

ZONING BOARD OF APPEALS

MEETING – MARCH 22, 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 that if you have cell phones to please turn them off or put them on silent and when speaking, speak directly into the microphone as it is being recorded. Roll call please.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

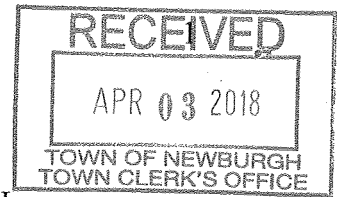
Mr. Scalzo: We'd like to welcome our newest Member of the Zoning Board of Appeals Tony Marino. Glad to have you here Tony. And we're going to stand for the Pledge of Allegiance I would like Mr. Marino to lead us please.

(Time Noted – 7:05 PM)

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ZBA MEETING - MARCH 22, 2018

(Time Noted – 7:05 PM)



SHERI DRIVANOS/
CHARLEEN McCARTHY

233 QUAKER STREET, WALLKILL
(2-1-15) A/R ZONE

Applicant is seeking a use variance for the maximum of one dwelling unit per lot to keep a second dwelling unit built without a Permit on the premises.

Mr. Scalzo: Our first application before the Board this evening is Sheri Drivanos/Charleen McCarthy, 233 Quaker Street in Wallkill. They are looking for a use variance for the maximum of one dwelling unit per lot to keep a second dwelling unit built without a Permit on the premises. If the applicant is here please come forward and state your case.

Ms. Gennarelli: Okay, the Public Hearing Notices for all of the new applications being heard this evening were published in The Mid-Hudson Times on Wednesday, March 14th and The Orange County Post on Friday, March 16th. And the new applications from the February meeting were re-noticed and were also published February 14th and February 16th papers. This applicant sent out twenty-one letters. All the mailings, publications and postings are in order.

Mr. Scalzo: Good evening folks.

Mr. Drivanos: Good evening. How are you tonight?

Mr. Scalzo: We're fine.

Mr. Drivanos: Good and congratulations for your...

Mr. Scalzo: Thank you very much.

Mr. Drivanos: ...your recent promotion.

Mr. Scalzo: If you could explain to the Board why you're here...

Mr. Drivanos: Yup.

Mr. Scalzo: ...and why you're looking for...?

Mr. Donovan: And I'm sorry if you could tell us who you are for the record?

Mr. Drivanos: Yup. My name is Scott Drivanos; this is my wife Sheri Drivanos. We currently reside at 235 Quaker Street and the use variance we're seeking is for the property we just purchased at 233 Quaker Street. And the variance we're seeking is for a building that was a...built up without Permits by the previous owners. It was stated as a one use a...building for a lawnmower business that was there at the time when it was built. A...yeah, small business which we're not planning to run, we bought the property in use for residential not for running businesses out of. So the variance is for that second dwelling to put a...a...an apartment which it's

been used at for...now...there's been an apartment there for the past twenty-five years a...the previous owners when they purchased it they had the a...the apartment put in. So the building is currently in use as that but it's just not up to compliance. So we're seeking the variance to bring it up to compliance, to keep it as an apartment so that way we can use it for a purpose other than the business which was originally...it was a...built for back in a...the forties.

Mr. Scalzo: Okay, thank you. As you're...were applying for a use variance they are difficult a...

Mr. Drivanos: And I thank you all for not laughing uncontrollably when we came up here cause we've told...that we've been told that quite a few times.

Mr. Scalzo: Yes, they are four criteria that need to be met and it's not...

Mr. Drivanos: Yup.

Mr. Scalzo: ...the best three out of four. It has to be all four...

Mr. Drivanos: Okay.

Mr. Scalzo: ...a...or...or we a...legally cannot...

Mr. Drivanos: Sure.

Mr. Scalzo: ...grant approval. First I'll...I'll go to the Board for any comments or questions. Mr. Bell?

Mr. Bell: Well my...the first question I have since you mentioned that you were going to use it as...as an apartment as rental...?

Mr. Drivanos: A...yeah, that was our plan as rental. We do have extended family that kind of met me to make it the purpose that we would use the apartment for a...so that way we could control kind of who was there since the property is directly behind our current residence and there's been some issues with the previous owner some criminal activity and stuff that's been going on back there and the house has been falling into disrepair over the past ten years or so and we're trying to fix it up since it...it's kind of a...an adjacent property to ours so we want to have a little bit more control as to what goes on.

Mr. Bell: And you also mentioned...excuse me...you also mentioned that it's not up to Code so...

Mr. Drivanos: It wasn't...right, the apartment...so the apartment...the building was built a...I believe by the previous owner and they just happened to make an apartment out of it and I think the stories that we got is that their son lived there and then a...when the past owners had purchased it they had purchased it knowing that it was an apartment but it was not a legal apartment but they used it for their family member as well, the mother lived in that.

Mr. Bell: So my understanding is that the previous owner purchased it like that and sold it to you like that as well so it was just...

Mr. Drivanos: Yeah, the previous...

Mr. Bell: ...so it was just...

Mr. Drivanos: ...yeah but they didn't do anything to try to bring it up to compliance and we're gonna...that's what we're trying to do.

Mr. McKelvey: Who built the apartment?

Mr. Drivanos: Well, the building was originally built by a family called the Duffs and they owned the lawnmower repair shop and we were told that they were the ones that put the apartment in there for their son to live in. They lived on the other dwelling, single-family dwelling that's on the property, their son lived in that apartment a...and then when they had sold it to the owner...the previous owners they purchased it and they lived...their family lived in that single dwelling and her mother lived in that apartment that was there.

Mr. McKelvey: How many rooms are in there?

Mr. Drivanos: It's a...one bedroom and then an open area with a kitchen and dining room and then a bathroom.

Mr. Scalzo: How many square feet is the apartment?

Mr. Drivanos: A...right now, it's about (780) seven hundred and eighty square feet I would say. There's a...there's an area kind of behind it which includes the...the furnace that they had there but it...there's no access to that from the apartment. I don't know if that's considered part of the apartment or not but...up to that wall which is a...an enclosed wall is about seven hundred and eighty square feet. The actual building itself, I believe, is just over (800) eight hundred square feet (1900).

Mr. Scalzo: Okay, a...if...Mr. Canfield, if you could lend your a...expertise on this, I know a few months back we had...that magical seven hundred square foot number a...for accessory apartments...if you could explain that a little better a...?

Mr. Canfield: Thank you for your compliment. A...is this on?

Mr. Bell: Yes.

Mr. Canfield: I don't know if I have any expertise but I'll try. Yes, the magic a...number or the criteria in 185-38 is maximum seven hundred square feet a...that's the gross floor area which would be inclusive of utility rooms, closets, what have you. As the applicants had stated this...this property has an extensive history a...I think Mr. Levin asked the question when the apartment was built or John...anyhow but I don't know if we can actually ascertain that at some

time perhaps in the late eighties a...the history of this building was there was a or currently is a barn that was there a...it was a lawnmower shop that was run by the Duffs back in the eighties. They went before the ZBA back in the eighties to put an addition on a...this structure because at the time it was an accessory structure as in today's standards it would be. The addition was permitted. Sometime between the eighties and now this apartment is there so the current applicants as they had testified is trying to bring it up to Code. There is no Permits on anything that was done there as far as the apartment goes. If it weren't for the excess of seven hundred square feet this application would probably not be before you a...the way our Code is written though it's very specific if you exceed that seven square foot plateau it puts you into a different category which perhaps would be a two-family...

Mr. Donovan: Right, so just for clarification so if you were under seven hundred square foot even though it's in a detached structure it could be considered an accessory apartment. Accessory apartments are allowed...

Mr. Drivanos: Okay.

Mr. Donovan: ...to primary residences on one lot in separate structures are not allowed...

Mr. Drivanos: Okay.

Mr. Donovan: ...if you exceed the seven hundred square feet you are...you are not accessory apartment...

Mr. Drivanos: Right.

Mr. Donovan: ...and that's what...puts you into...

Mr. Drivanos: That's why we're here, yeah.

Mr. Donovan: ...into the use variance category.

Mr. Drivanos: Correct.

Mr. Donovan: And...and not to short circuit any of the Board questions but, you know, there's another application on the tonight for a use variance and the proof that needs to be submitted and if you go through the four factors the...the first factor is you have to demonstrate by dollars and cents proof that you cannot get a reasonable economic return from any other use that is allowed in the zoning district...

Mr. Drivanos: Okay.

Mr. Donovan: ...other than having two single families on one so...

Mr. Drivanos: Well...

Mr. Donovan: ...you don't well you don't have anything here right and so...

Mr. Drivanos: There's nothing...there's nothing...

Mr. Donovan: ...dollars and cents proof is only going to come an appraiser, an accountant, a financial analyst...

Mr. Drivanos: Yeah.

Mr. Donovan: ...but you know, I don't want to short circuit anything from the Board but...there's...there's no...you have no proof.

Mr. Drivanos: That...that we could use the building for something else, is that what you're...you're saying?

Mr. Donovan: No, I'm saying you have no proof regarding the first...criteria which would be you need to show dollars and cents proof that you cannot obtain a reasonable economic return for any other use that's allowed in this zone other than having two principal dwellings on one lot. Absent that showing...

Mr. Drivanos: Right.

Mr. Donovan: ...no proof equals no chance.

Mr. Drivanos: Okay.

Mr. Donovan: Sorry.

Mr. Drivanos: No, that...that's fine, I just didn't a...so as far as that proof would be is...you would...you're saying that we would either need to show that we can't run a business out of there or we can't...

Mr. Donovan: No, so you'd have to go...go to the list of permitted uses in the R-1...what zoning district are we in? I forget.

Mr. Canfield: A/R.

Mr. Donovan: A/R? So go to the list of permitted uses in the A/R...

Mr. Drivanos: Okay, A/R.

Mr. Levin: I...

Mr. Donovan: And you have to...

Mr. Levin: Go ahead and finish I'll...

Mr. Donovan: No, that's okay; I've been talking a lot you can go.

Mr. Levin: I a...I have a suggestion, I don't know if it will work but could that be subdivided a...the land? You'd need variances for that but even have two...two lots instead of one.

Mr. Drivanos: I...I...I think we looked into that, it's just that the way the two buildings are situated it's very awkward to try to, you know, subdivide... they're just so close to each other to try to divide them...

Mr. Levin: You would need variances to subdivide.

Mr. McKelvey: You'd need variances.

Mr. Drivanos: Yeah, right, right.

Mr. Levin: (Inaudible) two buildings.

Mr. Drivanos: Okay.

Mr. Scalzo: Right and...and to go back a...ten minutes, that magical seven hundred square foot threshold...

Mr. Drivanos: Okay.

Mr. Scalzo: ...a...because you exceed that a...if we were to evaluate your application based on what have you presented tonight it would be very difficult to...

Mr. Drivanos: Okay.

Mr. Scalzo: ...obtain a favorable a...

Mr. Drivanos: So the...

Mr. Scalzo: ...decision.

Mr. Drivanos: ...so that seven hundred square feet now is...how would we be able to make just that accessory seven hundred square feet. I know the building is bigger...the total building but is there a way that that's possible to be done to make the...just that accessory apartment seven hundred square feet?

Mr. Scalzo: Thank you for bringing that up. Jerry because that is attached to a much larger structure...that doesn't affect the actual accessory apartment used for that? So it can...it can be in a two thousand square foot building but as long as the accessory apartment is (Inaudible).

Mr. Canfield: (Inaudible) broken out to (Inaudible).

Mr. Drivanos: Again...okay, so it just has to be some kind of solid wall basically? Is that how they break it up? Okay. So with no access to the other...the rest of the building?

Mr. Canfield: Right.

Mr. Drivanos: Okay.

Mr. Canfield: Also I'd to remind the Board there are provisions of 185-38, although we...we hinged a lot of conversation on the square footage but another is that it has to be owner occupied. So I don't know if we got into who was going to be there...

Mr. Bell: That's what I was ready to ask.

Mr. Drivanos: Yes, the...the property is deeded in my mother-in-law's and Sheri's name a...so she would be on residence in these other single family most likely the other single family property that's on there and then this would be the apartment so there would...

Mr. Bell: Because you live...you guys live at 235 so...

Mr. Drivanos: Directly...it's adjacent property.

Mr. Bell: ...oh cause I know, so when right now the property is unoccupied or your mother is...?

Mr. Drivanos: Yeah, there's nothing, yeah the...

Mr. Bell: ... unoccupied at this point.

Mr. Drivanos: Unoccupied at this point.

Mr. Scalzo: So your position is...or your intent is that your mother-in-law would live in the single family?

Mr. Drivanos: We would have someone on the deed yeah...someone would be living in that main residence and the apartment would be either extended family at that point...

Mr. Bell: When you say...when you use the word someone on the deed...

Mr. Drivanos: Well I...I...

Mr. Bell: ...I mean, your mother-in-law is the...

Mr. Drivanos: My mother-in-law is on the deed...

(Inaudible Members speaking)

Mr. Bell: ...deed or is it going to be rental both?

Mr. Drivanos: No, no, both would...both would not be rental, the apartment would be the...the rental basically is what we're...we're looking to...to do.

Mr. Scalzo: And your mother is Charleen McCarthy?

Ms. Drivanos: My mother.

Mr. Drivanos: Charleen correct. So despite that the...what the a...David was saying that without that other proof there's really no...no chance for us to get the use variance but it is acceptable for the a...accessory building a...var...a...no, we don't need a variance for that, correct?

Mr. Scalzo: Should you meet...

(Inaudible Members talking)

Mr. Drivanos: Right and that would be discussed with the Building Department or is that something that we have to do through zoning at that point?

Mr. Scalzo: A...well actually the Code Compliance probably could assist you in the other...

Mr. Drivanos: Okay.

Mr. Scalzo: ...criteria that are required a...

Mr. Drivanos: Okay.

Mr. Scalzo: ...they could point out the sections of the Code.

Mr. Drivanos: Does that require another meeting with you guys?

Mr. Scalzo: That would require you to reapply and reappear.

Mr. Drivanos: Okay...under a different...?

Mr. Canfield: A...just to...to clarify if they remove or recall their application for the use variance then it's no longer an issue of the Board. Then it's something that you deal with Code Compliance...

Mr. Drivanos: Okay.

Mr. Canfield: ...as far as ascertaining your Permit...

Mr. Drivanos: Okay.

Mr. Canfield: ...and we can advise you how to get there.

Mr. Drivanos: Okay so...

Mr. Donovan: If you can satisfy the criteria of Code Section 185-38 for an accessory apartment you...you wouldn't need to come here...

Mr. Drivanos: We don't need to come back.

Mr. Donovan: ...even though it's obviously a joyful experience.

Mr. Drivanos: It wasn't so bad. Just to further...just so we can think about the use variance, if you could just help me a little bit with so...we would need to go to the a...what did you say the use is...?

Mr. Donovan: So...so...so it's not really, there...there's you Google it, you get a...

Mr. Drivanos: Okay.

Mr. Donovan: ...use variance in New York and you're going to get four criteria...

Mr. Drivanos: Right, yeah.

Mr. Donovan: ...and it's going to show you what you need to prove. But in terms of, you know, I...I can't say you know, get evidence from this person or that person. I can't make your case for you I...

Mr. Drivanos: Yeah, sure.

Mr. Donovan: ...can't give you advice but...

Mr. Drivanos: Right.

Mr. Donovan: ...but you know, generally you're going to need competent financial proof. Now that generally that might come from a...an appraiser...

Mr. Drivanos: Okay.

Mr. Donovan: ...it may come from a financial analyst, it may come from a CPA...

Mr. Drivanos: Yes.

Mr. Donovan: ...you know...you...you would chose the person or persons that you think would be best qualified to provide that information.

Mr. Drivanos: Okay. And that's to prove that there's no other use for that building or that piece of land that would allow us to gain financially...?

Mr. Donovan: Yeah, and let me just tell you it's going to be very difficult. You have a dwelling so your going to...the dwelling has value...

Mr. Drivanos: Okay.

Mr. Donovan: ...right, you just...you just bought this...

Mr. Drivanos: Correct.

Mr. Donovan: ...and...and I mean, you can't use the barn as an apartment so...

Mr. Drivanos: You can't really...yeah, you...that's the thing is...is the barn is...it's a barn...

Mr. Donovan: It's going to be a heavy lift and you're not even...it hasn't even gotten to the next three criteria. It would be a heavy lift to get past the first one though because the property has value. Right?

Mr. Drivanos: Okay. So basically that...that's if the property has any value then there's really no use to put the a...for you to give us the right to put an apartment in there because it already has value so the apartment is increasing the value, it's not really taking away from it if we don't have it, that's...that's...

Mr. Donovan: Exactly.

Mr. Drivanos: Okay.

Mr. Donovan: Exactly.

Mr. Drivanos: Okay. That seems fair. I guess we're done.

Mr. Donovan: So are you going to withdraw your application...because then...?

Mr. Drivanos: I would...I would think so.

Mr. Donovan: Then the Board wouldn't have to vote so...

Mr. Drivanos: Yeah I would think so because a...if...if that's not going to work then we would probably just go with the accessory and then we can deal with a...Code Compliance at that point.

Mr. McKelvey: Or you could do away with the apartment you wouldn't have to be here.

Mr. Donovan: So if you're going to withdraw though I'd just ask that you contact Betty in writing, get a little writing...

Mr. Drivanos: Okay.

Mr. Donovan: ...email, letter, something...

Mr. Drivanos: Sure.

Mr. Donovan: ...that you withdraw your application.

Mr. Drivanos: Okay.

Ms. Gennarelli: In writing, signed.

Mr. Drivanos: Okay, very good. Thank you very much.

Mr. Scalzo: Thank you.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

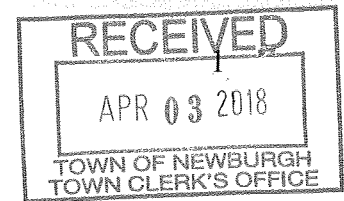
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4/3/18

ZBA MEETING – MARCH 22, 2018

(Time Noted – 7:22 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: The next applicant is Daniel and Elissa Dickinson, Fostertown, Revere Road, Tarben Way, Stillhollow Road, area variance from the requirements for New York State Town Law 280-a - (1) allowing a single family home to be constructed on a 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 does not...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: Will you state your name and...?

Mr. Brown: Thank you, I'm Charles Brown...

Ms. Gennarelli: And then wait one second after you do that. Okay and this applicant sent out eight letters. All the mailings, publications and postings are in order. Okay, thanks Charlie.

Mr. Scalzo: Thank you, Betty.

Mr. Brown: Thank you. Again, I'm Charles Brown engineer for the applicant. This is existing twelve acre parcel that's vacant. We have a utility easement off of Stillhollow Road. We were before this Board some time ago to try and get access via the same as we are tonight, from Stillhollow Road and we were turned down. So our only recourse now is to get access through a fifty foot right-a-way that was filed with the Tarben Subdivision a...not that long ago. The lot is generally larger than the a...developed lots on Stillhollow and the proposed lots on the Tarben Subdivision so it won't be out of character with the neighborhood. Again, we already tried to come up through Stillhollow Road, were turned down so this is our...our only way of...of doing this. And again it's only one house on twelve acres so the environmental impact is minimal and a...for that reason it's also a...not a large variance.

Mr. McKelvey: Is there some wetland involved?

Mr. Brown: What?

Mr. McKelvey: Wetland involved?

Mr. Brown: Yes, there's a Federal Wetland that was flagged with the Tarben Subdivision a...we're permitted to a...fill in a tenth of an acre of that under a nationwide permit. We're actually filling in a thirty-five hundred square feet; a tenth of an acre is 42 by 80. We're under the threshold for the nationwide permit.

Mr. Scalzo: I understand Charlie if you could a...it had been flagged for the Federal Wetlands for the Tar...Tarbell...

Mr. Brown: Tarben.

Mr. Scalzo: ...Tarben Subdivision...how long ago was that?

Mr. Brown: The map was just filed last...

Mr. Scalzo: That I know.

Mr. Brown: ...last year.

Mr. Scalzo: Yeah, but that was a...that was a...they had the Permit with that one. But the a...the actual wetland flagging does expire at some point so you have...

Mr. Brown: Yeah, it's generally five years on...on there a...on the Federal.

Mr. Scalzo: Oh, I...I...

Mr. Brown: I could verify that.

Mr. Scalzo: Right, actually I don't...I don't believe that's going be a factor for us but the planning board would read our minutes and that may just tune them into it.

Mr. Brown: Well we...we...if we get approval from your...your Board we're going straight for a Building Permit. We don't need...

Mr. Scalzo: Okay.

Mr. Brown: ...planning board approval.

Mr. Scalzo: Wow a...okay.

Mr. Brown: Again, this right-of-way was...was included in the Tarben Subdivision at my client's request.

Mr. Donovan: Charlie, do we have a copy of that map? Is this...? So...

Mr. Brown: I...I believe it was submitted with the a...application package a...otherwise I can forward it to you. I do have copies in my office.

Mr. Levin: Charlie did you client expect to sub-divide this property at any time?

Mr. Brown: A...not that I know of...he just wants to build his house. He's been trying to build his house for years.

Mr. Donovan: So what I'm trying to figure out Charlie is whether or not this strip was a proposed street shown on a filed subdivision map. Was it or...?

Mr. Brown: No, it's just a right-of-way. The Tarben Way, the road with the Tarben Subdivision is a...a Town Road. I don't know if it's been dedicated yet but it is built a...and it's actually built very well.

Mr. Donovan: So have you given us anything that says you have the right to use that...that fifty foot strip?

Mr. Brown: Yeah, it should be on the Tarben Subdivision map and again...

Mr. Donovan: That I don't have.

Mr. Brown: You don't have?

Ms. Gennarelli: We don't have that.

Mr. Brown: Okay.

Mr. Dickinson: I can produce it.

Mr. Brown: We have it...we have it here with us.

Mr. Scalzo: Charlie have you investigated the a...grading plan for the drive...I know it doesn't necessarily meet Town Road criteria a...for grading slope and side slope but would the grading plan that you're going to need to produce to build this driveway, your total slopes do they encroach on any of these private lines?

Mr. Brown: No they don't. I mean I actually showed some grading a...at the wetland to verify that we weren't going to exceed the tenth of an acre.

Mr. Scalzo: Okay.

Mr. Brown: Driveway specs in the Town of Newburgh allow fifteen percent of...so I...I don't see a problem you know with the total slope spilling over the right-of-way lines.

Mr. Scalzo: Okay and the topography is that for the Orange County USGS is that from the old Water Authority maps?

Mr. Brown: It's from Orange County GIS a...the Global Information Systems a...I believe that the topo on the Tarben Subdivision is actually from that subdivision map.

Mr. Scalzo: Okay.

Mr. Donovan: Now Charlie when...when you came in before you were looking to go out the other way the Board...there was...there was a dispute amongst some neighbors and among you whether or not you had the right to cross the strip to get to Stillhollow Road and the Board ultimately determined that we couldn't be the arbiters' of that legal issue so I...I want to know how...how going out the other way is different. How do we know that you have the legal right to use that strip to get to Tarben?

Mr. Brown: A...again it should say so...do you have the Tarben map?

Mr. Dickinson: Yeah, I'm looking...I have the title insurance policy that insures that access.
(Inaudible)

Mr. Brown: Will that suffice...the title?

Mr. Donovan: I don't know. I don't know what it's going to say.

Mr. Scalzo: And Mr. Levin you had mentioned if there was any future subdivision plan for this which the applicant at this time does not know a...Dave, do we have the ability to say that as a condition of approval that no further subdivision of this lot can occur?

Mr. Donovan: You know Darrin let me give that some thought I don't really know...I...I haven't been out to the site so I don't know what's there. I don't know if...if that meets any kind of Town specifications. I don't know whether he talked about the...the grade before. I don't know what the grade is there if there...if it exceeds any kind of percentage that's relative to our specifications. Whether that's intended to be a future private road you know, I don't know what the...you know Charlie, cause typically if it's on a filed map, if it's not a street but a right-of-way shown on a filed map that's not going to create an easement. Right? There's generally there's an instrument that would go along with that...that would describe it and...and...do you not have that?

Mr. Brown: A...I guess I...I'll have to get it from a...the engineer that...that did the Tarben Subdivision.

Mr. Donovan: Okay.

Mr. Brown: A...I mean I looked through the a...a...again at the deeds and all of that and I didn't see any problem with it but you know I'm no lawyer.

Mr. McKelvey: You...you don't know if it's...?

Mr. Donovan: That's not necessarily a bad thing, Charlie.

Mr. McKelvey: ...you don't know if this road has been dedicated to the Town?

Mr. Brown: I know it's constructed. I don't know if it's been dedicated.

Mr. McKelvey: It is a...it's a neat road there's no doubt about that.

Mr. Brown: They did a nice job.

Mr. Scalzo: You know, it's beautiful up there.

Mr. Brown: Jerry, Tarben pull any Permits up there?

Mr. Canfield: What's that?

Mr. Brown: On Tarben, did they pull any Permits?

Mr. Canfield: For houses, yes, up on the (Inaudible).

Mr. Brown: Well I can check and see if the road is dedicated and I can...you know, produce the documentation on our rights to use it...we want to...whatever (Inaudible).

Mr. Scalzo: That would certainly be helpful.

Mr. Levin: I don't think we can vote on it without that.

Mr. Scalzo: Well let's get a little further and then we'll get to that but if I could just poll the a...Board. Mr. Bell do you have any other questions?

Mr. Bell: No...no I don't.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No.

Mr. Masten: No, I was up there the other day and it was...it's...the house is going to be quite a ways back off the road and if that were to proposed a...driveway is going in there's a substantial rock in there. Like John says, Federal Wetlands in there too.

Mr. Scalzo: Well yeah and it's going to be quite an undertaking I understand that but these big machines move quite a bit of stuff.

Mr. Masten: Yes.

Mr. Scalzo: Mr. Marino are...? No, okay, very good. With that being said, I'll open it up now to any questions or comments from the public. Please state your name for the record.

Mr. Leroy: My name is Mike Leroy; I live at 36 South Dix Avenue. My question is how many properties will that driveway serve? And do the people on Tarben Way have the right to use that also...being that it borders their property? It's my understanding that whenever a right-of-way borders your property you have the right to use that. Everybody's property would go to the center of the right-of-way or in this case private road because it's going to serve more than one driveway.

Mr. Scalzo: Well reverts to a private road or private driveway, Dave, if...if you can help me out on this, I believe if it's private it is fee simple ownership. Correct?

Mr. Donovan: So what's shown here and I...I can only go by what's show on this map is that a...this is owned...and Charlie who is this owned by? Who owns this fifty foot strip?

Mr. Brown: Tarben.

Mr. Donovan: And...

Mr. Brown: Tarsio.

Mr. Donovan: ...do...do they own the...the lot that's what you're here for to get the variance to use?

Mr. Brown: The subject lot?

Mr. Donovan: Yeah.

Mr. Brown: No.

Mr. Donovan: Yeah, okay. So there's no ownership of any adjacent property to the centerline? Cause it's...it's basically you have a fifty foot swath that kind of winds its way up to this lot...

Mr. Leroy: Okay, so the people on Tarben when they own the lot next to the right-of-way they don't own the right-of-way...?

Mr. Donovan: I...

Mr. Leroy: ...any part of it?

Mr. Donovan: ...I...I can't tell by this map but I...I...my speculation is that they would not.

Mr. Brown: That is correct.

Mr. Leroy: And how far back does that right-of-way go? How many lots are on that?

Mr. Scalzo: Actually sir, you're...you can walk up to that map and take a look at it. There are dimensions on all the legs of that proposed right of way sans the dimensions for the radius...Charlie...right off the end of the cul-de-sac?

Mr. Brown: Right. Then we'll get that on there too.

Mr. Scalzo: Yeah but Charlie, this gentleman brought up a really good question. I do see the one driveway leading into your applicant's lot but there's also another driveway there that leads off the right-of-way a...is that for a specific purpose?

Mr. Brown: Actually...that may be...a...a driveway for one of the Tarben lots...I have to go back and look.

Mr. Scalzo: Thank you for calling that to our attention.

Mr. Leroy: Yeah, okay, that right-of-way I was here with Tarsio subdivide you know or and getting his approval for his subdivision and there are many people on that private drive. More than just Dickinson, you have Fuchek and you have Colandrea so there's at least three if not the two owners that are adjoining that right-of-way...

Mr. Scalzo: Sir help...

Mr. Leroy: (Inaudible)

Mr. Scalzo: ...help me understand a little bit. Now you talking not about the improved Tarben Way that we're looking at on the map which is paved asphalt right now?

Mr. Leroy: Correct.

Mr. Scalzo: You're talking about access off the proposed right-of-way that...that appears on the map?

Mr. Leroy: Right, right. Well somebody is going to own where that driveway is...right...this lot here. On the lower side of the right-of-way somebody also owns that. So without Tarben's Subdivision map you wouldn't...you don't see that.

Mr. Scalzo: Well...I understand. Charlie, when you...it sounds as though you're going to be back in here...a...when you re-submit answering the questions that we have regarding the right-of-way, Charlie can you extend your location map so we can actually see...? Because if you look at it on

the...what you've shown here we really can't get a good look at Tarben Road where it comes in to the a...your location map.

Mr. Brown: Yeah, I will expand it and I will make sure that the a...the entire right-of-way was shown with...with all adjoining parcels. A...this gentleman is correct a...the next one up is Fuchek and then a...at the end is Colandrea...he was at the final meeting, Colandrea was run...the final meeting for the Tarben Subdivision and requested that it get extended to his property because he's also landlocked. So but a...for anybody else to use it after this they would have to come back before this Board or a...improve this to private road specifications.

Mr. Scalzo: Thank you sir. Any other questions?

Mr. Leroy: No.

Mr. Scalzo: Any other questions from the public?

No response.

Mr. Scalzo: Any other questions from the Board?

Mr. Masten: I have none.

Mr. Scalzo: Mr. Brown, I believe we're going to see you...

Mr. Donovan: So Mr. Chairman, if you could just motion to the Board to continue the Hearing on the...at the April meeting.

Mr. Scalzo: Yes, do I have a motion from the Board to continue to the...this applicant?

Mr. McKelvey: I'll make that motion.

Mr. Masten: I'll second it.

Mr. Scalzo: Motion from Mr. McKelvey, second from Mr. Masten. All in favor.

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

Mr. Scalzo: Thank you Betty.

Ms. Gennarelli: Once second, all right, okay. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Mr. Brown: Thank you.

Ms. Gennarelli: I believe that's April 26th. And, if you could now bring whatever it is you have at least ten days before so I can give it to them.

Mr. Brown: How many copies?

Ms. Gennarelli: Eleven the usual, yes.

Mr. Brown: Okay. Thank you.

Ms. Gennarelli: Thank you.

Mr. Scalzo: Thank you Charlie.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:38 PM)

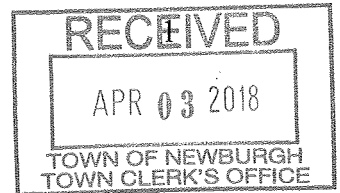
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ZBA MEETING – MARCH 22, 2018

(Time Noted – 7:38 PM)

H. NICHOLAS CORIS/
AMANDA GARGANO CORIS

12 JACKS POND ROAD, NBGH
(43-1-25.22) R-2 ZONE



Applicant is seeking area variances for one side yard setback, the combined side yards setback and increasing the degree of non-conformity of the front yard setback to build a side addition (15 x 56) on the residence.

Mr. Scalzo: The next applicant is H. Nicholas Coris and Amanda Gargano Coris at 12 Jacks Pond Road. They are seeking area variances for one side yard setback, the combined side yards setback and increasing the degree of non-conformity of the front yard setback to build a side addition (15 x 56) on the residence. There are...please come on up and state your name.

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

Mr. Scalzo: Please state your name and fill us in on what you'd like to do.

Ms. Coris: Amanda Coris.

Mr. Coris: Nick Coris.

Ms. Coris: Our son Jackson Coris, we're just looking to add on to our house a...we need more living space. We moved in over six years ago we're just looking to add another bedroom. We currently live in a two bedroom house. We'd like to have another bedroom and more living space. The actual addition will be our actual property but we understand that there's required setbacks that we have to meet so that's why we're in front of you to get permission to do that.

Mr. Scalzo: Okay. In most cases most of the Board Members have been out to see each property.

Ms. Coris: I think I saw some a couple of times, yes.

Mr. Scalzo: Yes, I was out there it was late at night well not late but late enough. Let's start off with just any questions from the Board. Mr. Bell?

Mr. Bell: I don't have any.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: (Inaudible)

Mr. Scalzo: Mr. Masten?

Mr. Masten: No, it's pretty well (Inaudible)

Mr. Scalzo: Mr. Marino?

Mr. Marino: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: What was the question?

Mr. Scalzo: No, just if you had any questions...

Mr. Levin: No, I...I don't...I (Inaudible)

Mr. Scalzo: I...just looking at it from a...the plot plan information...the offsets from your property line which are perpendicular are...are very descriptive. You're going to a tenth of a foot. This was prepared by an engineer or a surveyor?

Ms. Coris: Surveyor, yes.

Mr. Scalzo: Okay, so the...who...who was it?

Mr. Coris: There's a surveyor and engineer...

Mr. Scalzo: And...and that's fine.

Mr. Coris: Formerly (Inaudible) Surveyors from Beacon a...the...

Ms. Gennarelli: Could you get closer to the microphone? Thank you.

Mr. Coris: A...Walden engineer...or Surveying, he used to be out of Beacon...he works for Con Edison now...

Mr. Scalzo: Okay, very good.

Mr. Coris: ...he did it for me and then the engineer...what's the name of the engineer...the group?

Ms. Coris: M. A. Day.

Mr. Coris: M. A. Day.

Mr. Scalzo: Okay.

Mr. Coris: Sorry our babysitter...

Mr. Scalzo: No, that's quite alright.

Mr. Coris: ...was available last meeting but...

Mr. Scalzo: Hey, other than that I...I a...you know, your approximate location of your septic and leech fields are you...there's a small dot up front...that's your well, I'm assuming...

Mr. Coris: Yes, yes the well is in the front.

Mr. Scalzo: The lot between you and Fostertown Road is vacant?

Mr. Coris: I believe it's vacant. There's a lot of questions on who owns it. I want to say somebody on the other side of Fostertown owns it and we really don't know. We know all the neighbors on Jack Pond Road but that lot...it's all been subdivided before we came in and whoever owns road I heard they lived Cloud Drive (Street) across Fostertown and it is vacant, yes to answer the question but. As far as plans for sale or anything we're...we're not sure. We know the other side there they're trying to sell.

Mr. Scalzo: Okay, thank you. At this time I'd like to open it up to any comments from the public. Anyone here to discuss this application?

No response.

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

Mr. Scalzo: Mr. Bell?

Mr. Bell: No

Mr. Scalzo: Mr. McKelvey?

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: Thank you very much.

Ms. Gennarelli: Would you like a motion to close the Public Hearing?

Mr. Scalzo: A motion to close the Public Hearing.

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

Mr. Masten: I'll second it.

Mr. Scalzo: Motion by Mr. Levin, second by Mr. Masten.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Ms. Gennarelli: Thank you.

Mr. Scalzo: Thank you Betty by the end of the meeting...

Ms. Gennarelli: You'll get it.

Ms. Coris: Is there anything else we needed to do or...?

Mr. Scalzo: We are going to probably take a short break once we're done hearing all the applicants and then we're going to try to vote on all applicants that we can tonight.

Ms. Coris: Okay.

Mr. Scalzo: So now you don't necessarily have to be here for our...

Ms. Coris: Okay.

Mr. Scalzo: ...final deter...or our determination...

Ms. Coris: Okay.

Mr. Scalzo: ...you can call Betty Gennarelli our...our ZBA Secretary tomorrow to find out how everything worked out.

Ms. Coris: Okay we'll try to stick around.

Mr. Scalzo: Okay, very good, thank you.

Ms. Coris: Thank you.

Ms. Gennarelli: See how things go.

(Time Noted - 7:43PM)

ZBA MEETING – MARCH 22, 2018 (Resumption for decision: 8:53 PM)

H. NICHOLAS CORIS/	12 JACKS POND ROAD, NBGH
AMANDA GARGANO CORIS	(43-1-25.22) R-2 ZONE

Applicant is seeking area variances for one side yard setback, the combined side yards setback and increasing the degree of non-conformity of the front yard setback to build a side addition (15 x 56) on the residence.

Mr. Scalzo: The Board is resuming the ZBA meeting. At this point we will have small discussion and vote on the applicants that we are allowed to this evening. The first one that we...applicant that we can entertain would be the H. Nicholas Coris and Amanda Gargano Coris, 12 Jacks Pond Road, area variances for one side yard setback, the combined side yards setback, increasing the degree of non-conformity. I would look to the Board for one last opportunity to comment on it. Mr. Bell?

Mr. Bell: No

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: No.

Mr. Scalzo: Mr. Levin?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: I'm good. No.

Mr. Scalzo: Okay so at this point Dave this is a...

Mr. Donovan: So this is a Type II Action under SEQR. And the Board can go through the five part balancing test.

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

Mr. McKelvey: I don't think so.

Mr. Scalzo: No, it's a pretty narrow a...if you noticed it's only fifteen feet wide along that side they're trying to accommodate the side yard setback as best they can while still having a habitable room. Anyone else?

No response.

Mr. Scalzo: The second criteria, if there is an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Levin: I don't believe there is.

Mr. McKelvey: No.

Mr. Scalzo: I agree.

Mr. Scalzo: The third, whether the request is substantial? A...relative to the neighborhood I don't believe it is.

Mr. McKelvey: No I don't.

Mr. Levin: I agree with that.

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

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Marino: No

Mr. Bell: No.

Mr. Scalzo: And the fifth, whether the alleged difficulty is self-created? This is relevant but not determinative. Well yes it is self-created however...

Inaudible Board Members

Mr. Scalzo: If the Board approves it shall grant the minimum variance necessary and may impose reasonable conditions. Having gone through the balancing tests of the area variance what is the pleasure of the Board...?

Ms. Gennarelli: Darrin, did you get back the Orange County report?

Mr. Scalzo: Thank you, Betty.

Ms. Gennarelli: Okay.

Mr. Scalzo: I did, it was handed to me moments ago. Orange County Department of Planning had commented on the project, the Planning Department has received the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that inter-municipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. That being said does the Board...what is the pleasure of the Board? Does the Board have a motion of some sort?

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

Mr. Masten: I'll second.

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

Ms. Gennarelli: Okay, Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Ms. Scalzo: The motion is carried.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

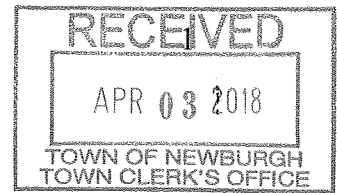
DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:57 PM)

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ZBA MEETING – MARCH 22, 2018

(Time Noted – 7:43 PM)



MARGUERITE A. LEASE

LAKESIDE ROAD, NBGH
(33-1-20.21) R-1 ZONE

Applicant is seeking area variances for the minimum lot size, the minimum lot width and the minimum combined side yards setback to build a new single family dwelling; and area variances for the maximum allowed square footage of accessory buildings and no such buildings shall project closer to the fronting street than the main dwelling to keep three accessory structures built without Permits; (A) 20.2 x 10.1; (B) 24.1 x 23.3 and (C) 16.2 x 12.3 on the premises.

Mr. Scalzo: Our next applicant is Marguerite Lease, Lakeside Road seeking area variances for the minimum lot size, the minimum lot width and the minimum combined side yards setback to build a new single family dwelling; and area variances for the maximum allowed square footage of accessory buildings and no such buildings shall project closer to the fronting street than the main dwelling to keep three accessory structures built without Permits; (A) 20.2 x 10.1; (B) 24 x 23 (24.1 x 23.3) and (C) 16 x 12 (16.2 x 12.3) on the premises.

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

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

Mr. Doce: I'm Darren Doce here for Mrs. Lease. Mrs. Lease is proposing building a single family dwelling potentially to be owned by one of her daughters on a...the lot and to do that we are a...we need to get the a...listed variances. The lot is thirty seven thousand, eight hundred and thirty feet...square feet in size. Required is forty thousand square feet. The minimum lot width is required is one fifty, we have a hundred and twenty-five. The combined yard...side yard setbacks, requirement is eighty and we will have seventy-five proposed. Also requesting area variances to keep three existing sheds that will be located in a front yard. Just like to say a...when Mrs. Lease purchased the property the zone was R-3 and she purchased it in 1990. I believe the Town rezoned the area in 1995. At the time she purchased it the lot would have been conforming and wouldn't have needed the a...the requested variances. Also it's the nature of the neighborhood a...the houses are all built along the shoreline. There's a number...a number of a...other a...parcels in the area with accessory structures, sheds, garages along the a...the road line. The sheds on this lot a...are actually further back than a number of the other garages along Lakeside Road. Also just point out to that we are meeting the side yard setbacks on each side yard it's just the combined yard. We have thirty-seven and thirty-eight feet to the side yards for the proposed house. And also this lot width and area wise is larger than I'd say a majority of the rest of the parcels along the west side of Lakeside Road. So I'll answer questions (Inaudible)...

Mr. Scalzo: Thank you. Mr. Bell any questions?

Mr. Bell: No

Mr. Scalzo: Mr. Marino?

Mr. Marino: Yeah, I have...let's see if this works...you mentioned the sheds are they strictly storage or what are they exactly? And are they owned by Mrs. Lease?

Mr. Doce: The small shed is garden tools, lawn mowers; the larger is a...they store a...kayaks, canoes, stuff like that in the larger one. The third is a...a cabin that was on the property prior to them purchasing it. They believe that...I don't know if anyone was out there but...that it was built by the Girl Scouts at one time. They had a camp out there and they just kept it and they'd like to keep it. It's just...I guess sentimental reasons, her kids used to sleep in there when they were younger and so they'd like to keep that one also (Inaudible).

Mr. Scalzo: Mr. Masten?

Mr. Masten: Yes, I was out there the other day, yesterday and today in fact and a...there's primary and secondary running right down the middle of the lot and now they're going to be relocated?

Mr. Doce: Yeah, they've already contacted Central Hudson who is...

Mr. Masten: Because I...

Mr. Doce: ...relocate that.

Mr. Masten: ...that's right...right smack down the middle of that right-of-way.

Mr. Doce: That's already in the works a...(Inaudible).

Mr. Masten: That's all I have right now.

Mr. McKelvey: Is there any proof that that's in the works?

Mr. Donovan: Well I don't know that it's an issue for the Board. It's obviously an issue if...if the variance is granted, variances are granted before a Building Permit is going issued by Code Compliance you're going to want to make sure that there's not electrical lines run through...over the top of the building I would assume. Right? I mean, if you want to make it a conditions should you be so inclined you could do that but I think there's another safety net at Code Compliance that's going to address that issue.

Mr. McKelvey: Yeah, okay.

Mr. Scalzo: Mr. Levin?

street from the Turner side yard so that the construction will not impede or block the view of the lake from their home in any way. Lastly I would like to add that Margie and Richard Lease have done a great deal for the Orange Lake community. Marge has served as...many years as a board member and secretary of the Homeowner's Association. She is familiar with our goals and our concerns as an organization and I am confident that any construction or undertaking made by her would be consistent with the continued preservation, beautification and betterment of Orange Lake. Thank you for your consideration of my opinion and support of the Lease application.

Mr. Scalzo: Thank you sir. I think we had another member of the public actually two.

Mr. Fowler: My name is Art Fowler, I live at 8 Snider Avenue on the west side of the lake so I'm across from the lot that we're talking about and I'm also a board member of the Homeowner's Association and there's two other board members on the west side and I've talked to them. We have no objections to this project. All we give are full support, it's in our view and everything this family has ever done is been first class and we're very confident this will be too.

Mr. Scalzo: Thank you very much.

Mr. Fowler: You're welcome.

Mr. Scalzo: Sir?

Mr. Mazzarelli: (Inaudible)

Ms. Gennarelli: You need the mic, I'm sorry.

Mr. Mazzarelli: My name is Gene Mazzarelli, I live 381 Lakeside Road and I've known the Leases for a long time. They've made...sorry, great efforts with getting Orange Lake back along with a lot of other people. I know they don't want to do anything that would take away from anything. I go back past this piece of (Inaudible) and I'm always worried about some little furry thing coming running out of there or whatever a...but I see nothing that will. And again, they do it the best way to get it done as they've done for other things so I see no reason not to. (Inaudible) Okay?

Mr. Scalzo: Very good, thank you. Any other comments from the public?

No response.

Mr. Scalzo: Hearing none I'll return to the Board, anyone?

No response.

Mr. Scalzo: At this point I will wait for a motion to close the Public Hearing.

Mr. Masten: I make a motion.

Mr. Bell: Second.

Mr. Scalzo: Motion from Mr. Masten, second by Mr. Bell.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Mr. Scalzo: Thank you.

(Time Noted - 7:54 PM)

ZBA MEETING – MARCH 22, 2018 (Resumption for decision: 8:57 PM)

MARGUERITE A. LEASE

LAKESIDE ROAD, NBGH
(33-1-20.21) R-1 ZONE

Applicant is seeking area variances for the minimum lot size, the minimum lot width and the minimum combined side yards setback to build a new single family dwelling; and area variances for the maximum allowed square footage of accessory buildings and no such buildings shall project closer to the fronting street than the main dwelling to keep three accessory structures built without Permits; (A) 20.2 x 10.1; (B) 24.1 x 23.3 and (C) 16.2 x 12.3 on the premises.

Mr. Scalzo: The next applicant is Marguerite Lease, Lakeside Road, seeking area variances for the minimum lot size, minimum lot width and the minimum combined side

yards setback to build a new single family dwelling; area variances for the maximum allowed square footage of accessory buildings and no such buildings shall project closer to the fronting street than the main dwelling to keep three accessory structures built without Permits. This is also a Type II Action Under SEQR. We going to go through the area variance criteria and discuss the five factors that we're weighing, the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. Levin: I don't believe so.

Mr. McKelvey: No.

Mr. Marino: No.

Mr. Scalzo: The second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Bell: No.

Mr. McKelvey: No

Mr. Levin: No, not at all.

Mr. Scalzo: I believe it fits...fits appropriately in the neighborhood. The third, whether the request is substantial? While he may not meet the combined side yards setbacks he still meets the individuals on...I don't believe it's going to be noticeable. The fourth, whether the request will have adverse physical or environmental effects?

Mr. Levin: No.

Mr. Scalzo: Does not appear so and the fifth, whether the alleged difficulty is self-created? It is relevant but not determinative.

Mr. Bell: Yup, self-created but it's not determinative.

Mr. Scalzo: Thank you. Having gone through the balancing tests of the area variance what is the pleasure of the Board; does the Board have a motion?

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

Mr. Masten: I'll second.

Mr. Scalzo: We have a motion to approve from Mr. Levin, a second by Mr. Masten.

Ms. Gennarelli: Okay, Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Mr. Scalzo: The motion carried.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:58 PM)

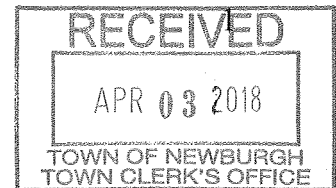
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ZBA MEETING – MARCH 22, 2018

(Time Noted – 7:54 PM)

WILLIAM MIELE

6 TARA LANE, WALLKILL
(2-2-16.2) R/R ZONE



Applicant is seeking area variances (A) for accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building (24 x 50 x 16'9 pole barn).

Mr. Scalzo: Our next applicant is an applicant Held Open from the January 25, 2018 meeting William Miele, 6 Tara Lane in Wallkill seeking (A) area variance for an accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) area variances or area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building which is a pole barn. Welcome back Mr. Miele. Actually last meeting I recall we were waiting on a recommendation from the County which we have since received. Dave is that something I read in now? Yes, I'll read that into the record. The comments of the Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts of the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We do note that the proposed new construction requires multiple and relatively substantial variances in order to be approved and we advise the Town to work with the applicant to consider alternatives that more closely conform to the development standards of the RR Zone. And that is from the office of David Church. How are you sir?

Mr. Miele: How are you?

Mr. Scalzo: I am fine; if you could please again just go over your application for the Board? We actually have a new Member who hasn't heard...

Mr. Miele: William Miele, 6 Tara Lane, Wallkill requesting area variance for an accessory building and to keep up a prior built a...carport.

Mr. Scalzo: Thank you. I'm not sure Mr. Marino if you had a chance to get out there and take a look at that.

Mr. Marino: I did not.

Mr. Scalzo: And as I had mentioned this has been in front of us, it was in front of us in January so I will call to the Board. Mr. Bell do you have any questions on this applicant?

Mr. Bell: No, I don't.

Mr. Scalzo: Mr. McKelvey?

Mr. McKelvey: Jerry, I have a question. Only four vehicles can be in a garage, right?

Mr. Canfield: Correct. Yes, the response to that is yes. I believe Mr. Mattina has submitted to the Board for their review his analysis of our zoning Bulk Use requirement that a...that covers that. In the RR zone under accessory use the Table states a private garage, a carport for not more than four (4) vehicles as an accessory use...a to a single family.

Mr. Levin: Jerry, the house counts as two? And the carport counts as two?

Mr. Canfield: Correct.

Mr. Levin: So that's four there?

Mr. Canfield: Correct.

Mr. Levin: Can I ask you the variance that was...the Code...on the carport it says it has to be ten feet away from the house, do you know why that was written that way? It's a hard question, I'm thinking of fire...

Mr. Canfield: Yes, I believe back in the day when they enacted that that ten foot separation was in light of fire protection.

Mr. Levin: And I'll have a question of Mr. Donovan. If we were to approve that he has a fire would we be liable?

Mr. Miele: Can I...can I quickly say something? That carport is non-combustible it's made of metal material.

Mr. Levin: But a car is combustible it can burn. It can start a fire.

Mr. Miele: This...a...okay, (Inaudible) ...

Mr. Donovan: So Richard it's kind of hard to answer the question because it depends upon the circumstances and I don't know how that...how that would occur but the likelihood is if...if we granted a var...it would have to bear some relationship A, to our variance; B, we would have to be acting outside the scope of our...of our duties as a...as a Zoning Board, you know, and acting a way that's grossly negligent so I don't...I don't...there are no guarantees in life but I don't...I can't envision a circumstance under which this Board could be held responsible for an event that occurred that would...at best tangentially the issuance of a variance.

Mr. McKelvey: How many cars are you looking to garage?

Mr. Miele: I have only two classics I want to put in there but I have other like a...you know, lawn equipment...I have other things I'd like to keep in the accessory building.

Mr. Levin: You're going over the amount by (50) fifty percent you have...You're allowed four if you want two more...

Mr. Miele: No, no two...two that are in the garage will go in the pole barn.

Mr. Levin: Okay.

Mr. Miele: I want to open up my garage so I got my bike and have space that's all. I don't need any more vehicles, the vehicles that I own is what I own. I just want to keep the two in the pole barn and I have some old gas pumps that I restored I'd like to keep them, you know, nice and I'd like to, you know, work...they're just old antiques I'd like to keep them secured and dry.

Mr. Donovan: But if I could, in terms of motor vehicles how many...how many did you...?

Mr. Miele: I'd keep two in that pole barn.

Mr. Donovan: And how many would you have total on the property...do you think?

Mr. Miele: A...two...four...there'll be four...five on the property.

Mr. Donovan: So that'll be four not eight as indicated by the chart, correct?

Mr. Miele: Yeah, don't know where he got eight from.

Mr. Donovan: I just think a mathematical calculation of what could fit but if the request is for one car then the Board could allow one extra car and then it becomes an enforcement issue for Code Compliance if you have more than that...that's all.

Mr. Miele: I...I mean, you know, I mean that's...that's fine...I drive around and I see people with six, seven cars in their houses and it blows my mind that no one enforces that. But yeah, absolutely you want five cars; it would be four cars plus the one.

Mr. Scalzo: Sir, just you understand that we're following the procedure of the Code...

Mr. Miele: I...I understand it a hundred percent. I really do...I...I really do, I get it.

Mr. Scalzo: Regarding building height you're looking at sixteen feet nine inches which is only one foot, nine inches over a...so your only looking for a small variance on that. It is quite a substantial building a...seventeen hundred and fifty-two square feet.

Mr. Miele: No, can I...reiterate? It's 24 x 50 that's twelve hundred square feet. Where do they get the seventeen hundred from?

Mr. Scalzo: Jerry, are they including the other structures here?

Mr. Canfield: I'm not certain what you have in front of you...

Mr. Scalzo: I'm...I'm...

Mr. Miele: It's twenty-one fifty do the math...it's twelve hundred square feet so I don't get where you're getting seventeen hundred from I don't get it.

Mr. Canfield: Can I see that?

Mr. Donovan: Yeah I think their showing existing five fifty-two proposed seventeen-fifty-two.

Mr. Scalzo: The five fifty-two are your existing...

Mr. Donovan: So it's combined.

Mr. Scalzo: ...yeah, your other accessory buildings...

Mr. Miele: What's an accessory building? I only have...I just have a two-car...a two-car garage attached I got a...a carport and then I have the a...proposed twenty-four by fifty pole barn.

Mr. Scalzo: What about the existing shed off...is that still there?

Mr. Miele: Yeah, but that's...that's not for automobile...that's for tools and stuff...

Mr. Scalzo: That...that...that's part of the accessory calculation.

Mr. Miele: Oh, okay so and add them up.

Mr. Scalzo: Yeah.

Mr. Miele: Okay.

Mr. Scalzo: Thank you. So we're looking at twelve hundred on the one that's...for the new.

Mr. Donovan: We always got to keep in mind that's the way the formula works...if he had a larger house... right Jerry? Fourteen is not that big of an issue. Right...I mean that's kind of the...

Mr. Miele: Say that again, I'm sorry?

Mr. Donovan: So there's the formula, part of the formula is based upon the square footage of the house and the lot...

Mr. Miele: Right.

Mr. Donovan: ...so if you had a larger house...in theory...right Jerry? If I recall correctly you could have more...a...larger accessory structures...more square footage.

Mr. Miele: Square footage?

Mr. Donovan: Just something for the Board to...

Mr. Miele: So the larger house the more cars you can own? I don't get this.

Mr. Scalzo: The cars are a different issue. No, just the a...the amount allowed for accessory structures if you have a larger house it's a... (Inaudible) ... I'm going to go to the Board. Mr. Bell, any questions?

Mr. Bell: No.

Mr. Scalzo: Mr. McKelvey, Mr. Levin?

Mr. Levin: No.

Mr. Scalzo: Mr. Masten?

Mr. Masten: No.

Mr. Scalzo: Mr. Marino?

Mr. Marino: Yes, I just want to understand this a...you live in the main house itself right now?

Mr. Miele: Yeah, main dwelling, yup.

Mr. Marino: So on the property there's that house, a garage...?

Mr. Miele: An attached garage.

Mr. Marino: Detached garage?

Mr. Miele: Attached.

Mr. Marino: Attached garage.

Mr. Miele: Yeah.

Mr. Marino: And a storage shed?

Mr. Miele: A shed, yeah.

Mr. Marino: And you want to build a pole barn on the property as well?

Mr. Miele: Right.

Mr. Marino: But you'll still continue to live there yourself?

Mr. Miele: I live there, I've have lived there since 1992.

Mr. Marino: Okay.

Mr. Miele: And I don't plan on leaving...when they bury me in the backyard, that's it.

Mr. Marino: Okay.

Mr. Scalzo: Okay we left the Public Hearing open, correct?

Ms. Gennarelli: Yes.

Mr. Scalzo: Okay, at this time, I would like to turn to the public anybody have any comments regarding this application?

No response.

Mr. Scalzo: Hearing none I'll go back to the Board one last time.

No response.

Mr. Scalzo: Well then who will make that motion for closing the Public Hearing?

Mr. McKelvey: I'll make that motion.

Mr. Bell: Second.

Ms. Gennarelli: Okay I have Mr. Bell and Mr. ...

Mr. Scalzo: Mr. McKelvey made the motion and Mr. Bell...

Ms. Gennarelli: Alright, Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Mr. Scalzo: We will take a break and then we will vote on your application.

(Time Noted - 8:05 PM)

ZBA MEETING – MARCH 22, 2018 (Resumption for decision: 8:58 PM)

WILLIAM MIELE

6 TARA LANE, WALLKILL
(2-2-16.2) R/R ZONE

Applicant is seeking area variances (A) for accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building (24 x 50 x 16'9 pole barn).

Mr. Scalzo: Okay, the next applicant is William Miele, 6 Tara Lane in Wallkill seeking (A) area variance for an accessory buildings shall be ten feet from the main dwelling to keep a detached carport (18 x 20) built without a Permit and (B) area variances for the maximum allowed square footage of accessory buildings, the maximum height, the maximum allowed yard coverage area and the maximum storage of four (4) vehicles to build an accessory building (24 x 50 x 16'9 pole barn). This is a Type II Action Under SEQR as well. We will again hit the area variance criteria the first one being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. Bell: I don't think so. No.

Mr. Scalzo: I hadn't heard any through the discussions for the application...the applicant as well. The second, if there is an undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Bell: No.

Mr. Scalzo: I don't believe so there's a...you know, he's got one of the nicer homes in the neighborhood I'm sure this is going to be in kind. The third, whether the request is substantial? Now while the pole barn may be substantial you really can't see it from the road, he's got the fence along Route 32. You know, my personal criteria of the height, it's really not exceeding the height all that much.

Mr. Bell: Right, it's only one foot.

Mr. Scalzo: A...one six or one nine.

Mr. Bell: Something, something.

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

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Masten: No, I don't believe so.

Mr. Scalzo: The fifth, whether the alleged difficulty is self-created? Relevant but not determinative. And yes, it is self-created but not...

Mr. Bell: Determinative.

Mr. Scalzo: Alright, having gone through the balancing tests...what does the Board have a motion of some sort?

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

Mr. Marino: Second.

Mr. Scalzo: Motion from Mr. Bell, a second from Mr. Marino.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: No

Anthony Marino: Yes

John Masten: Yes

John McKelvey: No

Darrin Scalzo: Yes

Ms. Gennarelli: Okay, that's four yes and two no.

Mr. Scalzo: Motion carried.

Mr. Donovan: Motion passes.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

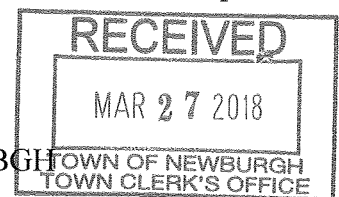
PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:01 PM)

4/3/18
[Signature]



ZBA MEETING – MARCH 22, 2018 (Time Noted – 8:05 PM)

FRANK DARRIGO REVOCABLE TRUST 84 LAKESIDE ROAD, NBGH
(86-1-96) R-1 ZONE

Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone)

Mr. Scalzo: Our next application is held open also from the January 25, 2018 meeting. I will have to ask Mr. McKelvey to assist me in this. I must step aside.

Ms. Gennarelli: Okay, this is Frank Darrigo Revocable Trust and they're requesting a use variance for 185-83 solar farms shall be located in an Industrial District, that's an I Zone to build a solar farm in a residential-1 District the R-1 Zone.

Mr. McKelvey: You could take that mic off; you can pull it right off.

Ms. Gennarelli: Or there is one on the table there, thank you.

Mr. Lease: So I'm Jeff Lease of Lease Real Estate. I'm here on proxy for the Darrigo Family Trust and a...I'd just like to reiterate some of the things we're doing. We're...this is a variance request for community based solar on Lakeside Road, on forty of the sixty acres of the existing farm. It's currently an R-1 Zone and a...community solar or solar is only allowed in and Industrial Zone. This is a use variance only. We're not requesting an area...a...area setback or height variances. And a...the proposal complies with all other aspects of the zone...of the a Code as it is written. At the last meeting in January a fuller explanation of the pro...of the financial proposal as a development under the R-1 Zoning was requested and as compared to a solar farm on the same site we have submitted a comparison prepared by Greg Langer of Valuation Consultants of Newburgh. The conclusion that I think you'll see in both the original form and the addendum is that there is...there is no a...reasonable return on this property except as a solar farm and to further develop that explanation I'd like to introduced Greg Langer of Valuation.

Mr. Langer: Hi, I'm Greg Langer; I'm president of Valuation Consultants at 6 Front Street in Newburgh, New York. I'm a real estate appraiser and have been for...a pretty long time...back in the 70's. A...so I was asked to provide an analysis of this property as a...as Jeff mentioned sixty acres of which forty acres they're proposing to use as a solar farm. The remaining twenty acres will still remain with all the improvements of a few of the scary houses that are on there and the wetlands that are along Lakeside Road and a...lease is proposed with forty acres, I'm just gonna point this out at...maybe you've already...the solar field is for this part. This is the improvements here, down here is wetlands, those are just the existing fields, this is the...the forty acres I'll be discussing mostly.

Mr. McKelvey: The Board Members have visited the property.

Mr. Langer: Okay so I'll cut...I'll cut through that part you already knew that, okay. The subject is in the R...R-1 Zone, part of the property you recall is a DEC environmental contaminated site

that's undergone remediation and has monitoring wells on it. The R-1 District principal permitted uses re...resolve...revolve around single-family residences, municipal dwellings and Town activities. There are other uses allowed via special permits from the planning board including conversion of existing dwellings for multi-family use, cluster developments, membership clubs, recreation facilities, places of worship, parish houses, seminaries, dormitories, related activities, substance abuse rehabilitation homes, community residence for the disabled, marinas, public utility structures, right-of-ways, two-family dwellings and semi-detached dwellings. There are no buildings currently on the forty acres so there's no converting an existing building. There's no known demand for membership clubs, places of worship, and dormitories, that's never been built in the area for many years. The distance from services makes the...an unlikely use for rehabilitation homes and community residences for the disabled. This property sits far back from the highway...for the most part. Marinas are not applicable, two-family, single-family and det...semi-detached dwellings appear to be physically possible. We looked at what sales of other vacant land would be on it for the forty acres a...a...I've listed here seven sales that range from thirteen hundred twenty-five dollar an acre to eight thousand and eighty-eight dollars per acre. We estimate a value of six thousand per acre for those forty acres based on those...an analysis of those sales using...which would be two hundred and forty thousand dollars. We also looked at a possible subdivision of those forty acres, we came up with twenty-eight homes could be built using a formula with thirty percent of the property usually goes towards roads, setbacks and other things and we figured out that based on an analysis of twenty-two lots sold in the Town of Newburgh that they're sale price would be about fifty-seven thousand per lot. We think that the lots closest to where the remediation is...where the old contamination was would probably sell for less but those farther away from it would probably sell for more. Then we did an analysis assuming that it would take two years to sel...to go through the approval process to get all the approvals, one year to put in all the roads and then we would sell out the lots over a period of time. So, I have a...I have a discounted cash flow for as part of my submission that shows what would happen at the end of that period of time you would end up with a value of one hundred and ninety thousand dollars for the forty acres. So our two values are basically two hundred and forty thousand dollars if you sold the land forty acres outright, one hundred and ninety thousand dollars if you developed it with twenty eight lots that were worth fifty-seven thousand dollars apiece.

Mr. Donovan: I'm sorry, could you just run that back so if you did twenty-eight lots at fifty-seven thousand dollars so...

Mr. Langer: Right.

Mr. Donovan: ...so how...how do you....how do you back that down to one ninety?

Mr. Langer: Okay.

Mr. Lease: Well...there...a...I think Greg you may be mis...misstating here...the...there were two analysis done. One where the entire sixty acres was developed and one in...then I...I asked Greg to redo it for just the forty acres.

Mr. Donovan: Right, that's what...

Mr. Lease: So there...there's two different numbers. The two hundred and forty I believe is on the entire sixty acres and the a...the one ninety was just on the forty acres...

Mr. Donovan: Correct.

Mr. Lease: ...is that correct, sorry.

Mr. Donovan: Yup, so...I...just...so I'm...

Mr. Lease: (Inaudible)

Mr. Donovan: ...just trying to figure, so if we get...if we get to...I'm simple minded. Right? So if we said fifty-seven thousand...

Mr. Lease: I gotcha...

Mr. Donovan: ...times twenty-eight yields a number that's a lot higher than one ninety so how do we get down to one ninety and how do you arrive at that value? That's all I'm trying to...fill in that blank.

Mr. Langer: So...as part of that you would have to pay real estate taxes and I have a six year cash flow, if you would pay real estate taxes over the time...over time has the...if you got your approvals you're taxes typically would increase and as you made improvements to the road your taxes would increase but then as you sold lots the taxes would decrease. We figured out that the infrastructure...we averaged a hundred lineal foot per lot as average when you do a subdivision and we estimated the cost to develop the roads at two hundred and fifty dollars per lineal foot which is at the low end, it could be...it could go six seven hundred as but we...so we factored that in so that was seven hundred dollars to put the roads in. We have sales commissions to sell the lots that's at three percent. We have closing costs. We have to pay an attorney and...whoever closing costs. We...we put in ten percent for profit which is just a nominal profit. You wouldn't want to do this unless you made some money on it and then we add the miscellaneous expenses of just thirty thousand. So every year we...we have no income the first three years and then we have income the second three years when we sell the lots off but we have expenses all six years. So what we do is we discount the present worth of a right to receive a certain amount of money down the road. Like if you were going to get...receive fifty thousand dollars five years from now you wouldn't give somebody fifty thousand dollars today for that. You would discount it at...at what you considered a safe rate. In this...in this case we used twelve percent because it's a risky venture. It's not like putting your money in the bank. So we go...after we go through all this calculations we get an income stream and then we discount it and then we come out with a net income for the sale of all those lots and...

(Inaudible)

Mr. Langer: ...in this case was a hundred and ninety thousand dollars. Now the solar tenant is willing to pay eighty thousand dollars a year with two percent annual increases for a twenty-five

year period. So my second analysis...I had a chance to clean it up a little due to your snowstorm that last one so a...my second analysis I said the right to receive eighty thousand dollars annually for twenty-five years with a two and a half percent increase equals one thousand two hundred and ninety-eight thousand three hundred and sixty dollars which we round to a million three. So in this case the economic return on the solar farm is significantly better than the economic return on if you sold the property the forty acres as a whole or if you tried to develop it into twenty-eight lots. That's gonna...that's...that's the economic return a significant difference.

Mr. Lease: May I say as...and as a real estate broker...we've seen a lot of situations like this. In the case of Darrigo Farm...

Mr. McKelvey: Do you want to get closer to the mic?

Mr. Lease: Yeah, it's...it's almost a triple whammy because the R-3 Zone is so expensive to develop right now it...it...because of the constant improvements. When the zone was formulated a number years ago the improvements were not nearly as expensive as they are now. I can tell you when my...my grandfather created Fletcher Drive North, he came in to see Bob Kilpatrick and with a crayon he simply created Fletcher Drive North on piece of paper and was almost approved immediately and then they started laying gravel. The cost of development back in the '40's and '50's was really inexpensive. So I...I think this proposal as...as...as unbelievable as it may seem is rather more typical than you would imagine and the Darrigo property is especially hard-hit in that it has a number of things going against it. Number one it has very little frontage so over the years 84 bisected the property and completely made the long edge of the property completely inaccessible. There are wetlands on one portion and so the usable frontage on this property, I think, is less than a thousand feet. So subdividing the property using the existing roads would...would be the easiest and most convenient way of doing it...it is an impossibility on this. You need internal roads. Add that to the fact that there is a eighty-five foot grade difference between where the barns are in the top of the property and gradually with a solar farm using the top...the highest portions of the property on one side a...and then of course, the...the big issue is the retired hazardous waste site. Something that was unforeseen when it was created back in the '40's a...it was...it was a dumpsite that was a...used for a...farm waste and a...it was contaminated unbeknownst to the Darrigo's back in the '40's and '50's and then testing that was done in the '70's showed that there were...that there was a...heavy metals mixed in there. The Darrigo family at their expense a...cleaned it up and has capped it and that parcel remains unusable for residential development so that eight point six and it...and I say it also affects the balance of the entire property...the...the saleability of the...of the property a...that and that really is the reason that I think that solar is such a...a unique opportunity for this proper...property. It...it kind of makes something which is an impossibility as a...as an R-1 Zone and...and makes it useful and more than that as I...as I explained it will remain a kind of...it will remain as similar to the way it looks today as opposed to being lobbed up into twenty-four or twenty-six lots for residential development. It's consistent with what the neighborhood now knows. Right, I didn't want to cut you off before (Inaudible)...

Mr. Levin: Greg or Mr. Lease, do you a...are you going to have the buildings on the highway? Are they...they remained...all those funny looking buildings?

Mr. Lease: Yes.

Mr. Levin: They're not going on in that area?

Mr. Lease: Right. The barns that were...that have been there are all there. There's...there's no new structures with the solar farm.

Mr. McKelvey: All those buildings have Permits?

Mr. Lease: I don't know.

Mr. Levin: Are there any Violations on the property?

Mr. Lease: You have to know that there's been no structure been put on this...this property since before the Building Department. So everything is grandfathered in. There's no new structures after 1955. So funny looking or not they...they've been there before the establishment of the Building Department.

Mr. Levin: Are there any Violations now on the property?

Mr. Lease: I don't know. I guess Jerry (Canfield) could answer that.

Mr. Levin: He's not here.

Mr. Lease: Okay. As far as I know, no.

Mr. McKelvey: There's one building on...on the property coming up 84 it looks like a fairly new building than the 1950's.

Mr. Lease: You have to understand also that...that...that...they...they are a ag exemption so they are able to run it as a farm. The only useful...this...this has been a farm before it's been R-1. So they're running it as a farm and I believe that there was a barn that was rebuilt but under the ag exemption which they are in they can rebuild barns without the Building Department. I can...I can ask Danny Darrigo...I don't know how that's exactly done. I'm not a farmer.

Mr. McKelvey: I...well I just want to make sure everything is closure.

Mr. Lease: Yeah, yeah, yeah, right and I think if the Building Inspector were here we could...could ask him to say...

Mr. Darrigo: My name is Dan Darrigo, I live 86 Lakeside Road. I'm currently the trustee of the a...of the property. And yeah, we a...a fire January of 2017, my garage burnt down where I fix my equipment so I had to rebuild a new building and I was told that the...you know, I am active farm and I was able to put up a building to replace the one that burned down. So that's the new building you can see from 84.

Mr. McKelvey: Do you do farming on the property?

Mr. Darrigo: Oh, yes...yes sir.

Mr. McKelvey: Okay, just...

Mr. Darrigo: One other point I'd like to make I don't think it was mentioned but a...and I don't know, I don't have any proof on me right now but with our DEC remediation I was told by the engineering consultants that were hired on our behalf that because of that hazardous materials whatever that any person that buys a property on that has to sign off that they know that there is a hazardous material site and that possibly they could be...if something at that site were to become compromised if something should fail whatever and it's got to be re-dug up or whatever that anybody that buys property will...could...could be liable for that, could be partially, wholly or whatever so a...don't know of too many people who would really want to buy any...any of that property with that hanging over their head so... That's what I was told by an engineering consultant. I don't know the environmental laws...

Mr. Lease: Danny you saying...are you saying...?

Mr. Darrigo: That's what I was told...

Mr. Lease: ...for the...for the eight point six acres or the entire sixty?

Mr. Darrigo: I was told that anybody that builds on that property that...

Mr. Lease: On the remaining site...

Mr. Darrigo: On the remaining yeah, that's what I was told. I don't know how true that is. I never bothered to look into it because right now we don't have any plans on...on selling it until, you know, the solar farm came up so whether that weighs in your decision I don't know but once again I don't know the whole validity of that so, okay.

Mr. McKelvey: We asked...it was asked last time you were here, why didn't you get the Town to re-zone the property?

Mr. Darrigo: A...because I was letting Jeff Lease handle it. I...this is beyond me, okay? You know...

Mr. Lease: I don't know, I don't understand the question.

Mr. McKelvey: Well, legally it has to be in an I...a business district.

Mr. Lease: What does?

Mr. McKelvey: The property...for a solar farm.

Mr. Lease: The industrial district, it has to be done in...

Mr. McKelvey: Yeah, industrial, right but it's...it's residential.

Mr. Lease: Correct.

Mr. McKelvey: It was asked last month the question is...and there was a Councilman here and he said that they never followed up on it.

Mr. Lease: That's...that's not true at all. I don't remember that at the meeting. No we did try to change, we...we did make a request of...

Mr. McKelvey: He stated that you didn't follow up. You didn't follow up with the Town.

Mr. Lease: Do you know the name of the Councilperson that was here?

Ms. Gennarelli: Scott Manley.

Mr. McKelvey: Scott Manley.

Ms. Gennarelli: John, I think...wasn't it about changing the solar law?

Mr. McKelvey: Oh, maybe the solar law, I don't know.

Mr. Lease: We...we absolutely did everything we could have done. We...we begged the Town to...to change it and we did follow up. I went to a Town Council meeting where they said, listen, we thought we could change the law and a...we decided that we don't want to...we don't want to go about this, we want you to go in for a variance. The last...the last thing I wanted to do was go for a variance. I can actually written out the way that the law could be changed. It was very simple but we were stopped at a Town Council meeting. And you know it's funny because I heard that...that a...Mr. Manley had made that comment once before from Animal but I...he...he is mis...misunderstood what happened at that meeting. I think the minutes of that meeting as well as a review by the other people at the meeting will show that they specifically asked me not to try to change the law and to appear before this...I did not want to be thrown into this tar pit but here I am. I would have much preferred it. In fact, I knew exactly how to change the law very simply but we couldn't do it. We...we were turned down and that...

Mr. McKelvey: Well I'm just referring to the question that was asked that's all.

Mr. Lease: I didn't hear that...

Mr. Darrigo: I...I don't remember.

Mr. Lease: ...that question from Scott Manley.

Mr. McKelvey: He didn't ask the question. I don't...I don't know who asked the question.

Mr. Lease: No...if...yeah so I...that was something that I heard separately and I...I was incredulous. It is...it is completely unfounded. It is completely unfounded and untrue. It...it contradicts all the notes that were there in at that council meeting when we tried to change it so I done all of this at...at...made a tremendous amount of effort only because I couldn't change the zoning. I...I...really...I thought the easiest thing for us to do was simply change the...change the zoning law so that it included a property with a hazardous waste site. But it was determined at the council meeting that we should not do it that way. That was the...that was the simplest thing to do. Oh boy, I would have loved to have it that way.

Mr. McKelvey: It would have been a little lot easier.

Mr. Lease: Oh sure, what would have been easier is that if...if the zone...if the...if...if the a...let me just retract...if the zoning law had been written so that it included parcels that you could develop a solar farm on that would have been the right way to write it. And it and in my...in my introduction the last time a...we saw and I thought I showed you that there were no available properties of a size large enough to put a solar farm on. So it's in the industrial zone but again that industrial zone is either the airport or the Danskammer property and I have a map here to show you that.

Mr. McKelvey: No we...we understand that.

Mr. Lease: And so there...what you need is a minimum of about ten acres and there are no pro...properties available that were ten acres or larger.

Mr. McKelvey: There's flaws in the zoning law as far as I...I can see.

Mr. Lease: You wanted...want me to be thrown back to the zoning law again?

Mr. McKelvey: No...

Mr. Lease: Oh...oh...oh...oh, okay.

Mr. McKelvey: ...we have to...we have to...we have to abide by this zoning law.

Mr. Lease: Right, right so but that was...that was the...that was the whole thing I didn't really want to go about this because it was going to be a difficult proposal but that...that's how it came about. But the long and short of it is that it's a perfect use for this piece of property. It allows the Darrigo's to continue their ownership of the property after they've gone through a very expensive a...DEC remediation on...on something that they didn't un...they didn't know was happening during the 40's and 50's. A...so that the...the...the had...the...the a...the hardship that has been incurred was not self-created wasn't known this is part of my concluding remarks here a...the proposal for the solar farm is more in keeping with the nature of the neighborhood because this is kind of a large green farm, a buffer that protects all the other neighbors from the noise of 84 a...and that developing it as an R-1 because of the hazardous waste site, cost of the roads and a...and the a...change in the grading would make R-1 really an impossibility on the

site. A...and lastly, a...the hazardous waste site may not be used for residential uses but it may be used for commercial and with DEC approval and they will have to weigh in a...on a...a...on the review process in terms of the construction of the project. They will allow solar before a commercial use over the top of the eight and a half acres that is contaminated. It will have to be ballasted in a certain way so that it doesn't a...puncture the a...the seal that's on top of the hazardous material. What they did is they scraped all of the hazardous material and they put it into a clay lined a...container and then they...they put a top over it. In fact, Beacon is doing that exact same thing right now on about fifteen acres down a...by their sewage plant. They have a methane a...a...waste site down there and they are just completing a...a...a solar farm which is a two megawatt solar farm which will be used by the City of Beacon to offset the a...the cost of running their street lights and a...and a...traffic lights.

Mr. Bell: So my question, I got a question...

Mr. Lease: Yes.

Mr. Bell: ...when you...when you mentioned about going to the Board to request to change the law...?

Mr. Lease: Yeah.

Mr. Bell: ...when I look back in the minutes with Mr. Manley, he said, that you never followed up that's why nothing never happened and your response was, no, that you didn't follow up. I'm reading back in the minutes so...

Mr. Lease: Yeah, but...

Mr. Bell: ...I'm just trying to...

Mr. Lease: Did we...

Mr. McKelvey: That's what I was referring to.

Mr. Levin: Yeah.

Mr. Bell: ...you never...that you were supposed to come back and nothing never happened.

Mr. Levin: Jeff, I overheard that too. You didn't go back.

Mr. Lease: No you heard it from Mr. Manley, but did it...did it happen in this meeting when I was here?

Mr. McKelvey: It's...it's in the minutes...

Mr. Bell: It's in the minutes that of that meeting...

Mr. McKelvey: ...it's in the minutes of the meeting.

Mr. Bell: ...this is the word for word minutes of the last meeting that we had which were about this when...as a matter of fact, when you first brought it forward, you know...

Mr. Levin: I was surprised.

Mr. Bell: ...that was mentioned about that, yeah.

Mr. Lease: Yeah, yeah, yeah. That...that's easily...

Mr. Levin: Evidently that was the easier way to go.

Mr. Lease: What's that?

Mr. Levin: That was the easier way to go.

Mr. Lease: Right.

Mr. Bell: Which would have been easier, you're right...

Mr. Lease: But, but it's completely incorrect and I wish...I wish I had heard that comment I was here for the last one, I didn't hear Scott say that at all.

Mr. McKelvey: Scott sat right over there next to Mr. Canfield.

Mr. Lease: Right, right and I'm sorry I didn't hear that but it is completely...I...I would have preferred to go that way, that was the easier way to go. But I think that if you speak to Mark Taylor, if you speak to Mr. Piaquadio or Andy Zarutskie they were here at the meeting and they said please don't do it this way. And if I need to put a fine point on it the reason why they asked me not to go in that direction, which is why I'm somewhat incredulous, is that you had a law suit, a pending law suit with respect to Troon Development and Troon Development had to go before the variance Board in order to get a use variance as well as area variance and setback variance and the Town Council felt that if I were...if we were to change the zoning law in...after the fact that Troon had gotten turned down by this Board then that would open up Town to an Article...58?

Mr. Levin: 78.

Mr. Lease: 78 and for that reason they wanted us to get turned down or approved in the exact same manner that Troon was turned down. That was...that was the reason for that. Now I don't know how Scott Manley walked away from that meeting with a separate understanding. There was no...I...I said please don't do it this way. And they said, that's our decision, that's the way we want to do it. We want you approved or denied. I...I agree that would have been the simplest way to do it and I...I actually re-wrote the law, put in there exactly how it was going to go,

submitted it ahead of time, was not there. Somehow I don't quite understand and I didn't hear Scott's comment there but I don't understand where that's coming from.

Mr. Bell: Well it was on tape so...

Mr. Lease: I believe it was said...

Ms. Gennarelli: And you answered him.

Mr. Bell: Yeah.

Mr. Lease: What was that?

Ms. Gennarelli: You answered him.

Mr. Bell: Yeah, you answered him.

Mr. Lease: I answered him at that meeting? And what did I say?

Ms. Gennarelli: No.

Mr. Bell: Right here...no.

Ms. Gennarelli: No.

Mr. Lease: I said no.

Mr. Levin: Well what was...what came on tape before that though?

Ms. Gennarelli: Well Scott said...do you want to read that to him?

Mr. Bell: You want me to read the whole thing...there, can you...?

Ms. Gennarelli: I believe he came and gave a presentation at the work shop...

Mr. Lease: Yes.

Mr. Bell: Mr. Lease said, yes.

Ms. Gennarelli: ...and you never followed up on after that...there was no follow up and you said, no.

Mr. Bell: No, yeah, yeah.

Mr. Lease: There was no follow up because I...I was completely shut down. They said you cannot do it, don't do it this way.

Mr. Bell: The Board said don't do it this way?

Mr. Lease: That's correct, the...the council said don't do it this way we want you to get approved or denied in the same fashion that Troon was denied.

Mr. Bell: Right.

Mr. Lease: Do it...do it this way.

Mr. Bell: Right.

Mr. Lease: It made...it made sense it was protecting the Town from an Article 78 and that was it. And that's...that's why we're here. And it would have been so much simpler to do it that way but the reason I'm a little excited is that I mean, I spent nine months doing it or six months from that meeting and to come back and saying you didn't follow it up I...I mean it's almost...

Mr. Darrigo: Are there any? Can I ask a question? Are there any...? Are there any mention in that workshop meeting of...of the...of the council telling Jeff to...to go to...

Mr. Lease: He doesn't have the council minutes.

Mr. Bell: We don't have the council minutes. We don't have that, no.

Mr. Lease: But they...but they do exist.

Mr. McKelvey: They exist.

Mr. Bell: You have to go back to them.

Mr. Lease: But something...Mr. Manley is...I wish he was here because that just...I don't remember that...that exchange. I'm sorry but it is...it is...without calling...

Mr. McKelvey: There's got to be minutes of that work session.

Mr. Lease: Right, but the point is...

Mr. Donovan: Well whatever was said or wasn't said or may have been said you need to decide this application on the merits that's in front of you, so...

Mr. Lease: Right, exactly.

Mr. McKelvey: Yeah.

Mr. Lease: Exactly, perfect.

Mr. Bell: Yup.

Mr. Lease: Okay.

Mr. McKelvey: Did we...Dave...did you accept what they had for financial statement?

Mr. Donovan: Well I mean...Mr. Langer submitted information. I asked a couple of questions, he answered those questions.

Mr. McKelvey: Yeah.

Mr. Donovan: Obviously he's competent...that's a compliment, competent in the field obviously a well-known expert so you take it for what it's worth. You know, if it satisfies you then the criteria...

Mr. McKelvey: Said what it was, I know you asked for it.

Mr. Lease: I think that the bottom line is there are no reasonable return for this property other than a solar farm. That...that's the bottom line, there is no reasonable return on this property except for use as a solar farm. I think the other points of...of the application for a variance are...are pretty straight forward and clear too. It's a great use. The Town of New Windsor is putting one in...in place, they've only got one. The application process for solar farms is...is for all intents and purposes closed so this is...this is it.

Mr. McKelvey: I don't know what their solar law is though.

Mr. Lease: In the Town of New Windsor?

Mr. McKelvey: Yeah.

Mr. Lease: Exactly like yours except...any zone you can place it in with the proper setbacks. That's...it's...

Mr. McKelvey: Well see that's the difference.

Mr. Lease: Dynamite.

Mr. McKelvey: The I/B is the sticker.

Mr. Lease: Exactly. But you...I know...I wish it was there...I wish it had been created with that in mind. I wish it was done like New Windsor which is the same as Hamptonburgh's, is the same as a number of other ones. It was...

Mr. McKelvey: I've seen all of these in the papers.

Mr. Lease: Right. It...it's really great but having said all of that and done all of that the point is is that here...

Mr. Donovan: You really like Hamptonburgh's law?

Mr. Lease: What's that?

Mr. Donovan: Do you really like Hamptonburgh's law?

Mr. Lease: No, no, no, I misspoke when I said...

Mr. Donovan: Did you not like that?

Mr. Lease: No, what happened?

Mr. Donovan: Oh, I wrote it so that's just wondering.

Mr. Lease: But it...it...if...if...it's much more...it's much more wide open and allows for a variety of different places to put it. So it would allow the size of the property to determine where it would allow...

Mr. Bell: To go.

Mr. McKelvey: Do we have any other questions from the Board? Mr. Bell?

Mr. Bell: No, I'm good.

Mr. Masten: I don't have anything John.

Mr. Levin: I'm fine.

Mr. McKelvey: Mr. Marino?

Ms. Gennarelli: Mr. Marino left for a second. He'll be right back I guess.

Mr. McKelvey: He'll be right back. Do you have any further questions Mr. Marino?

Mr. Marino: No.

Mr. McKelvey: Anybody in the audience? Is there anybody in the audience that would like to speak?

No response.

Mr. McKelvey: I guess we'll look for a motion.

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

Mr. McKelvey: Do we have a second?

Mr. Masten: I'll second it John.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Ms. Gennarelli: The Public Hearing is closed.

Mr. Lease: Thank you.

Mr. McKelvey: We can bring Mr. Scalzo back in.

Ms. Gennarelli: Can you send Mr. Scalzo back in? Thanks... Do you want me to read the before proceeding...?

Mr. Scalzo: Yes, please.

Ms. Gennarelli: Okay, 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 you could wait out in the hallway and then we'll call you in very shortly or maybe a little longer.

(Time Noted - 8:38 PM)

ZBA MEETING – MARCH 22, 2018 (Resumption for decision: 9:01PM)

FRANK DARRIGO REVOCABLE TRUST 84 LAKESIDE ROAD, NBGH
(86-1-96) R-1 ZONE

Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone).

Mr. Scalzo: Okay, the final item on this evening's agenda would be the Frank Darrigo Revocable Trust, 89 (84) Lakeside Road, Newburgh seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone). I will recuse myself from voting but I will maintain the microphone. So in this case, Dave this is a...

Ms. Gennarelli: The use variance questions.

Mr. Donovan: Sure but in terms of the SEQR this actually an Unlisted Action. So if the Board is going to move forward and grant the variance. You would need to issue a Negative Declaration as a prerequisite to that. So if you want to go through the balancing tests firsts or you want to address SEQR first that's a matter of the Board. I'm sorry not the balancing tests address the four factors for the use variance.

Mr. Scalzo: Okay, that's a...the order I like to prefer if you don't mind.

Mr. Donovan: Okay.

Mr. Scalzo: We will go through the test the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by New York State Town Law from granting an approval. To allow a use not otherwise allowed in zoning, an applicant must demonstrate to the Board - unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following, for each and every use permitted in that zone. The first is the land cannot realize a reasonable return, in dollars and cents, substantial as shown by competent financial evidence.

Mr. Donovan: If I could just summarize for the Board, so the information that you have in front of you is correspondence from John J. Lease Realtors, dated 24, January, 2018 indicating that they've been marketing the farm for rent and sale without any success. You also have correspondence from; I apologize for mispronouncing, Nicholas Johannets, CPA regarding profit of the Daniel Darrigo Trust and you have a report issued by Valuation Consultants, dated February 8, 2018 and a supplement to that report dated February 22, 2018. Relative to the first criteria those are the items that are in the record before the Board.

Mr. Scalzo: Do we have comment from the Board?

Mr. Bell: Well I mean I think that the...the return information is put out pretty good. It is it can't be and like it's concrete, you know what I mean, a 100% but I mean it was a really good

presentation for it where he did a lot of work and you see that a lot of work was put in to it to a...to try to bring it before us to kind of give us a pretty good breakdown on the return costs and return value sale.

Mr. Scalzo: So Mr. Bell your opinion is the competent financial evidence has been met.

Mr. Bell: Yeah, (Inaudible)

Mr. Scalzo: Yeah, okay (Inaudible)...Mr. McKelvey?

Mr. McKelvey: Yeah.

Mr. Scalzo: Mr. Levin?

Mr. Levin: Yes.

Mr. Marino: Are we voting now?

Mr. Donovan: No, no, no. We're just going through the four...four different criteria.

(Inaudible Members speaking)

Mr. Scalzo: Mr. Marino, I'm just...I'm still on the first question if the applicant has provided competent financial evidence a...that the land cannot realize a reasonable return.

Mr. Marino: I think he has, I think those who spoke in favor of the proposition... (Inaudible)

Mr. Scalzo: Mr. Masten, yes? Second, the alleged hardship is unique and does not apply to substantial portion of district or neighborhood? A...Dave if you could help me...and well I'm not voting on this so I...a but if...if you went through this with the applicants prior in...in an earlier portion...

Mr. Donovan: I thought the applicant has submitted information relative to their position as to why they believe that the hardship is unique and...and forgive me while I read my cheat sheet is unique and does not apply to a substantial portion of the district or neighborhood. The Board has to determine whether a...they accept that position because of a...whatever condition the property may be affected by.

Mr. Scalzo: And you know, I can also remind the Board we have sixty-two days to make this determination...

Mr. Bell: Right, exactly.

Mr. Scalzo: ...so if...if we need more time to a...determine this...so state.

Mr. Bell: Re-read that question one more...

Mr. Scalzo: Sure.

Mr. Bell: ...time.

Mr. Scalzo: The alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

Mr. Bell: Yeah, well, I do recall the last meeting that we had the...there were...there were a personnel here that were from the neighborhood and they were seemed to all be in agreement with this so I don't think it would really affect them much, they seemed all...they all came in with approval as far as from the neighborhood...

Mr. Donovan: Just if I may, I think the evidence that's been submitted relative to this issue is that the uniqueness of the property is perhaps that it was previously utilized as a landfill and does have some DEC a...remediation that was required and completed...

Mr. Bell: Right.

Mr. Donovan: ...I don't know that there is any other areas in the neighborhood that are...that are similarly affected.

Mr. Scalzo: Okay, I'm going to move on to the third question I can come back to the second later or we can determine that at...

Mr. Marino: No I...

Mr. Scalzo: ...further...future time...

Mr. Marino: ...on the...on the second one I would say it's a...been demonstrated.

Mr. Levin: I'll go with that...

Mr. Bell: That's what...

Mr. Levin: ...it was demonstrated.

Mr. Bell: ...where I'm going.

Mr. Scalzo: Moving on to the third criteria, the requested variance will not alter the essential character of the neighborhood.

Mr. Marino: I would agree with that also. I...I...that particular site I...I do know, I'm familiar with it so yeah, it's not going to disrupt the neighborhood.

Mr. Scalzo: Okay.

Mr. Bell: I agree with, I agree.

Mr. Scalzo: And lastly, that the alleged hardship has not been self-created.

Mr. Levin: It has been self-created.

Mr. McKelvey: It has been self-created.

Mr. Bell: It has been self-created.

Mr. Donovan: Well let me just say, recall that in the context of a use variance if the hardship is...if you find the hardship is self-created you must deny the variance. So the situation would be if there was a new property owner a...that purchased this property with knowledge of the zoning that would be a self-created hardship. I don't know what the situation of the ownership here is or whether the Board has knowledge of who may have owned the property for a period of time but if the situation is the property has been owned in a common ownership or a common family ownership over a period of time and was subject to a zone change during that ownership then the hardship would not be self-created.

Mr. Levin: I believe he said that they owned it before zoning.

Mr. Bell: Yeah.

Mr. Marino: But what if we're talking about members of the same family? If...if as he indicated some of these problems occurred back in the 40's and 50's obviously he is not responsible for that.

Mr. Masten: No.

Mr. Marino: So, even though you might say well family did it, he didn't and I don't think he...he should be, I don't think he should be punished for the ills of someone else in the family years ago.

Mr. Donovan: I think the issue relative to this specific criteria is Tony, you own the property, the zone was changed a...a zoning came into place for solar while you owned it right, so it's not self-created as to you. I buy it from you with knowledge or at least imputed knowledge it's self-created to me. So I...I think that's the issue that the Board needs to...I...I don't really know what the ownership is. I think that the testimony in front of the Board is that's been in common family ownership for an extended period of time.

Mr. Marino: Yeah, I think it has been for the same...same family for many, many years.

Mr. Masten: Yeah.

Mr. Scalzo: Keeping in mind all four of these criteria must be met or the Zoning Board is barred by the New York State Town Law from granting approval. Again, do we have anything further from the Board on this application?

No response.

Mr. Scalzo: Hearing none, does the Board have a motion of some sort or would the Board prefer to postpone the decision, which is the still a decision?

Mr. Marino: I would make a motion that we approve (Inaudible).

Mr. Scalzo: We have a motion for approval from Mr. Marino. Do we have a second?

Mr. Levin: I'll second.

Mr. Bell: I'll second, I make a second the motion. I second it.

Mr. Scalzo: I think Mr. Levin had a second in there.

Mr. Bell: All right.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: No

John McKelvey: No

Mr. Donovan: So the vote is three to two, you have five people here so the motion fails. It's a seven member board you needed four affirmative votes so that is a denial, three to two. Right? Did I do my math right?

Mr. Scalzo: That's correct, I abstained.

Mr. Donovan: And...and Mr. Scalzo abstained so that's a denial. Three, two is a denial.

Mr. Scalzo: That being said, I don't need to go through the SEQR requirement.

PRESENT ARE:

DARRELL BELL

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

ABSENT:

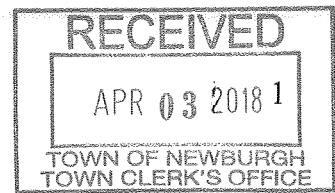
PETER OLYMPIA

ALSO PRESENT:

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

(Time Noted – 9:11 PM)

Bg 3/27/18



ZBA MEETING – MARCH 22, 2018

END OF MEETING

(Time Noted – 9:11 PM)

Ms. Gennarelli: Do you need to ask if we want to approve the minutes from the January meeting?

Mr. Scalzo: Oh I was getting there. That concludes our meeting for this evening. At this point do we have a motion to approve our meeting minutes from our last meeting?

Mr. Bell: I'll make a motion we approve them.

Mr. Scalzo: Do we have a second?

Mr. McKelvey: Yes, second.

Mr. Scalzo: All in favor say Aye?

Aye - All

Mr. Scalzo: Opposed?

Mr. Marino: Abstain.

Mr. Scalzo: Do we have a motion to adjourn?

Mr. Masten: I'll make a motion.

Mr. Bell: Second.

Mr. Scalzo: Motion by Mr. Masten, second by Mr. Bell. All in favor say Aye?

Aye All

Mr. Scalzo: The meeting is adjourned. Thanks folks.

Ms. Gennarelli: Great first meeting.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:14 PM)

4/3/18
B