like to note something for the record? A...Mr. Bloom has failed to disclose that his client Mr. Manley is former chairman of this board and I think that should be put on this record...on record (Inaudible). Further Mr. Manley purchased the property next to this site long after the a...use was established and he has in the interim attempted to make purchases of portions of this property. I would suggest that there are motives on the part of Mr. Manley that are other than seeing to it that the process is properly observed and that the neighbor's interests are being looked at, just want that noted on the record.

Mr. Bloom: May I respond to that Mr. Chairman?

Mr. Scalzo: Please.

Mr. Bloom: My office submitted a brief to this Board yesterday so there's no attempt to hide the representation to Mr. Manley. We indicated in the brief that we represent Mr. Manley. Just want to clarify for the record.

Mr. Scalzo: In the back, maam?

Inaudible

Mr. Scalzo: Yeah, need to speak into the microphone.

Ms. Munoz: My name is Nancy Munoz, I can sign in but I live at 3 Dusty Drive a...and I'm a little, I'm very late to this party. I never met you before. I actually never talk to most of my neighbors that have been involved in this for a long time so I heard about this, came and what I've heard is just literally what I've been listening to in the last hour. So while you may be here to rule on a pretty narrow interpretation of law I have three quick questions. A...the spoils that you were talking about...what are they consist of? Have they been analyzed and cleaned up...? Well I have more than three questions. What's your intention relative to those spoils? I'm curious why they've been dumped fairly recently in light of the work that you've undertaken fairly recently and a...well I'll start...I'll start there.

Mr. Scalzo: Actually Mr. Conklin has given testimony earlier today that the a...disposal of slurry or discharge ceased...

Mr. Conklin: After the last meeting...

Mr. Scalzo: A year ago.

Ms. Munoz: Right, that's fairly recent in the...in the...I take it in the half-life of these materials. So I'm just...so what is the status of these spoils?

Mr. Scalzo: Have you done any removal sir?

Mr. Conklin: No. No, there's nothing any spoils dumped a...on the...on the property in over a year.

Ms. Munoz: Well I know they haven't been dumped, as per what you said...

Mr. Conklin: Right.

Ms. Munoz: Well I...I guess I've kind of common sense questions. If you were...if you were using this to the base of operations why would you dump to begin with and secondly, have they been analyzed and what's the...what's the intention relative to cleaning up the spoils?

Mr. Conklin: There is...there is no intention of cleaning up the spoils. It's leveling it out. The spoils come from a...the spoils that came into our yard were from either somebody's...water entering somebody's basement so we vac around the...the concrete basement to...to so we could put gravel in and waterproof it or for utility poles. A...there's no a...no anything from a gas station doesn't leave a gas station it gets put on plastic and left there. So all the...all the is...the material is...clean.

Mr. Munoz: So you well mentioned gas station stays with the gas station. Central Hudson has a dumping site. I actually...my friend owns a...an energy company so and I presume you have lots of other customers outside those two categories that don't have authorized dumpsites so obviously you dump it elsewhere but I...I...if you're saying that all the spoils consist of removal of dirt outside of someone's basement I don't know if this Board is taking this person...taking your word for it but I would like that there be a...

Mr. Conklin: Well if I own the own property I don't know why I would bring any contaminated soil and contaminate my own property so if you're inferring that it's...I bringing contaminated soil in you're barking up the wrong tree. It's clean soil.

Ms. Munoz: Has anyone tested this as part of this process?

Mr. Scalzo: Okay, if I could just slow you folks down? Moving forward any other members of the public that will be asking questions...the questions actually are addressed to the Board...

Ms. Munoz: Oh.

Mr. Scalzo: ...and the Board and then a...you know analyze them and ask the applicants...

Ms. Munoz: You can tell I'm new to this party.

Mr. Scalzo: Yeah, and that's perfectly acceptable but if...if you could...

Ms. Munoz: Sure.

Mr. Scalzo: ...you know, we understand your concerns. Everybody's here they have great concerns and we're going to do our best to get through them.

Ms. Munoz: Has...has anyone...has there been independent testing of the spoils on this property?

Mr. Scalzo: There has been no indication in the application that there's been any testing required or asked for. I do believe it at...last year's meeting during the meeting minutes one of the members of the public did ask about testing but I don't believe that there was any requirement for that.

Ms. Munoz: I...I would like to volunteer a...a request for it and I will pay for independent testing of whatever needs to be done once I get a sense of how much that is.

Mr. Donovan: So...kind of the way this works is we're...we're actually this is a Board of limited jurisdiction we call appellate jurisdiction so...so they come to us appealing a determination from the Code Compliance Department and they're seeking limited relief and we only have jurisdiction over the limited relief. That's not to say that your question is not legitimate. That's not to say that your concern is not legitimate. It's only to say that this Board only has authority over the application before...before it which is to allow the request is an interpretation to allow them to build the addition to put in four hydrovac or alternatively a use variance to allow them to put into the building the four hydrovac trucks. I know that's not satisfactory but legally speaking, that's why they pay me to come to these meetings, that's the jurisdiction of the Board.

Ms. Munoz: So what is your recommendation relative to I...and again, I haven't talked to my neighbors I presume they share some of my concerns...where should I bring this concern, obviously this isn't the place, now that I've heard...the first time I was hearing about the spoils...was from you where should I bring this concern?

Mr. Scalzo: This may end up before the planning board for a site plan approval, it may not. I don't know that they can help you but certainly attending that meeting and raising your question there may yield different results.

Ms. Munoz: Okay, thank you.

Mr. Scalzo: The gentleman in the front.

Mr. Conklin: Can I just...can I just add being if it ends up they pay for it and test it themselves they can...you know, they can do it but I want...you know we...we have to have some kind of control. You have people coming in...in the middle of the...whenever we want to know when they're coming. We're gonna go watch them and if they want to test the soil then let test it.

Ms. Munoz: Sounds good.

Mr. McKelvey: The a...the slurry that you dumped there before...that was not contaminated soil?

Mr. Conklin: Ask me that again, please?

Mr. McKelvey: When you were dumping the slurry there where was...what kind of soil was that?

Mr. Conklin: It was clean soil.

Mr. McKelvey: From where?

Mr. Conklin: It would be from various...various locations a...

Mr. McKelvey: It wasn't from tanks?

Mr. Conklin: No.

Mr. McKelvey: Okay.

Mr. Conklin: No, I can't say it enough that we were at a gas station or a petroleum tank or any place like that the material gets left on site on plastic.

Mr. McKelvey: I understand that.

Mr. Scalzo: Say your name sir.

Mr. Acker: My name is Robert Acker a...I...I listening to the comments both last year and this year I had some questions I wanted to bring up to the Board. First, there...there's discussion of the wetlands across the street a...I...I would like to request has a jurisdictional determination been

sought from New York State DEC Region 3 in regards to where their adjacent wetlands property is...or where their adjacent wetlands jurisdiction is in this instance?

Mr. Scalzo: I believe during...if this should make it to site plan that is one of the criteria that they will need to review.

Mr. Acker: Additionally there was the comment, I believe one of you brought up, the letter in February 2018 where h...hydrovac trucks still on the property but the determination last year was that the hydrovac trucks were not a permitted use under the existing variance and as such should be removed from property. Is...I understand that the applicant is making good faith promises to adhere to this Board's decisions and adhere to this Board's recommendations but the appearance would be that several months after you issued your determination last year trucks were still on the property until the Building Inspector raised a ruckus.

Mr. Scalzo: We depend on our Compliance...our Building and Code Compliance Department for enforcement purposes. We do not enforce.

Mr. Acker: Okay, I have a feeling a lot of the questions are going to be like this so please bear with me. I...I would like to ask the...the Board has a survey been done to determine the amount of spoils deposited on site?

Mr. Scalzo: The application included the boundary survey. That boundary survey showed a...the areas of gravel driveway, there was no indication on that survey of any topographical information.

Mr. Acker: Okay. Following up with the...the assertion that all excavations are done with all permits and legal forms in line, would it be possible for the Board to review the delivery tickets on the trucks for the slurry that was deposited?

Mr. Scalzo: From what I...and Mr. Conklin I am going to need you to speak to this but from our meeting one year ago a...I believe Mr. Conklin had said that anything that requires a manifest has a manifest for homes as he just indicated if they're excavating...hydroexcavating around the foundation those...unless there is a known contaminant there do not require manifests. Is that correct?

Mr. Conklin: That's correct.

Mr. Acker: So have any delivery tickets been presented to this Board for review?

Mr. Scalzo: There were no delivery tickets attached to the application.

Mr. Acker: Okay. And as a point of record, the reason I'm asking for the...the...this topographical survey information a...there are...New York State Law has strict limits of how much material can be placed at a site before you require a Beneficial Use Determination (BUD) on that material or other delivery tickets and items as such and the reason I'm asking for the delivery tickets and asking for this information is that should the a...volume of material exceed that limit then the site would be an illegal dumping zone and I know that's not anyone's intention but given the amount of time

material was dumped and the assertions I heard at last year's meeting that I've heard numbers ranging from a few inches to a foot and a half, two feet. There...there's a huge amount of difference in that and I would like a...

Mr. Scalzo: That's a...I don't know that I can answer to that but I having been present at the meeting last year a...they also didn't provide a SWPPP or an Erosion and Sediment Control plan. I think that's where you were headed.

Mr. Acker: Yes, sir. A...alright maybe these are a little bit more impertinent to this meeting but I just want to go through my list and put them all on the record. Some of the last comments from Mr. Conklin were that a...by running these two companies he would keep people in business. He's asserted very firmly that he is no longer part of Hydrovac I would respectfully request what two companies is he referring to running? On this property.

Mr. Scalzo: A...the only evidence is what was handed to us today indicating Mr. Conklin a...has divorced himself as of April 6th from Hydrovac.

Mr. Acker: Is that the date?

Mr. Scalzo: That...that's all we have.

Mr. Acker: Right, I would just like to...my understanding then I...I'm not a planning board member but my understanding was the original variance was for the one company. He makes reference to running two companies and I would just like to make sure that that point is cleared up for your purposes...

Mr. Scalzo: Correct, I...I believe Mr. Gaba had indicated that it was a...accidental that they were running a...well not accidental but a...they were running two and then they realized the mistake and removed that second company.

Mr. Acker: The other comment I heard and this will be my last here. Mr. Conklin made reference to not be able to store the trucks in the garage because they undertake repair operations in the garage. They repair, I believe the comment was, fire trucks, water trucks, plows a...none of this equipment was equipment necessary for operating his business...

Mr. Scalzo: And also the indication through the application was that they do no work on site.

Mr. Acker: That was also stated, I believe, tonight as well so I'd like to point just...

Mr. Scalzo: Duly noted.

Mr. Acker: Thank you sir and then if there's any questions you wish to ask me before I sit down.

Mr. Scalzo: No thank you...unless a...no. Thank you. Please sign in. Any...? In the back. You may have to turn that microphone down so we can hear you.

Ms. Perry: My name is Joan...

Ms. Gennarelli: Yeah, just rotate it, could you rotate that for her? Thank you.

Ms. Perry: My name is Joan Perry, I live at 25 Forest Road, my property abuts the business and I brought some pictures. I would like you to look at these because everything is right up against my property line and I know you mentioned you were out there but possibly these other gentleman...

Mr. Scalzo: We are obliged by our positions to visit the sites.

Ms. Perry: Right. Everybody?

Mr. Scalzo: Yes.

Ms. Perry: And...

Mr. McKelvey: Please use the microphone.

Mr. Levin: What's the date of these pictures?

Ms. Perry: Two weeks ago Sunday.

Board Member: Oh jees, that's current.

Ms. Perry: And there's so many things there. The shipping containers, you know, I don't think that's in the...in the a variance from 1982 but I would like to know if you guys know I thought everything had to be fifty feet from a property line...

Mr. Scalzo: That's not...I...you know what, I would have to review the Code but I'm not sure that that is the case. I know for accessory structures it is...it varies but it's typically five feet for accessory structures. As far as moving equipment...

Ms. Perry: Well that stuff is not moving equipment that is just stuff. You may keep those pictures I have duplicates at home.

Mr. Scalzo: I will hand these...now you say this was two weeks ago Sunday.

Ms. Perry: Yes.

Mr. Scalzo: Was that after April 6th.

Ms. Levin: Yes.

Ms. Perry: Yes, it was well after April 6th.

Mr. Scalzo: Wow, the a...

Ms. Perry: There's where the trees would...

Mr. Scalzo: Well the...the trucks in the photograph say Hydrovac Excavating on them.

Ms. Perry: Thank you for your time.

Mr. Scalzo: Thank you.

Mr. Masten: You're welcome.

Mr. Conklin: The trucks left the property...I was...on April 6th I left the company, April 9th the trucks were gone. So if it was the Sunday before maybe that was it...

Mr. Scalzo: Perhaps.

Mr. Conklin: And if...they needed something moved or there's some debris near the edge we'll gladly move it, screen it, whatever the...whatever the neighbors would want.

Mr. Scalzo: Okay If they could just...the photos make it down to Betty at the end that would be great. Any other members of the public like to speak? Please come forward.

Ms. Vandemark: Hi I'm Claudia Vandemark, 17 Forest Road; I just wanted to let you know that Joan Perry took those pictures on April 15th. She brought them right over to our house to show them to us after she took them. April 15th...they were still there.

Mr. Conklin: Can I have a look at one of those photos?

Mr. Scalzo: The ones that had the Hydrovac vehicles in them are the ones that Mr. Olympia has in his hands at the moment.

Mr. Conklin: Those trucks were all gone on Monday April 9th they were not...they were no longer there; they were all delivered on April 9th which was a Monday.

Mr. Scalzo: Any other members of the public? State your name for the record.

Ms. Carroll: My name is Susan Carroll, I live in the two parcels directly west of the property line with Mr. Conklin and Mr. Dietz and whoever else owns it at this point. It's 2116 and 2122 Route 300. We total eight acres on two separate parcels. I...I being in the food business I really don't get it. We did this last year. You made your statements that these things were not allowed. You've already that Hydrovac Excavating is not permitted. Now they're saying that Hydrovac is no longer there and they have basically changed the lettering on the trucks to say WCC Tanks. They're still the same trucks. They've registered them in WCC Tank. It...it just...it just sounds like a bunch of smoke and mirrors to me that it's still operating, there's four of them rolling in and out of there every day. Showing up, backing into the garages, granted they're not outside. As Mr. Conklin stated they have not dumped anything on the property, except perhaps some gravel here and there but

it...it's still the same business and I don't understand it that we're here again getting another interpretation. And I understand that it's a...it's a different presentation now that they want to put the two businesses together as one but not as Hydrovac Excavaing. They want to incorporate it into WCC Tank. And I feel for Mr. Dietz and if there's any partners left...the partners however, they brought in Ira D. Conklin III with his hydrovacating business in 2015 and then just operated this hydrovac business, dumping the materials that are no longer dumped from the hydrovac trucks and to be honest with you I...I'm sure it's at least ten feet deep that they dumped this stuff. Because they used to be in a gully well they're not anymore and that was in the rear of the corner of their property and I...I'm still concerned with, you know, what they pumped out of there because at their own admission last year you know, they do around broken sewer lines and septic tanks and that concerns me. What's in that dirt? You know, and they just continued to operate until the neighbors start making enough complaints that...you know, the Town actually did something about it, which took quite a while. So basically they were operating and thumbing their nose at all the Town's Laws and you know, until somebody did something. And ironically, that's basically the same thing that William C. Conklin did. He ran out of his home which used to belong to or now belongs to Jim Manley, had the trucks parked there and somebody complained. So then he applied for a variance. Alright? So, it's...it's like déjà vu, you know and that's when he applied for the original variance. Now Mr. Conklin is a third generation businessman in this Town and I'm sure he is well versed in the permitting, variance and all the other regulations in this Town so for him to say anything like he didn't know he couldn't do any of the things that have been done on that property since his arrival is a large stretch of the truth. I have with me tonight some pictures of the property from 2009 through 2016. I have nothing past that because I have no access to aerial photos on Google that go past '16 very early '17. So I...I'd like to show them to you if I may?

Mr. Scalzo: Please.

Ms. Carroll approached the Board

(Inaudible)

Ms. Gennarelli: If you could grab the mic, sorry, thank you.

Ms. Carroll: Oh, I'm sorry. This photo here was taken yesterday from the highway cause I in no way want to infringe upon his private property. This picture basically shows you his business and the rest of the area.

Mr. Scalzo: If you could...what...what's going on in here?

Ms. Carroll: This is just woods. This is my parcel. This is one where I live. This is one I inherited from my father in October of '16.

Mr. Scalzo: Walter Carroll Sr. (Inaudible)

Ms. Carroll: That is correct. I am the trustee of that trust. And this is just a big blow up of that. These I took off of Google Earth. This was looking out at the road in 2009. And one of these blow ups was yesterday. You can see that there are no trees anymore.

Mr. Levin: What's the date on this?

Ms. Carroll: I'm sorry, sir?

Mr. Levin: What's the date?

Ms. Carroll: A...well what I'm saying is since those yellow hoses were over there it's some time in '16 because they moved them to the back here later on. And this is looking in in 2009 so...and this is looking in today.

Mr. Donovan: Maam, in terms of the photographs you're submitting are they...are they labeled by date...is there a date, other than your verbal testimony...

Ms. Carroll: No, absolutely not.

Mr. Donovan: ...because at...as they become part of the record it would be helpful to the Board if you were able to put some sort of legend on them as to the approximate date of the picture.

Ms. Carroll: Oh, I'd be happy to write on them but I have no...only from what they look like.

Mr. Donovan: And just in case where the pictures come from...if you had taken them or got them on line or wherever.

Ms. Carroll: And this is a summer time picture of the same in about 2016 because the yellow hoses are to the west and not to the back of his property. Thank you.

Mr. Scalzo: Thank you.

Ms. Carroll: And as I said, I don't begrudge these people to have a business but if they need to make it so big perhaps it would be more advantageous to everyone if they found a commercial area to do it and sold the property. In closing I just want to say that, try to think of it that it's in your backyard and decide. Thank you for the opportunity to speak.

Mr. Scalzo: Thank you very much. Maam, could you sign in please.

Ms. Carroll: Oh, yes.

Mr. Scalzo: Thank you. Are there any other members of the public who would like to speak? Mr. Manley. Please state your name for the record.

Mr. Manley: Certainly, I'm James Manley, 19 Forest Road, Town of Newburgh. First of all, I'd like to say good evening to the Board. Thank you for the opportunity to have this Public Hearing a...there's been a lot of comments this evening and a...I just want to address two a...issues that were brought up. One was first of all I am represented by counsel and I'm going to make my remarks brief. The brief that was submitted by Mr. Bloom's firm is going to be my official testimony. I'm

just supplementing that with my personal knowledge of the property that I reside at as well as some of the information that some of the individuals spoke about this evening. First of all, I have lived there since 1995, actually October of 1995 and William Conklin is actually the one that sold me the property and I had discussed with Mr. Conklin at the time when I purchased the property specifically what that business was behind the property because obviously that would be my first concern is why is there a commercial property behind the house. He indicated to me that it was specifically just for offices. It's where the employees would meet in the morning. That they had a number of trucks that went out to the job sites as indicated in the testimony in the 1982 variance and that they were pretty much traveling factories. They'd go to the location, they'd be off-site for quite some time then they would come back, they would replenish their supplies and they'd go back out again. That was the extent of it. There wasn't the amount of equipment that you see there today. There wasn't the hydrovacs, there wasn't all of the sprawl that you're seeing with, you know, all of the different a...sea containers, none of that existed back then. The property was actually kept very well back then. The second issue that was brought up was that I approached about purchasing part of the property. That is correct. I enjoy the rural character of neighborhood. I enjoy it. And I had talked to Bill a number of years after I had purchased the property and I had asked him if I could...there's a two acre piece that borders my property and it includes the pond that's out by 300 and that is a beautiful characteristic of that area. And I had asked him if there would be a possibility that I would be able to purchase that and add it on to my property. He declined. He said that the property would be more valuable if it was kept together as one parcel and he was not interested at that point in selling it. So that was the nature of our conversation. No other conversations existed after that. What I'd like to just touch on a couple issues. Specifically there are a couple of things that came up but what I...what I'd like to do is give to the Board a number of exhibits I have here. Really not going to get into it because I don't want to take up the Board's time but I think that it's relevant to your decision and to your deliberation. The first thing that I would like to a...just discuss is a...the impact specifically on the EAF that was submitted. There were a number of errors and omissions that I noticed in the EAF whether they were accidental, intentional...I've made some comments with respect to the EAF on the forms so that you could at least see where my concerns were the things that were omitted and that are probably germane to your a...discussions in your deliberation when you deliberate later. So if I may have permission to approach Mr. Chair, please, and provide this information to the Secretary?

Mr. Manley approached the Board

Ms. Gennarelli: Thank you.

Mr. Manley: The next item that I wanted to just discuss which really wasn't touched upon is there was a FOIL that was done recently with regard to the Building Permits on the property. First of all, the second building that was added onto which the Zoning Board did say could be added onto and that building has a Building Permit and it has a C.O. For some reason, the first building has a Building Permit but there's no C.O. and this was received by FOIL. The Town has no record of a C.O. for that first building which needs that. If there is no C.O. the Town doesn't have it, we have to assume that there was one that was never issued. My concern at this point is for public safety and obviously that is outside the purview of this Board but I believe that's going to be germane to also your discussions that's there's no C.O. that's shown, at least that could be found, to match up with the Building Permit. So I'd just like to pass that if may to the...

Mr. Manley approached the Board

Ms. Gennarelli: Did you want me to hand these out now...now...?

Mr. Manley: Yes, if you'd like to.

Ms. Gennarelli: Okay.

Mr. Manley: So since 1982 if that information is indeed correct that would mean for, you know, almost thirty-six, thirty-seven years that building has not had a C.O. That's obviously...should be a concern. And it also further shows that the applicant hasn't taken the due diligence to correct these issues as...as they've come up and every time that something comes up it's a mistake. The last thing I'd like to just a...go over is the effect of the trucks if granted and if this Board interprets that they are okay to be there. If this Board says that the variance...the use variance in its expanded fashion granted there is an impact to the residents with regard to the water. We are all on wells. Wells are very expensive to drill and potentially...there is the potential that the amount of groundwater that they're pulling out to fill those hydrovacs every day, four trucks, every day is going to potentially take the water of potentially ten, fourteen houses...the equivalent per year. So I just did a quick calculation which is my next Exhibit 3 which basically just shows what the impact of four trucks a day based on, you know, an average per gallon use per day of the trucks a...divided by the number of yearly gallons the average household uses. That's something that I think this Board should consider because that ultimately can change the characteristic of the neighborhood. If you have a neighborhood that is without water that changes the characteristic of the neighborhood and that obviously impacts tremendously all of the neighbors that live in the area. May I approach and provide this documentation?

Mr. Scalzo: Yes, please.

Mr. Manley approached the Board

Mr. Manley: Thank you. The last think I just want to give to the Board which I was able to obtain on-line is the...it's from the Division of Local Government Services. It's the Zoning Board of Appeals Manual that's put out and it's from the James A. Coon, Local Government Technical Series. And what this particular item has is...it talks about Interpretations, it talks about Use Variance and specifically this has to do with the Interpretation that this Board had in 2017. In 2017 this Board ruled that whether or not the hydrovacs are used in WCC or in Hydrovac Excavating they're not permitted to be there...period...end of story, they were not part of the 1982 use variance.

Mr. Scalzo: Mr. Manley if I could just stop you for one second? Fellow Board Members I would prefer it if we were...we wouldn't compete with the handouts just...

Mr. Masten: I...I'm...

Mr. Scalzo: ...if we could listen to what's going on at that point and we could read those a little later. Mr. Manley I apologize.

Mr. Manley: That's okay. So this Board unanimously voted and in April of 2017 issued the Decision and Resolution through an interpretation that basically said that the hydrovacs in any form cannot be on the property. They were not part of the 1982 use variance. I'd like to read from the State manual that goes to Zoning Boards and that's part of normal training. It says, the Court of Appeals has held that a Zoning Board of Appeals performs a quasi-judicial functions when it renders an interpretation of a zoning provision and as such should act according to its own precedent thus where a Board of Appeals has interpreted a particular provision of Municipal Zoning Law in a prior case it should follow that precedent. The other thing that I wanted that this Board should be aware of is the very high standard for a use variance. And, I'm not going to get into it but I've highlighted it, I've gone through certain areas and I pointed out which areas a...would apply potentially to this particular case. So if I may approach I'll give this last set of exhibits...?

Mr. Scalzo: Hand that to Ms. Gennarelli.

Mr. Manley: Thank you.

Ms. Gennarelli: Thank you.

Mr. Manley: Mr. Chair, Members of the Board, in closing State guidelines are very clear and strict about the proof that's requested for the four factors that must be met to grant the use variance. The Municipal Zoning Law's function to divide a Municipality into residential, commercial and industrial zones...zones for the most part separate in one and other and the purpose is keep...keep each zone reasonably uniform. To be consistent in zoning is paramount to a community's character, and the fabric of our community. The law recognizes the importance in maintaining this character and this is why State Law creates the very huge hurdle for an applicant to overcome to be granted a use variance. This is why it's been over twenty years since this ZBA has granted a use variance. The applicant who has had the benefit of over a year to make their case has done a real lackluster job at proving all four factors. The residents on the other hand have given the Board a tremendous amount of information that without question makes the strongest case for denial. The applicant has clearly failed to prove unnecessary hardship through the application of the four tests required to by State statute. This Board has enough information from the 1982 Hearing, from the 2017 Hearing and from tonight's Hearing to close the Hearing and render a decision. I'd like to thank this Board for the time and your tremendous efforts in service to our community. Thank you.

Mr. Scalzo: Thank you.

Mr. Gaba: Chairman Scalzo if I may? I just have to put a procedural point on the record.

Mr. Scalzo: Certainly Mr. Gaba.

Mr. Gaba: Unless I'm mistaken James Manley was a Member of this Board. Isn't that so?

Mr. Scalzo: That is correct.

Mr. Gaba: He was Chairman of this Board.

Mr. Scalzo: That is correct.

Mr. Gaba: He's...he's come up here in front you to counsel, now he's submitted a brief and...and he's appeared separately to...to testify independently. He's admitted to you that he has a puniary interest in obtaining a portion of this property and I'm sorry, I...I don't mean to do this but it creates an appearance of unimproper bias on the part of this Board, undue influence on behalf of a former Member and I'm going to have to ask at this point, just to make a record, that you pole the Board and every Member go on record as saying that they can be fair and impartial...

Mr. Donovan: Yeah, we're not going to do that Steve.

Mr. Gaba: Alright, I've made my record but I...I'm telling you there's an appearance...

Mr. Donovan: Well, you know, I...I...my...my recollection is as a member of the public no longer a Member of the Board he has the right to address the Board and the Board can take that under advisement and give the weight that they thing is appropriate.

Mr. Gaba: And that's absolutely true except he admits he has a pecuniary in this particular application and I think that makes all the difference. The Board can be guided by its own lights but I just...

Mr. Donovan: I don't...no I don't...I respectfully disagree that he says he has a pecuniary interest. He says he lived next door and he said he tried to buy a piece a number of years ago. I think that's what he said.

Mr. Gaba: That's true and if the property goes out of business, the business goes out of business it can't operate anymore it's going to be a heck of a lot more easy for him to purchase it and he still lives next door...he has a pecuniary interest...

Mr. Scalzo: My recollection is that anytime this action was in front of the Board Mr. Manley was absent.

Mr. Masten: Yes, yes he was.

Mr. Conklin: One item the...the ponds on that property have been absolutely filled the...for...for thirty years and they're still filled and they're overfilled right now. So as far as the impact on any water there's absolutely no chance of...of impacting anyone's well.

Mr. Scalzo: Well a...I understand what you're saying surface water, groundwater and I suppose eventually it does percolate down to it although the soil profile in the area of the pond comparatively speaking to the soil profiles and you know, not that you're going to do a fracture trace analysis of everyone's well a...I don't...I...I understand what you're saying, sir I...

Mr. Conklin: Yeah, high water table.

Mr. Scalzo: Okay. In the back...

Audience Member - Can we open the door?

Ms. Gennarelli: Not the door.

Mr. Scalzo: Is the A/C...?

Ms. Gennarelli: You won't be able to hear...we know we have that problem.

Mr. Scalzo: I speak loud.

Ms. Gennarelli: Do you want to open the windows? (Ms. Gennarelli opened the windows)

Mr. Hogan: My name is Brendon Hogan. I'm employed by WCC Tank Technologies a...I wanted to agree with Mr. Manley. He stated that when he spoke to Mr. Conklin when he first purchased the property the trucks left in the morning, they stayed away for a few days or they came back in the afternoon that's exactly what goes on now. Whatever the complaint is...I understand there was dumping in the back...that ceased. How it operates now is no different than then, trucks start, they go out. Is there going to be an issue with ten years from now all the trucks are electric and their nice and quiet? I don't think so. You have to take into account the fact that technology moves and changes and makes us more efficient. That's all I have to say.

Mr. Scalzo: Thank you. Any other members of the public wish to speak?

Mr. Taylor: Good evening Mr. Chairman, Members of the Board, my name is...

Ms. Gennarelli: You can flip it (the mic) back up.

Mr. Taylor: ...Mark Taylor and I'm an attorney for the Town. I just want to clarify what is before the Board so that it is in the record. There are actually two determinations that the Code Compliance Department issued. And one was an Order To Remedy preceded by a Cease and Desist letter with respect to the outdoor parking or continued outdoor parking of trucks with hydrovac devices mounted on them. The applicant has appealed that Order To Remedy a determination of the Board with respect to the continued outdoor parking. The second as was mentioned has to do with the Building Inspector's interpretation that the indoor parking of trucks with hydrovac devices was logically also prohibited given the Board's determination which was lended to outdoor parking. The Board in its prior decision only outdoored...addressed outdoor parking so...a...the...the Board's totally cognizant that that issue is before it. It's been referenced on several occasions. A...the other point or clarification that I would like to make to the Board is that should you make a determination to grant relief to the applicant it has been stated that the matter would go before the planning board for site plan approval I would ask that the Board...if you make that decision specifically state that in your decision so that the...the Code Compliance Department has clear guidance that that should occur. And that's all I have to say.

Mr. Scalzo: Thank you.

Mr. Taylor: Thank you.

Mr. Scalzo: Any other members of the public like to speak? Noticing none I'm going to turn to the Board anyone have any further questions for the applicant?

Mr. McKelvey: Not at this time.

Mr. Marino: No.

Mr. Masten: No.

Mr. Levin: I have a question for the Chairman a...there's a lot to absorb...what do we... (Inaudible)

Mr. Scalzo: I agree with you Mr. Levin. It's quite a bit to absorb. We can...

Mr. McKelvey: We'd have sixty-two days.

Mr. Scalzo: Yeah, we will have sixty-two days to make a determination but hearing no further comments from the public and no other comments from the Board perhaps someone could make a motion to close or leave the Public Hearing open that's...

Mr. McKelvey: I'll make a motion we keep it open so we can...

Mr. Masten: I'll second.

Mr. Scalzo: Well is there information that you haven't...oh, you prefer to keep it open while we digest the information that was handed to us today?

Mr. Donovan: So...so just that I can...generally speaking right the purpose of the Public Hearing is to get comment from the public that is going to assist you in your decision making. Right? So, if you think you need more comments, you would like more comments then you should leave the Public Hearing open if you think it will assist you in your decision making. If you think you have information and you need time to digest the information then perhaps you prefer to close the Public Hearing bearing in mind you have sixty-two days to render a determination. That's up to the Board. If you're going leave the Public Hearing open you may...you could certainly do that if you have certain things that you're interested in you may want to communicate that to the applicant so they would know what to bring forward next month or if you wish to publically discuss...which and all of the meetings are public but if you want input on the information you've received then you would keep the Public Hearing open but if you...if you have a lot of information that you just want to digest then it's up to you if you want to keep the Public Hearing open.

Mr. Scalzo: Thank you. Can we accept...should we close the Public Hearing can we accept information from the public a...to...?

Mr. Donovan: So the SEQR regulations and I only mention that because many Boards use that as...as a benchmark if you will, allow for after the close of certain Public Hearings written comment for a ten day period. There's nothing in the NYS Town Law that provides for that, there's nothing in your local Code that provides that but you have the option if you want to do that to say, we'll close the Public Hearing tonight but we'll accept written comments up to a date certain. You have...you have the inherent authority to do that should you choose to do so.

Mr. Marino: If we decided to keep it open would we then vote at the next meeting in May? Cause I don't think an hour or more tonight is going to do anything. If we really want to look at these papers we were given we need more than an hour so we'd have to vote at the next meeting...

Mr. McKelvey: We have sixty-two days.

Mr. Donovan: From the close of the Public Hearing so...

Mr. Scalzo: You're correct, however, if...if we were looking to the members of the public to give us any additional information verbally here today a...then...then we should leave it open. My interpretation of what Mr. Donovan is saying is that not being the case then we can close the Public Hearing.

Mr. Marino: And do what?

Mr. Scalzo: Well we can leave it open or and...

Mr. Donovan: And...and you can wait sixty-two day. By law you have sixty-two days to render a determination.

Mr. Marino: Which we could do...let's say we want to do that at the May meeting after we have enough time to absorb all of this.

Mr. Donovan: You could, you wouldn't have to but you could.

Mr. Marino: Yeah, yeah, okay.

Mr. Scalzo: Actually, Betty, would sixty-two days bring us to...?

Ms. Gennarelli: I don't know we'll have to look at a calendar and do the count...

Mr. Scalzo: ...to the June meeting is where I'm going.

Ms. Gennarelli: Right, yeah, let's take a look here. We'll have to count that out.

Mr. Donovan: It's all on you Betty.

Ms. Gennarelli: I don't know that I can do it that quickly. I'm sorry, I haven't been feeling well so my brain is not working. It would be June 22nd. May has 31 and today is the 26th...we start at the 27th?

Mr. Donovan: Correct.

Ms. Gennarelli: It looks like it's fifty-seven but I'm not positive, you know, double check that.

Mr. Scalzo: Dave did math in his head and he concurs.

Ms. Gennarelli: He came up with that.

Mr. Donovan: Yes.

Mr. Scalzo: So Mr. Marino so to answer your question...

Mr. Marino: Yes.

Mr. Scalzo:were we to close the Public Hearing we would actually have the May meeting and the June meeting to act.

Mr. Marino: Either one we could do...we could vote in May if we feel we've had enough time.

Mr. Donovan: If you are prepared to do so, that's correct.

Mr. Scalzo: Correct, and this would just remain on...

Ms. Gennarelli: Reserved Decision.

Mr. Marino: And the meeting is closed and neither side then has the opportunity to give us more material?

Mr. Donovan: So...so, the...you can always hear from the applicant.

Mr. Scalzo: Yeah.

Mr. Donovan: If additional information is going to be submitted that's a different story though.

Mr. Scalzo: Right, but now going back to we had a motion and a second, we did not have a roll call however...

Ms. Gennarelli: We didn't have anything yet I don't think.

Mr. Donovan: I think there was.

Mr. McKelvey: I'll withdraw my motion.

Ms. Gennarelli: There was no motion.

Mr. McKelvey: Yeah, I did.

Ms. Gennarelli: He just said he thought...yeah, okay.

Mr. Marino: We would not be allowed to question anybody...any of these parties, right, if we close it?

Mr. Scalzo: If we close it. So that being said, now we can add a...

Mr. Donovan: Well let me just clarify that, I mean, if you have...if you have a question, I mean it's a public meeting, if you have a specific question for the applicant you can ask that question.

Mr. Marino: After we close the meeting?

Mr. Donovan: And before you vote, correct.

Mr. McKelvey: We can but the public can't.

Mr. Donovan: That's correct.

Mr. Marino: Okay.

Mr. Scalzo: Well in that case and again we can throw on a...not a stipulation Dave but what is it that we would allow public comment in writing to come in for ten days after this meeting. That being said I'll again ask the Board for a motion to either hold the Public Hearing open or to close it.

Mr. McKelvey: I'll make a motion we close the Public Hearing with what you just said.

Mr. Scalzo: With the ten day extension for public...

Mr. Donovan: For written comments.

Mr. Scalzo: ...for written comment.

Mr. Donovan: Ten days from tonight.

Mr. Masten: I'll second.

Mr. Marino: For both sides? For the public as well as the applicant?

Mr. Donovan: That would be correct, yes.

Mr. Scalzo: Yes.

Ms. Gennarelli: Who seconded?

Mr. Scalzo: John.

Ms. Gennarelli: John Masten, okay thank you. Alright, Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Ms. Gennarelli: Okay so that will be on...the Reserved Decision will be on the agenda for May 24th.

PRESENT ARE:

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

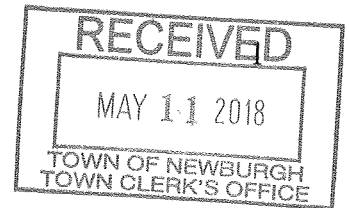
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 9:19 PM)

BB 5/11/18

ZBA MEETING – APRIL 26, 2018

(Time Noted – 7:25 PM)



Same Minutes Used for Both the Interpretation and the Use Variance

WCC TANK TECHNOLOGY, INC.
(2102 PARTNERS, LLC.)

2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
(3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking a use variance permitting a change of the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. This request is submitted in the event that the applicant's simultaneous interpretation request, seeking a determination that the use and parking of said hydrovac trucks is permitted under the previously issued 1982 use variance, is denied by the Zoning Board of Appeals.

Mr. Scalzo: The next applicant is WCC Tank Technology, Inc. (2102 Partners, LLC.), 2102 Route 300 & Plank Road, N. They are seeking an Interpretation that the use and proposed indoor parking of so-called "hydrovac" trucks used by WCC Tank Technology in its business is permitted under the 1982 use variance as a legally permitted expansion of the existing business and, therefore, a building permit should be issued for the new garage. Now this has a few spots on our agenda this evening...they are also seeking... well can I move ahead...?

Mr. Donovan: So in the alternative...not to speak for the applicant but in the alternative if the interpretation is not favorably looked upon you are requesting a use variance to allow you the same relief you are requesting, correct?

Mr. Gaba: That is correct.

Mr. Scalzo: Alright and if I could just read into the record the second application here is for a use variance permitting a change of the existing permitted tank repair use on the property to extend to use and parking of WCC's hydrovac trucks. This request is submitted in the event that the applicant simultaneous interpretation seeking a determination that the use and parking of said hydrovac trucks is permitted under the previously issued 1982 use variance is denied by the Zoning Board of Appeals. We have received numerous letters to this which will all be part of the record a...do I need to read every one of those Dave?

Mr. Donovan: No.

Mr. Scalzo: No, good. Thank you. They were all published on-line at the Town of Newburgh's website. So...

Ms. Gennarelli: Before you start...

Mr. Scalzo: Thanks Betty.

Ms. Gennarelli: ...regarding the mailings and postings. This applicant sent out twenty-nine letters for the interpretation and twenty-nine letters for the use variance application. All the mailings, publications and postings are in order. Okay.

See Previous

Minutes for
Interpretation

Same Used for
Both

Ms. Gennarelli: Who seconded?

Mr. Scalzo: John.

Ms. Gennarelli: John Masten, okay thank you. Alright, Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Ms. Gennarelli: Okay so that will be on...the Reserved Decision will be on the agenda for May 24th.

PRESENT ARE:

- RICHARD LEVIN
- ANTHONY MARINO
- JOHN MASTEN
- JOHN MC KELVEY
- PETER OLYMPIA
- DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

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

(Time Noted - 9:19 PM)

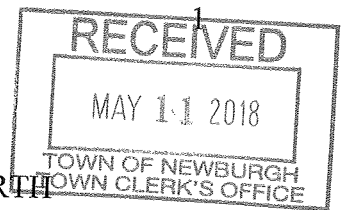
B 5/14/18

ZBA MEETING – APRIL 26, 2018

(Time Noted – 9:19 PM)

DANIEL & ELISSA DICKINSON

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



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

Mr. Scalzo: Okay, we are moving on to the...something that was held open from March 22nd meeting, Daniel and Elissa Dickinson. They are seeking an area variance from the requirements of the New York State Town Law 280-a - (1) allowing a single family home to be constructed on property where no street or highway giving access to the property has been duly placed on the official map or plans and where such access is not on an existing state, county or town highway and is not a street shown upon a plat approved by the planning board nor is it a street on a plat duly filed and recorded in the office of the county clerk prior to the appointment of such planning board and (2) road must be suitably improved to the satisfaction of Town road specifications to have a Building Permit issued. Wow, that's a ton of words. Ms. Gennarelli?

Ms. Gennarelli: This was held over so everything was...was good.

Mr. Scalzo: Thank you very much. Mr. Brown (Charles Brown, Talcott Engineering).

Mr. Brown: A...not yet, not yet that was very wordy for... just requesting a driveway on a right-of-way a...we did our presentation last month a...this Board requested that we provide additional documentation a...including the Tarben subdivision maps. We provided the appropriate sheets of that a...and that we had the right to use that and provide the documentation on that both through a surveyor and a Title Company a...(Inaudible) the only other changes...we did move the house much closer to shorten up that driveway a... the original location was still based upon when we were trying to access through Stillhollow Road which we were rejected on. A...in addition to that a...the house...or the other lots that would be able to use this right-of-way would be a...this lot which is Fuchek and this lot in the back here which is Colandrea. Colandrea came to the last Public Hearing for Tarben, I was at that meeting, he request that change and Tarben did...did make that change for him. I guess those other...if those other parcels on it to use that access they have to come before this Board (Inaudible).

Mr. Scalzo: So Charlie the...the short story is potentially it could be three driveways off the end of the cul-de-sac?

Mr. Brown: A...yes, and that would also require a Town Board a...280-a approval.

Mr. Scalzo: And not that this really is...has a bearing on what's requested here, however, I did at the last meeting ask about the wetlands flagging. You had indicated that they had a five year service life. This was put out much earlier than then however, I just...where I'm going with this Charlie is that before you put your shovel in the ground I do believe you have a requirement to speak or to communicate with Mr. Orzel from the Army Corp of Engineers.

Mr. Brown: Yes, my client already did do that. Mr. Orzel is severely overloaded a...he sent an email saying that this...what we're showing here is okay.

Mr. Scalzo: Okay, and as far as Mr. ... if it's what was in the package that email chain was over a year ago and I'm not sure of the requirements there Charlie but I trust that you will communicate with the Building Department for any requirements for that.

Mr. Brown: Yes.

Mr. Scalzo: Dave, you had questions last time.

Mr. Donovan: Yeah, so Charlie, this subdivision map the 2016 subdivision map could you show me where that...because I couldn't find it, and I'm not saying it doesn't exist but I couldn't find it. Where...where it shows that...that tax parcel what are we talking 6-1-12 has access on that? Because I couldn't find it.

Mr. Brown: The tax parcels are actually miss-numbered on that subdivision map. I don't know whether they...numbers changed from when the (Inaudible) some time ago.

Mr. Donovan: Well let me just...so I got Sheet 1 and the property is not on Sheet 1, right? And I don't see any notes that apply to it.

Mr. Brown: No, numbers on Sheet 2.

Mr. Donovan: Right. So I don't need Sheet 1...Sheet 2 property...is that it?

Mr. Brown: Inaudible

Mr. Donovan: So where, so this says together with and subject to access Lands of Yovane & Glas. Who are they?

Mr. Brown: Those are...Yovane was the previous owner of Dickinson and the Fuchek lots. Correct?

Audience Member Inaudible

Mr. Donovan: Look I'm not trying to be difficult but it would a lot helpful if the guy from the Title Company wrote a letter to the ZBA that says this tax parcel has the right to use this property.

Mr. Dickinson: That's included.

Mr. Donovan: It's really not though right? Because it's a letter to Dan Bloom, one of my favorite attorneys, but I mean, basically I got to figure out if this works or not and it would be a lot easier for me to tell the Board we got a letter from the ZBA...to the ZBA that says in Derrick Saunders opinion they have a right to use it. I'd feel more comfortable.

Mr. Scalzo: Thank you Counselor.

Mr. Brown: Also the survey map provided that...from Anthony Valdina that a...says that a...this parcel has a right to that.

Mr. Donovan: Well...

Mr. Marino: You said there are going to be three homes using that driveway?

Mr. Brown: I said potentially. I'm only involved with this particular lot right here.

Mr. Marino: It could be a lot more than three or...?

Mr. Brown: No, not...not unless it was upgraded to a...Town specs and the other parcels were subdivided.

Mr. Marino: Who puts the road in...to get the most homes?

Mr. Brown: Whoever makes the application for the fourth house?

Mr. Marino: Fourth house?

Mr. Brown: Yes, in other words if one of these lots was to sub-divide a...then they would have to upgrade the road.

Mr. Marino: If there is not a fourth house who maintains the road and puts it in?

Mr. Brown: The three houses would have to...Dan Dickinson would put in his piece right here...if Colandrea...if Colandrea came in next he would have to put it in all the way up to here a...and if Fuchek came in next he would have to put in this piece. A...at the time that the second house goes in there would be a common driveway maintenance agreement between those two and then the...if and when a third comes in there'd be a common driveway maintenance agreement between all three. That would be of the Town Board at the time they applied for the three on a common driveway (Inaudible).

Mr. Marino: And if there was only one house, Dickinson's house...?

Mr. Brown: He's responsible.

Mr. Marino: Okay.

Mr. Donovan: So Charlie, going to the Valdina survey there's a reference a...Map Note 3C, Liber 2223, page 957 and Liber 2229, page 233 together with and subject to the rights of others over right-of-way in 50 feet in width...in the submission where is that? I see the deed from Fuchek to Dickinson that references that but I don't...I don't...here's the thing, I'm sure you're probably right but I...I don't want to have to figure it out. I think a letter that says to the ZBA...yes, done and then it's easy for me to tell the ZBA.

Mr. Brown: Okay, so we need to get you a letter addressed to the Zoning Board...

Mr. Donovan: Yes.

Mr. Brown: ...from the Title Company.

Mr. Donovan: Correct.

Mr. Brown: Okay. See you next month.

Mr. Donovan: Sorry.

Mr. Brown: Thank you.

Mr. Scalzo: Thank you. Now...

Mr. McKelvey: I'll make a motion we hold it open.

Mr. Levin: Second.

Mr. Scalzo: Motion to hold the Public Hearing open to Mr. McKelvey, second from...

Audience Member: Are you not going to let the public speak?

Mr. Scalzo: Yes, yes we can. You know, I apologize I got so excited that we were nearing the end that I...I jumped the gun.

Mr. Fuchek: Ray Fuchek, I own the property a...next to Mr. Dickinson's property a...the lot...the paper that you have from Zen Design shows the right-of-way through the property through Tarben's or a...Tarsio's property to the lot a...that Mr. Dickinson owns so what...what other information do you need? I don't...I'm not understanding it.

Mr. Donovan: Well I think Charlie understands what I'm looking for.

Mr. Brown: The letter from the Title Company is addressed to Dan Bloom a...the Zoning Board requests that you have that Title Company address a letter to the Zoning Board.

Mr. Donovan: And then we can rely upon that letter.

Mr. Fuchek: Okay, does...does that have to go to the next month's meeting or is that a letter that he can bring to you tomorrow?

Mr. Donovan: Well I don't know if...if...I don't know how the ZBA feels about this, I mean if you want to make that a condition that it has to be proved satisfactorily to me? That's up to you...that's up to the Board.

Mr. Scalzo: Okay, I'll throw a what if out there Dave. What if you're not satisfied with the letter that you get? Do we...?

Mr. Donovan: Then the approval is not valid and it comes back here but you've closed the Public Hearing and voted so you've got to start all over again. I mean that would be the downside of it.

Mr. Marino: Could we vote tonight on the basis that a letter will be forthcoming to you that you will find agreeable and acceptable and go with the decision we have tonight?

Mr. Donovan: So the answer to that is...is yes but if it's not...right, then that I'm just pointing out...

Mr. Marino: Okay.

Mr. Donovan: ...it may cost them more time. Alright, do you have the lot sold or...?

Mr. Fuchek: No, no, no he wants to build a house.

Mr. Donovan: Yeah, okay.

Mr. Fuchek: We've already designed it and everything so...

Mr. Brown: We'll be here; we'll be back next month.

Mr. Donovan: I'm not trying to be difficult...

Mr. Brown: We'll come back anyway.

Mr. Fuchek: I hear you, I understand.

Mr. Scalzo: I understand it's been a lengthy process, I understand that.

Ms. Gennarelli: Okay, so we have a first and a second.

Mr. Scalzo: That was to leave the Public Hearing open?

Ms. Gennarelli: Open, okay, can we do a Roll call? Richard Levin...

Mr. Levin: I'm sorry, I didn't hear.

Mr. Scalzo: To leave the Public Hearing open.

Ms. Gennarelli: This is the Roll call to leave the Public Hearing open.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Darrin Scalzo: Yes

Ms. Gennarelli: See you on May 24th.

Mr. Brown: Thank you.

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

PRESENT ARE:

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

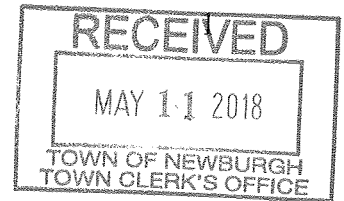
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 9:30 PM)

BG 5/11/18

ZBA MEETING – APRIL 26, 2018

(Time Noted – 10:01 PM)



OTHER BOARD BUSINESS

FRANK DARRIGO REVOCABLE TRUST

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

Mr. Scalzo: Moving on to Other Board business which would be Frank Darrigo Revocable Trust, 84 Lakeside Road. This is for discussion a...I received a letter April 11, 2018, Mr. Scalzo:

On March 22, 2018, the Town of Newburgh Zoning Board of Appeals denied my request for a Use Variance relating to the above premises. I submit that the Board based on its Decision upon a mistake...based its decision upon a mistake of fact and now write to respectfully request that the Board reconsider the application pursuant to Section 267-a (12) of the Town Law, based upon the information set forth in the enclosed Affidavits.

And the affidavits, I don't have to read through them David, do I?

Mr. Donovan: No, they're part of the record.

Mr. Scalzo: They're part of the record, okay. Now I'm going to look to Dave to help us out here.

Mr. Donovan: So...so the request is under NY Town Law 267-a (12) for a re-hearing. So a request for a re-hearing requires a unanimous vote of all Members present and then you would have to have a new Public Hearing as opposed to other procedures under the Town Law. But the request is under 267-a (12). So if the Board wants to re-hear there would need to be a motion to re-hear, a second and it has to be unanimously adopted and then it allows the Board to have another Public Hearing to consider the application again.

Mr. Levin: I'll make a motion to re-hear.

Mr. Scalzo: We have a motion to re-hear from Mr. Levin.

Mr. Marino: Second.

Mr. Scalzo: We have a second from Mr. Marino. Be advised I will be not voting I had recused myself from the application at the previous meetings. So we have a motion and a second, Roll call, Betty. And this needs to be unanimous, correct Dave?

Mr. Donovan: This needs to be unanimous and just for clarification and it's to re-open to have another Public Hearing. It doesn't approve or deny the application. It's just to start the process over again.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Peter Olympia: Yes

Ms. Gennarelli: Darrin Scalzo oh, yeah, recused.

Mr. McKelvey: So that will be next month.

Mr. Donovan: Yes, so just to be clear for...

Ms. Gennarelli: They have to submit an application.

Mr. Donovan: ...they have to make an application and do the public Hearing Notice again. Okay?

PRESENT ARE:

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO-RECUSED

ABSENT:

DARRELL BELL

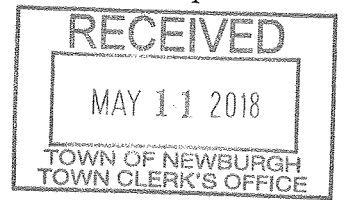
ALSO PRESENT:

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

(Time Noted – 10:03 PM)

BB 5/11/13

ZBA MEETING – APRIL 26, 2018



END OF MEETING

(Time Noted – 10:03 PM)

Mr. Scalzo: Okay, that concludes the regular business of the Board. The remaining item is voting on the meeting minutes for the March meeting? Has everyone had a chance to read the meeting minutes?

All the Board said yes.

Mr. Scalzo: May I look to the Board for a motion to approve the minutes?

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

Mr. Levin: I'll second.

Mr. Scalzo: A motion from Mr. Masten, a second from Mr. Levin. All those in favor?

Aye - All

Mr. Scalzo: That concludes the meeting...

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

Mr. Levin: Second

Mr. Scalzo: Motion to adjourn Mr. McKelvey, second Mr. Levin. All in favor?

Aye All

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

PRESENT ARE:

- RICHARD LEVIN
- ANTHONY MARINO
- JOHN MASTEN
- JOHN MC KELVEY
- PETER OLYMPIA
- DARRIN SCALZO

ABSENT:

- DARRELL BELL

ALSO PRESENT:

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

(Time Noted – 10:04 PM)

AS 5/11/18