

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Jim Mehling

Marc Malocsay

Chris Daubert

Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF Frances & John Allen and Frances Lee Galardo - regarding property located at 73 Liberty Corners Road, Warwick, New York, designated on the Town tax map as Section 11 Block 1 Lots 18, 19, & 20 and partially located in both the SL & AI districts for area variances in relation to the lot line change permitting the lot area of Proposed Lot 1 to be 1.594 +/- acres instead of the required 3 acres; and permitting the front of the pre-existing non-conforming dwelling on Proposed Lot #1 to be located 16'8" from the front property line where a 50' setback is required.

Representing the Applicants: Keith Woodruff, Senior Project Engineer

Chairman Jansen: Please identify yourself for the record.

Keith Woodruff: Keith Woodruff from Engineering and Surveying Properties.

Chairman Jansen: Okay. And do you have mailings?

Keith Woodruff: I have them.

Chairman Jansen: Okay.

Mary Garcia: Thank you.

Keith Woodruff: Thank you.

Chairman Jansen: Alright, just tell us what you're proposing to do.

Keith Woodruff: As you detailed, it's basically a lot line change that's currently before the Planning Board for which it's 3 tax lots existing that they're proposing to reconfigure to make 2. One already has a house on it now, but it's to make the other one have the remaining land and also make it buildable. Currently the third lot is in the rear portion of the overall layout, which is within the floodplain of a 100-year floodplain limits, making it pretty much undevelopable. We're still maintaining or actually decreasing the total number of lots, but we're just bringing into conformance as much as possible. One of the variances we're seeking is for the lot area for which three acres is required. That's going to be where the existing house is to remain. We tried to maximize the amount of lot area to get it as close as possible to comply with the zoning requirements. However, due to trying to maintain the existing lot access road to proposed the dwelling to serve Lot 2, as well as maintain the adequate width so that it doesn't get classified as a flag lot so that this way it has full access off of Liberty Corners. It does fit within the neighborhood. There are some substandard, I guess you want to call it lap blocks across the street, so there are other existing smaller lots within the vicinity. As far as improvements, Lot 2 is just going to have the driveway relocated. The farm access—actual access to Liberty Corners—is going to be slid up about 30 feet in order to improve site distance along Liberty Corners, and also the construction or improvements of that farm road to make it a driveway, the construction of the house, a well and septic will also be installed and that all is being currently reviewed by the Planning Board.

Chairman Jansen: Okay. So the only thing the Planning Board really wants us to do is to take a look at the reduction in the acreage and the setback, correct?

Keith Woodruff: Correct.

Chairman Jansen: Any questions at this point? Yes.

Diane Bramich: I have one. *(Diane points on diagram to show Keith Woodruff locations)* Why can't the lot, instead of making this so small, why can't it come up there and make it at least...

Keith Woodruff: They're trying to maintain this location for the house. The further back we go, the more topography. This doesn't have the actual...

Diane Bramich: I'm not saying they move the house, I'm saying the lot line, instead of making it such a tiny little...

Keith Woodruff: Well this is the house...

Diane Bramich: This tiny little piece here.

Keith Woodruff: No, that's the existing condition. So this Lot 1 is actually this 1 1/2 acre and then Lot 2 is going to be this remaining lands.

Diane Bramich: Why can't this be Lot 1 and that be Lot 2?

Keith Woodruff: Because then we would have access through Lot 1 in order to gain access to Lot 2, which would require a 280a variance, whereas this is an as of right, essentially. It's a minimum width to maintain front yard setbacks on Liberty Corners Road. Because otherwise there's no other access on any other portion of the lot. It would create Lot 2 as a landlocked parcel.

Diane Bramich: It is the only means of access if you're coming up the front road

Keith Woodruff: Yes.

Diane Bramich: Yes, so you have a right of way to get to the back. You are going to have to have it anyway if you cut this out.

Keith Woodruff: No, it's going to, so...

Diane Bramich: ...So you're taking this little itty bitty lot that you want to make...

Keith Woodruff: Yes.

Diane Bramich: And this house is going to be on Lot 2.

Keith Woodruff: Yes. So right now the tax parcel is that tiny, tiny little corner up here. The third lot is this in the back of the portion. And then the remaining land is 26 1/2 acres total and we're going to maintain that, but it's just making this 1 1/2 and the remaining is all Lot 2. So it's going to be 60 something feet of width here to maintain and create the access point for the proposed house.

Chairman Jansen: Anyone else?

Marc Malocsay: Not yet.

Chairman Jansen: Okay. I'm going to open up to the public.

Attorney Havens: Before we do, I was just going to ask him a few questions about the responses on the EAF, if we can.

Chairman Jansen: Sure.

Attorney Havens: On EAF question 12b, it identifies that a project is located in or adjacent to an area designated as sensitive for archeological sites in New York State Historic Preservation Office inventory. Could you just address that as to...

Keith Woodruff: Sure.

Attorney Havens: ...what the basis is?

Keith Woodruff: So we've made the initial contact with SHPO in order to see if there was any actual historic value to the property. They requested a Phase One Analysis to be performed, which is currently in the process of being completed.

Attorney Havens: And the Planning Board's going to further review that when...

Keith Woodruff: As part of receipt...

Attorney Havens: ...process?

Keith Woodruff: Yes.

Attorney Havens: Fantastic. Item 13a, "Is any portion of the site of the proposed action or lands joining the proposed action contain wetlands?" That you've already identified; I believe you've already highlighted the back portions?

Keith Woodruff: Yes, back portion.

<Inaudible; both speaking simultaneously>

Keith Woodruff: Yes, which we're not proposing any development within that portion of the property that you can't build up on.

Attorney Havens: And question 15, with respect to endangered species of animals, you've identified Indiana Bat, Short-eared Owl, and Northern Harrier and the Planning Board is reviewing that as well?

Keith Woodruff: Correct.

Attorney Havens: Fantastic. Question 17, "Will the proposed action create stormwater discharge either from point or non-point sources?" And you've identified, 'Yes, it will. Stormwater discharges will flow to adjacent properties.' Could you address that?

Keith Woodruff: So that is because of the construction of the driveway to serve Lot 2 because it's changing it from the farm access road to a paved driveway. It will create additional stormwater flows and then those flows will be either flowing off to Lot 1 or flowing into Lot 2, which ultimately dissipates out through the wetlands.

Attorney Havens: Okay. And again, the Planning Board's going to be fully reviewing all of those issues?

Keith Woodruff: Yes.

Attorney Havens: Alright.

Keith Woodruff: Yes. This is the same EAF that was submitted to the Planning Board.

Attorney Havens: Fantastic. I have no further questions on that.

Chairman Jansen: Diane?

Diane Bramich: Yes, I've got another question. Sorry about that. You are showing that this is going to be deleted?

Keith Woodruff: Yes.

Diane Bramich: Okay, according to your proposed layout, it is not deleted.

Keith Woodruff: Yes. That's just an error line that needs to come off the map, but...

Diane Bramich: And on this one?

Keith Woodruff: Yes. So those are lot lines to be deleted.

Diane Bramich: So this will be...

Keith Woodruff: This will be...

Diane Bramich: It'll only be two lots?

Keith Woodruff: Correct.

Chairman Jansen: Anyone else? At this point, I'd like to open it up to the public. Is there anyone from the public that would like to address this application?

Attorney Havens: No.

Chairman Jansen: No?

Attorney Havens: Alright so we need to discuss seeker. We've already discussed the EAF. We need to take into consideration the fact that any approval if granted on this variance would be subject to final Planning Board site plan conditions. The Planning Board is already declared lead agency status on this application. And so based on the fact that it's a subdivision, it qualifies as a Type 2 action under §617.5c[16][17]. Would someone care to make a motion typing the action as a Type 2 action?

Chairman Jansen: Should I close the public hearing first?

Attorney Havens: Sorry?

Chairman Jansen: Should I close the public hearing first?

Attorney Havens: Nope. I think we should handle the SEQRA and then close it first.

Chairman Jansen: Okay.

Attorney Havens: And then close it rather. So would someone care to make a motion typing the action as Type 2 with no adverse environmental impact?

Marc Malocsay: So moved.

Chairman Jansen: So motioned by Marc. Second?

Jim Mehling: Second.

Chairman Jansen: Second by Jim. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Okay. So I did want to just note that this was referred on August 18th to the Orange County Planning Department under GML 239 referral that was made pending a response. We have not yet received a response on that as of today. And so we can't close the public hearing because we have to wait for the response from Orange County Planning.

Keith Woodruff: Is the town of Warwick part of the agreement with the Orange County Planning as far as certain actions?

Attorney Havens: Yes.

Keith Woodruff: <inaudible>

Attorney Havens: And I specifically discussed with our Orange County Planning representative this application pointing out the fact that it is just a subdivision block line change but because of the creation of a new driveway for a new development parcel, she asked us to refer it.

Keith Woodruff: Okay.

Attorney Havens: We didn't just refer it because it did fall into that gray area where maybe it would qualify for no referral, so I contacted her and discussed the particulars and she specifically asked me to refer it.

Chairman Jansen: So we'll continue at the next meeting.

Attorney Havens: Correct.

Marc Malocsay: I have a question.

Chairman Jansen: Yes.

Marc Malocsay: It kind of goes into what Diane said, and to the best of my knowledge it's never happened before and the Planning Board also didn't do it. The question of a right of way because Diane had asked the question as opposed to making Lot 1 the size that it is and the road access, if it were a lot line change

for Lot 1 to make it bigger and then Lot 2 gets a right of way through Lot 1. Is there even a variance that's needed?

Keith Woodruff: A 280a variance would be needed because of the access through another property.

Marc Malocsay: And a right of way does not automatically...what's the word I'm looking for?

Keith Woodruff: No, unless the right of way is dedicated to the town of Warwick and then it becomes an actual public access street.

Marc Malocsay: Okay.

Keith Woodruff: Then it would be then considered or not required to have the 280a variance, but because you're gaining access solely through another private owner, you would need a 280a variance. We'd still have to be in front of the Board in order to request that.

Marc Malocsay: Okay. Because like I said, Diane had asked the question and it's come up a few times before because not necessarily, there would ultimately be a lot line change, but it would seem that it would just be, I don't want use the word easier, then the variance that's sought isn't needed and is a 280a variance the lesser of two evils for the variance? So...

Keith Woodruff: And I'd still have to request the front yard setback variance as well. So we would just kind of trade off one from lot area versus the 280a variance. Whereas the front setback is for the existing dwelling that's pre-existing non-conforming. And just because we're coming here to seek approval for the lot area, the Planning Board requested that we also request the front yard setback variance as well since we were going to be before the Board anyway.

Marc Malocsay: I understand, okay.

Chairman Jansen: Alright. So as it is it'll be continued to the next meeting until we hear back from the panel.

Attorney Havens: Correct.

Chairman Jansen: Okay, thank you.

Keith Woodruff: Thank you.

PUBLIC HEARING OF OLD FORGE ROAD LLC - regarding property located at 5761 Old Forge Road, Warwick, New York, designated on the Town tax map as Section 83 Block 1 Lot 2, located in a LC district for an area variance for lot coverage increasing the amount of impervious area from the pre-existing non-conforming 36.3% to 37.1 % as proposed, where only 20% is permitted.

Representing the Applicants: Robert Krahulik, Attorney and Keith Woodruff, Senior Project Engineer

Chairman Jansen: Please identify yourselves for the record.

Robert Krahulik: I'm Robert Krahulik, Attorney at Law for the applicants.

Keith Woodruff: And I'm Keith Woodruff from Engineering & Surveying Properties.

Mary Garcia: I'm sorry, can you spell your last name please?

Robert Krahulik: K R A H U L I K.

Mary Garcia: Thank you.

Chairman Jansen: Do we have any mailings?

Keith Woodruff: I had already submitted them, I dropped them off. I have photocopies here if you don't have them in the file.

Chairman Jansen: Okay.

Mary Garcia: Let me just make sure. Yes, they're here.

Chairman Jansen: Okay. So briefly tell the Board what's your...

Robert Krahulik: Sure. In the big picture what's going on here this is the former NYU research facility over in the Sterling Lake area, town of Warwick. The applicant proposes to convert the use into an educational facility that would also accommodate students that would sleep overnight. The application before you tonight involves the parking lot. And there is existing parking on site. The reason for the variance is we're just ever so slightly squaring off some of the corners of the parking lot throughout the facility. And by squaring off the corners of the parking lot, we are technically increasing the amount of impervious space on the property ever so slightly. Rather than reducing the footprint of the existing parking lot, we decided we'll just come and seek the variance to work with the minimus increase in impervious lands.

Chairman Jansen: Okay.

Marc Malocsay: Did this go before the Planning Board then?

Robert Krahulik: Well, before the Planning Board at present, yes. We were referred here by the Planning Board.

Marc Malocsay: So again, we're not part of the Planning Board. I understand a little bit on how they come up with their calculations, but isn't it based on the square footage of the building on how many spaces are needed?

Robert Krahulik: So it's not the number of spaces.

Marc Malocsay: Okay.

Robert Krahulik: There's no issue over the parking lot space count. It's increasing the square footage of the impervious material that is on site.

Marc Malocsay: Gotcha. Okay, good.

Robert Krahulik: Okay?

Chairman Jansen: So originally there was supposed to be a maximum of 20% of lot coverage?

Robert Krahulik: Correct. And that would be the footprint of the buildings and all the parking lot space. And by squaring off the corners of the parking lot, the incremental increase is less than 1% I think, right?

Keith Woodruff: Yes.

Attorney Havens: O eight; that was zero point eight what you had in the— or point zero eight, rather?

Keith Woodruff: No, point eight, point eight per cent.

Attorney Havens: Yes, point eight per cent.

Keith Woodruff: Over seven acres.

Attorney Havens: Right.

Diane Bramich: Didn't it change hands from NYU?

Robert Krahulik: Yes, it did.

Diane Bramich: It was something else.

Robert Krahulik: NYU sold the property.

Diane Bramich: Okay. They sold it to Jehovah Witnesses? They had a...what was in there?

Jim Mehling: It was a research facility.

Robert Krahulik: I don't know.

Diane Bramich: It was something else in the way of...

Chris Daubert: I don't know.

Robert Krahulik: I'm not aware of any intervening use. There might have been an intervening owner but I...

Chris Daubert: It's been sitting empty now.

Robert Krahulik: ...I don't think it is been used for anything since NYU abandoned the property.

Attorney Havens: So the current...

Diane Bramich: I thought they had something before us.

Attorney Havens: The current owner is Old Ford...

Diane Bramich: I know who it was.

Attorney Havens: Old Forge Road, LLC.

Diane Bramich: I know who it was. It wasn't, it was Nickel. International Nickel is the one that I'm thinking of.

Robert Krahulik: Right, and that's a different property.

Diane Bramich: I know where this one is.

Jim Mehling: The International Nickel's far.

Diane Bramich: Yep.

Jim Mehling: Way further down.

Diane Bramich: Yep.

Chris Daubert: This is like a little side...

Diane Bramich: Yep, I remember <inaudible>.

Chris Daubert: <inaudible>

Jim Mehling: It's the access point into the state park office down there.

Board Members: Yes.

Chairman Jansen: I'm still a little puzzled; if the original maximum was 20% of lot coverage and it is now 36.3, what was done to increase it?

Robert Krahulik: Historically it has always been 36%. The facility is, I would venture to guess at least 50, 60, maybe close to 100 years old. And we're not proposing to increase the amount of parking whatsoever, that's just all preexisting.

Chairman Jansen: Okay.

Keith Woodruff: We're just bringing the parking lot into conformance with current code requirements. So one of which is the fire apparatus access. We need at least 26 feet width in order to gain access to the parking or more specifically the lower parking lot. In order to get that 26 feet in width, we have to pave on both sides ever so slightly in order to get that full width. So even if we were to minimize parking spaces, we would still have to widen out that access to the lower parking lot. And that's where the bulk of the impervious surfaces are being created.

Robert Krahulik: It's very difficult to see but if you look at the site pad, we have shaded the areas that we proposed to blacktop resulting in the need for the variance.

Attorney Havens: Yes, with a very light colored dotted line that identifies the calculated square footage of additional impervious space.

Keith Woodruff: Yes.

Chairman Jansen: Okay. Any other questions at this point?

Marc Malocsay: Not yet.

Chairman Jansen: Do you have anything?

Attorney Havens: Yes. I would just like the applicant to address a couple of questions. First of all, I did want to make a note that this application as well was referred on August 14th to the Orange County Planning Department under GML 239 referral because it's within 500 feet of County Road 84. That's pending response as of today. We did not receive a response and I'd like the applicant to just at least touch on and address the potential environmental concerns on EAF form question number 10, regarding whether the proposed action would connect to existing public or private water supply. You've already provided an explanation. Can you just provide that generally speaking, just address what's being done...

Keith Woodruff: Sure.

Attorney Havens: ...with respect to the...

Keith Woodruff: So currently the building has been serviced by what used to be Suez, which is now Viola. So Viola provides the water and sewer to the building itself. We're not improving or expanding the lines that are currently servicing the building. We did get letters back from them as far as providing enough domestic supply for the water and that the sewer is going to require additional improvements to be made. They're currently in the process of doing a third party provided study to see what improvements are required for their sewage treatment plan. But that's all stuff that they have to do on their own and we have to unfortunately wait for them to come back with that information.

Chairman Jansen: So that will then be subject to the Planning Board approval?

Keith Woodruff: Yes.

Chairman Jansen: Okay.

Attorney Havens: And yes, that covers questions 10 and 11. Thank you Keith. And question 15, "Does the site of the proposed action contain any species of animal?" This is or associated habitats listed as

endangered. You've identified Northern Long-eared Bat...and hold on one second...there's three of them I think.

Keith Woodruff: Yes, one was the Timber Rattlesnake.

Attorney Havens: Yes, the Timber Rattlesnake and the Northern Long-eared Bat.

Keith Woodruff: There was a third species, I forget what it is, but yes, we did have an environmental analysis.

Attorney Havens: That was the last application—it was three. This one's two.

Keith Woodruff: Oh.

Attorney Havens: You're good.

Keith Woodruff: But we did do an analysis. We had a habitat analysis. They did not find any roost trees onsite. They also did not find any dens for the snakes. Their recommendation was to put in a fence around the proposed development to limit the passing of snakes during construction and have a snake professional onsite during the construction as well to help move them out of the way, I guess?

Attorney Havens: Alright. And...

Keith Woodruff: And that is all being reviewed by the Planning Board.

Attorney Havens: Thank you. And number 17, you've answered yes to whether the proposed action would create stormwater discharge either from point or non-point sources. "Will the stormwater discharge flow to adjacent properties and will the stormwater discharge be directed to establish conveyance systems run off or storm drains?"

Keith Woodruff: Yes. So...

Attorney Havens: If you could just address that a little bit?

Keith Woodruff: Yes. So because of the additional impervious surfaces that we're creating, we are going to be increasing the amount of stormwater flows exiting the site. There are streams or drainage ditch lines on the northern side along Old Forge Road, and there's also a ditch line on the North or SouthEasterly corner. So those are the two points of source for which the stormwater is going to leave the site, which is just I think we're 0.4 acres of total of raw disturbance. So we're well under the threshold but again, the Planning Board is doing a thorough analysis to make sure that we're not impacting any downstream properties.

Attorney Havens: Fantastic. You just articulated exactly what I was about to say. I think we're ready for an opening of the public hearing if you want.

Keith Woodruff: Just to let you know...

Attorney Havens: Unless you have additional questions.

Keith Woodruff: ...on The Orange County Planning, we did get comments. So the Planning Board did submit to Orange County Planning, we did receive comments back from them. We're still...

Attorney Havens: Oh, I'm sorry, that wasn't forwarded here. So if you already have comments then we can take those into consideration and avoid any further waiving because this is on the same application.

Keith Woodruff: Yep.

Attorney Havens: Fantastic. I'll review this if you want to have everybody cover any other questions.

Chairman Jansen: Any other questions at this time?

Marc Malocsay: No, open it up to the public.

Chairman Jansen: Okay. I'd like to open this up to the public. Is there anyone from the public that would like to address the application? Please come on up and state your name please.

Roger Friedman: I'm Roger Friedman. I'm the Co-Chairman of the Sterling Forest Partnership. We are a longstanding environmental protection group dedicated to the preservation of Sterling Forest State Park. I'm also here as the President of the Homeowners Association of the Sterling Lake Homeowners Association, which is adjacent just up the hill from the property on Old Forge Road. Now I'd like to go back to the question of why there's more part more impervious surface there than is allowed by the zoning in the conservation overlay district. And that is because it's not 100 years old, Mr. Krahulik. The original building there was built in 1924. It was the last building built in what is now the extinct town of Lakeville. It was a schoolhouse, it was fallow. NYU purchased the property I think in 1947, I have the deed. I'm sorry, I have a *copy* of the deed. And they sold the prop—they expanded the property including the impervious surface all before there was a concept of a conservation overlay district or possibly even zoning, I don't know. So when by the time they sold the property to I believe a Hasidic group in about 2 years ago, 4 years ago, the amount of impervious surface was a moot point. I would ask the Board, this Board as well as the Planning Board although I'm not addressing them, that to keep in mind that this is not just an isolated property that should be considered like any other. It's in a highly sensitive area that is in Sterling Forest State Park, a park that was created in 1998 to preserve drinking water for us, for Northern New Jersey, and to provide a recreation area and a wildlife protection area that is unique in the state of New York. It's actually the point—we actually did a study of this—it is the point where there is the most of the highest number of herp species existing in one place in the entire state of New York. That is diversity of species. We would ask the Board to consider that Sterling Lake State Park is deserving of special consideration in any decision that's made about this property. Can I address a question to Mr. Krahulik?

Chairman Jansen: Sure.

Roger Friedman: Do we know what sort of school this is going to be? Is this going to be a hotel or something like that?

Robert Krahulik: I don't know what that is. It's going to be grades I think 6 through 12.

Roger Friedman: Six through twelve. Now a hotel is an adult center. So we wonder if the children are, if it's going to be an overnight school, who's the parking for? We wonder, what will...well we just wonder how the property is going to be used beyond the window dressing of the proposal or anything. So I thank you. Thank you all.

Chairman Jansen: I don't know how the rest of you feel, but I think that should be addressed to the Planning Board.

Attorney Havens: That would be correct. Yes.

Chairman Jansen: Anyone else?

Attorney Havens: With respect to your questions and concerns, while we appreciate you coming here and sharing them, since this is being the overall site plan and so forth is being supervised by the Planning Board, the intended use is a permissible use within the zoning district. Even though it may be in a unique location, it's nonetheless a permissible use for the property. And so they're not seeking any sort of special use permit in order to permit this use. It's permissible as of right for that particular parcel. And so any limitations or concerns about how it's to be used or any mitigation on that since it is being fully reviewed by the Planning Board, would be more appropriate to address it to the Planning Board.

Susan Scher: With respect to the, one of the issues...

Diane Bramich: We need your name ma'am.

Susan Scher: Excuse me?

Diane Bramich: Your name.

Susan Scher: Susan Scher.

Diane Bramich: Thank you.

Susan Scher: And I'm Co-Chair of Sterling Forest Partnership, resident of Clinton Woods in Tuxedo. It was just today that several people received a notice that there in fact was work happening in the Planning Board, a letter went to one resident of Sterling Pines.

Roger Friedman: <inaudible>

Susan Scher: No, but I'm just saying because there was not a lot of publicity to people who lived in the area or to people who are the overseers of Sterling Forest Park. We had found out about it today.

Jim Mehling: Gotcha.

Susan Scher: And so if you were the Planning Board, we'd be here. So...

Jim Mehling: Understood.

Chairman Jansen: Anyone else?

Marc Malocsay: I have a couple of things because they were brought up. The one you can help me out just a little bit. Old Forge Road, the calculations on the pavement was that included in those calculations for the parking areas?

Keith Woodruff: No.

Marc Malocsay: Why?

Keith Woodruff: That's a town road so it's outside our control. If we added that...

Marc Malocsay: It's your property.

Keith Woodruff: Well, and that's the thing. So we also don't, the town has a right of way 25 feet from that center line. So they could in theory, come back and pave more. So if they decide to come back and pave more property, they would then have to come back to the Zoning Board to get a variance for an exceedance of the existing pavement.

Marc Malocsay: So what I'm confused on is that usually on an older subdivision property like this one, when it comes before the Planning Board, one of the first things they do, and we can call it a taking, but they usually move that line to their 25 foot right of way making the property smaller. So the reason I bring that up, if they made a mistake and didn't see it yet, any variances we give right now are mute.

Robert Krahulik: Well, that hasn't come up yet. It's an excellent point but that hasn't come up yet.

Marc Malocsay: Just because it, but it very well be, because hardly ever do we see these anymore because lots have changed hands numerous times. And to answer your question, we use like 1966 is when we first had some of our zoning, but '72, '73 is what we go back to to bring us to where we can say something was built after that and was it built to whatever. So I think it's an important question before we go on that if they're planning on doing that and taking that property from the Planning Board, it changes the variance that we're giving. And the second one...

Robert Krahulik: It doesn't change the variance, it changes the ratio.

Marc Malocsay: The degree. The degree of the variance because now the property...

Robert Krahulik: It changes the ratios but it doesn't change the work that we're proposing.

Marc Malocsay: Correct. Okay. The other one and I asked this question initially and then it was kind of brought up again that we understand that you're just squaring off and making it bigger. But in order to

not have to give the variance, did the Planning Board come up and say, "For the size of the building, you need that many parking spots"?

Robert Krahulik: No.

Marc Malocsay: So again, for us the whole idea is that we can find a way and not give a variance if it's not needed. You have a right to ask for one. But if all of a sudden we find out that you have 10 extra parking spaces that you could rip up and then not need the 1%, everybody's happy, you don't have to see us, just go to the Planning Board.

Robert Krahulik: I think the code describes a minimum number of parking spaces not a maximum.

Marc Malocsay: Okay. But again, you're asking us for a variance, and if the minimum you need is this, and then just because you want to put in 10 more need a variance to me anyway, is...

Robert Krahulik: But we're not adding more.

Marc Malocsay: I understand. But because this is so old and because of the whatever calculations they had at the time for all I know, this size building of what you're proposing requires 10 more parking spots. So if there's a reason that this has to go forward now I'd just like you to go back to the Planning Board to ask these questions so that we're not giving you a variance to find out we didn't have to give you one or giving you a variance and finding out we have to change it.

Robert Krahulik: Well at this point in time they referred us to you because they said 'you need a variance' and that's why we're here.

Marc Malocsay: And they never make mistakes.

Robert Krahulik: If they make a mistake we may be revisiting you but for now they're refusing to proceed with the application until we come to you and obtain a variance.

Marc Malocsay: Okay. But for that reason if it goes to vote, I'm going to say no. So just throwing it out there. Because we haven't looked at the other possibilities of you know the question that we're not going to ask but we should ask is, 'did you try buying land from the State of New York and the park?' Because then that would eliminate problems if the State of New York would say yes. But we kind of already know that that's not going to happen. But again, it's the first question we usually ask. Because I never saw anything that's completely surrounded by Palisades Interstate Park Commission.

Chairman Jansen: Okay anything else?

Board members speaking amongst themselves.

Attorney Havens: Hey, Jim.

Jim Mehling: Yes?

Attorney Havens: They already got referral. So...yes.

Jim Mehling: Sorry if I could...so on the map on the drawing here, it states that according to the intended use as a state accredited private school and the number of spaces provided, 29 teachers, we prorated 63 spaces total that they're requiring or thinking they're going to need for the building. But there's 106 spaces provided. So I understand the access point to the fire equipment on the lower lot...

Marc Malocsay: Clearly.

Jim Mehling: Okay? So, but I don't know, squaring off the upper, it just seems like a lot of unnecessary work. You could actually win some hearts and minds by clearing some of those spaces and returning it to

green and make it pervious material. We're not putting a bow on a pig here, but just saying it's a thought...just by your own calculations.

Robert Krahulik: I understand.

Jim Mehling: And I mean it's...

Robert Krahulik: I understand the thought prostheses. It's very hard to predict how many parking spaces.

Jim Mehling: No, I understand. I'm just basing it off of the information you provided on the drawing.

Robert Krahulik: I'd hate to start removing parking spaces...

Jim Mehling: Right.

Robert Krahulik: ...and then see cars parked out on Old Forge Road because we eliminated spaces that already existed.

Jim Mehling: I know but if the calculations here are correct and you're saying 20 visitors based on that... you're right, for a large event or something like that they could always contact the State.

Robert Krahulik: You don't know how many visitors are going to be there. That's our best guesstimate.

Jim Mehling: Knowing the areas I did. I was born in Tuxedo. I've lived there my whole life until I moved here 30 years ago. I hiked, camped, fished, and used Sterling Lake and that whole area. I know it like the back of my hand. That lower parking lot is degraded to the point where basically they're going to have to tear it all up and repave it anyway. There's no patching that, it's shot. The upper one is slightly better, but again, that's my question on it. I'm just wondering why, if the drawing here states they're only going to need 68, hey, I'll give you an extra 10. It's 70. You're still proposing almost 40 spaces more than by your own calculations today, I know it can be changed.

Marc Malocsay: Our notes can go before the Planning Board or I'll go to the Planning Board meeting and talk to them beforehand.

Jim Mehling: That does make more sense.

Marc Malocsay: And unless the blacktop trucks are in the driveway now ready to go...

Robert Krahulik: No, that's not the case.

Marc Malocsay: Okay.

Robert Krahulik: We could remove two parking spaces and we're going to be in compliance. It just seems...

Marc Malocsay: Yes.

Robert Krahulik: This is what the Planning Board asked us to do and that's why we're here.

Marc Malocsay: And again, they've never made a mistake.

Robert Krahulik: We may have made a mistake in our calculation of the number of parking spaces we're doing.

Marc Malocsay: Right. So we're just asking the review before we give something to find out that I can't be streaming a movie tonight because we have to come back.

Jim Mehling: Depends...

Marc Malocsay: Depends on the movie.

Chairman Jansen: So where do you want to go?

Robert Krahulik: We'll take a vote. I can handle a no, I can handle a yes. I can't go back to the client and say we didn't get a decision.

Marc Malocsay: Yeah but you could also be going back with a denial.

Robert Krahulik: I understand that.

Marc Malocsay: Okay.

Keith Woodruff: And then we can change the map and reduce a couple parking spaces.

Marc Malocsay: Okay.

Chairman Jansen: Alright. And can I close the public hearing?

Attorney Havens: No.

Chairman Jansen: No, you have to do that first.

Attorney Havens: So the Zoning Board needs to type this action even though the Planning Board's reviewing it for purposes strictly of the area variance being requested. I've reviewed it and it qualifies as a Type 2 action under Seeker 617.5 Subsection C2. And so I would like to ask if someone would care to make a motion typing the action as a Type 2 action with no adverse impact?

Marc Malocsay: So moved.

Diane Bramich: Second.

Chairman Jansen: Motioned by Marc, Second by Diane. Any discussion? All in favor? Any opposed? We have none.

Attorney Havens: All right. Could we actually get a verbal response on that question from all the Board members? Just for the record?

Marc Malocsay: Oh sorry, yes.

Jim Mehling: Yes

Chris Daubert: Yes.

Diane Bramich: Yes.

Attorney Havens: Okay. So we do have unanimous on that for the resolution typing it as a Type 2. Thank you. Before we go too much further I wanted to point out the applicant's engineer provided to us a response from the Orange County Department of Planning on this particular application. It's the same application that's before us with the exception that it's not specifically variant. And the Orange County Planning Department has addressed issues including traffic, landscape plan and signage, lighting, community facilities, lot consolidation and biodiversity, and made specific recommendations with respect to all of those. Does any of the members of this Board have any questions or concerns about whether or not the Planning Board sufficiently reviewed this?—the Orange County Planning Department, rather?

Marc Malocsay: No concerns.

Jim Mehling: I'm alright.

Attorney Havens: So I think we can accept the Orange County Planning referral response as a response that also satisfies our requirements to meet the GML 239 referral requirement. So in addition, this particular parcel is within the ridgeline overlay, which means it's subject to consideration of the visual EAF under §164-47.1F regarding ridgeline overlay visibility. So if this were any normal new development or reconstruction, we would need to review the visibility of the parcel from a multitude of different specific locations, whether or not it's visible from various areas that may be of concern. So I would like to run through this and I'm going to ask questions and I'd like the Board members here to address their concerns as to whether or not they believe the project would be visible from any of these particular sites.

Marc Malocsay: If I may?

Attorney Havens: Yes.

Marc Malocsay: Only in relation to what's before us.

Attorney Havens: Correct.

Marc Malocsay: So, because otherwise we haven't...

Attorney Havens: We're not redoing the site planning.

Marc Malocsay: Exactly.

Attorney Havens: Correct.

Marc Malocsay: So just, and which is less than 1%...

Attorney Havens: Right.

Marc Malocsay: ...of...Okay.

Attorney Havens: Yes. So what we're talking about is the nominal little edge increase that they're looking to put there. Not...

Marc Malocsay: I understand. Right.

Attorney Havens: ...everything. So would the project be visible from a parcel of land which is dedicated to or available to the public for the use enjoyment or appreciation of nature or manmade scenic qualities?

Board Members: Yes.

Attorney Havens: Okay. And we know that it's surrounded, immediately adjacent to a park, so we know that that's going to be within a quarter mile distance. Would it be visible from an overlook or parcel of land dedicated to public observation, enjoyment and appreciation of natural or manmade scenic qualities?

Board Members: Yes.

Attorney Havens: Same thing. A site or structure listed on the national or state register of historic places?

Marc: It...

Diane: There is the Iron Forge workers are down in that area.

Jim Mehling: Iron Forge Works at the bottom of the hill. There's two <inaudible> hills...

Diane Bramich: Yeah, yeah, down...

Jim Mehling: ...that loop down around, towards down...

Diane Bramich: That's all in that area.

Attorney Havens: So would...

Diane Bramich: That's historic.

Attorney Havens: ...the parking improvements be able to be seen from the bottom of the hill?

Jim Mehling: No.

Diane Bramich: No.

Jim Mehling: No.

Attorney Havens: Okay.

Jim Mehling: No.

Attorney Havens: I mean, in the winter?

Jim Mehling: Not even that.

Attorney Havens: Right.

Jim Mehling: Well, I'm saying with the leaves off, I doubt it.

Attorney Havens: From state parks?

Board Members: Yes.

Jim Mehling: It's right there.

Attorney Havens: Within one quarter of mile?

Board Members: Yes.

Attorney Havens: State Forest preserve? It's essentially the same thing.

Diane Bramich: Same thing.

Attorney Havens: National Wildlife Refuge or state game refuge,

Diane Bramich: Actually...

Attorney Havens: Sterling Forest...

Diane Bramich: ...Sterling...well...

Attorney Havens: I don't think it is. Oh, well actually they do allow hunting.

Diane Bramich: They do, they allow hunting.

Attorney Havens: They do allow hunting in Sterling Forest.

Diane Bramich: They do. But they also have—there's restrictions on killing the snakes in that area.

Jim Mehling: There's a portion of Sterling that's dedicated as the Door Astute Wildlife Reservation.

Attorney Havens: I understand. Since it's immediately adjacent to the improvement, then I would...

Jim Mehling: No.

Attorney Havens: Is it—I'm sorry?

Jim Mehling: I'm sorry, what was...?

Attorney Havens: I was saying it's immediately adjacent to the improvement.

Board Members: Yes.

Attorney Havens: Does everybody feel that that's essentially the same thing, within one quarter mile?

Board Members: "Yes", "I would say so", "it's right there".

Attorney Havens: National Landmark or other outstanding natural features?

Diane Bramich: That would be the only thing I <inaudible>.

Chairman Jansen: Yes.

Robert Krahulik: I don't think that has national...

Diane Bramich: <inaudible>

Attorney Havens: But it's a question not of proximity, but actual visibility for...

Diane Bramich: No

Jim Mehling: No

Attorney Havens: ...the proposed action—for the proposed improvement.

Diane Bramich: No.

Attorney Havens: Okay. National Park Service Lands?

Jim Mehling: No. Palisades is Jersey, but it's not national.

Marc Malocsay: Yeah.

Jim Mehling: It's not a National Park Service; PIP is not part of the National Park Service that I'm aware of.

Marc Malocsay: Okay.

Attorney Havens: Okay.

Jim Mehling: It's New York, New Jersey.

Attorney Havens: Rivers designated as National or State Wild Scenic or Recreational Rivers?

Diane Bramich: No river.

Jim Mehling: No river.

Attorney Havens: Any transportation corridor of high exposure such as part of the interstate system or Amtrak?

Diane Bramich: No.

Chairman Jansen: No.

Attorney Havens: A governmentally established or designated interstate or inter-county foot trail or one formally proposed for establishment or designation? Hiking trails.

Jim Mehling: Yes.

Marc Malocsay: Yeah.

Jim Mehling: The inter-county hiking trails.

Diane Bramich: Definitely.

Attorney Havens: And approximate distance? We have zero to one quarter mile, one quarter to a half, one half to three miles.

Board members discussing the question amongst themselves

Jim Mehling: Well there's hiking trails directly across the street from that facility down towards Shadow Lodge.

Attorney Havens: That would probably be within a quarter mile then you'd say?

Jim Mehling: Yes, it's right there.

Attorney Havens: A site, area, lake, reservoir or highway designated as scenic?

Diane Bramich: Sterling Lake.

Attorney Havens: Is that parking lot visible from Sterling Lake?

Jim Mehling: No, you can't see that from Sterling Lake.

Diane Bramich: No.

Attorney Havens: Okay. Municipal park or designated open space?

Marc Malocsay: Yeah. Palisades Interstate Park.

Diane Bramich: Yeah. Palisades.

Attorney Havens: That's the same thing. This is semi-redundant, but that's the form that they created for us. A county road?

Marc Malocsay: Long Meadow Road is...

Diane Bramich: Long Meadow.

Attorney Havens: Yeah. The one on the backside; would it be visible?

Jim Mehling: Yes, it's right there directly above the back of the property. You can see the building, you can see the rear <inaudible> building, you ride right by it. It's a small shot of it.

Attorney Havens: Okay, so within a quarter mile of that?

Diane Bramich: Yes.

Jim Mehling: Yeah.

Attorney Havens: State Road?

Diane Bramich: 17.

Jim Mehling: That's county.

Diane Bramich: Yeah.

Marc Malocsay: Yeah.

Attorney Havens: Okay. And a local road, that would be the town road that it sets.

Jim Mehling: That's the Old Ford Road, yes.

Attorney Havens: Is the visibility of the project only seasonal, meaning it's screened by summer foliage, but visible during other seasons?

Diane Bramich: It's visible.

Jim Mehling: Yes. Obviously a higher degree of visibility when there's no leaves on the tree.

Diane Bramich: It's right there on the road.

Attorney Havens: Are any of the resources that we checked in question one used by the public during the time of year, which the project will be visible?

Diane Bramich: Yes.

Attorney Havens: Yes. Okay, so now we have to describe the surrounding environment. We have to identify whether within one quarter mile or within one mile. And we've only checked off everything within one quarter mile because it's either immediately adjacent or it's not close enough to be worried about, it can't be seen. So within one quarter mile, we're supposed to check off what constitutes the surrounding development? Is it essentially undeveloped?

Marc and Diane simultaneously: Yes.

Jim Mehling: We have houses built on the road across the street that line a partial line along the shore of Sterling Lake.

Chairman Jansen: Yeah.

Jim Mehling: Diagonally across from that is the old Lodge, which was part of the conference center originally. That whole area is how small single family homes was part of a conference center. And that main lodge area now, I'm not even really sure what the function is of the old lodge, if it's used or...

Robert Krahulik: It's a long story.

Jim Mehling: I got it as usual, it's fine. And you get the Frank Lautenberg Welcome Center for the state park right down below that lower lot. And then there's a parking lot across from that. And then below that it just winds down towards Sterling Lake and the historic walkway area you can do. And then there's hiking trails that link all around the lake and go up over towards Greener Lake Mountain and link in through the whole area.

Attorney Havens: Is the surrounding environment generally forested?

Jim Mehling: Yes.

Diane Bramich: Yes.

Attorney Havens: Agricultural?

Board Members: No.

Attorney Havens: Suburban residential?

Board Members: Yes

Attorney Havens: Within one quarter mile? Is that what you were just describing...

Diane Bramich: Yes.

Board Members: Yes.

Attorney Havens: ...about the development right across the street?

Jim Mehling: Right.

Attorney Havens: Industrial?

Diane Bramich: Yes. There's other, you got other areas down there that have...

Attorney Havens: Within a quarter mile or...

Diane Bramich: Within a quarter mile? No.

Jim Mehling: No, not even close.

Diane Bramich: Sorry.

Jim Mehling: No.

Attorney Havens: Okay. We didn't check off anything in one mile, so it's not relevant.

Diane Bramich: Okay.

Attorney Havens: Commercial?

Jim Mehling: I think the state park really counts as a commercial operation. It's not a for profit, so I don't think that, no.

Attorney Havens: Okay.

Jim Mehling: I would have to say no.

Attorney Havens: Urban, I certainly don't...

Chairman Jansen: No.

Attorney Havens: ...think it's urban, right? Everybody agrees that's not urban?

Diane Bramich: Yes, we agree.

Attorney Havens: River, lake, or pond within one quarter mile?

Diane Bramich: How close is the lake? The lake's not that close.

Jim Mehling: You're talking a good half to three quarter of a mile, at least down the road.

Chairman Jansen: Yeah, or more.

Jim Mehling: At least. No way, not even close.

Attorney Havens: Cliffs or overlooks within one quarter of a mile?

Chairman Jansen: I don't know.

Jim Mehling: I don't think so. I honestly...that road, it slopes gently on the other side opposite from where the applicant's property is, it kind of slopes up and rolls up into the woods. So there's no cliffs or overlooks there per se.

Attorney Havens: Designated open space?

Jim Mehling: Yeah.

Diane Bramich: Well, yeah, parks.

Jim Mehling: Right, so a park. They asked that already.

Diane Bramich: Right.

Attorney Havens: Is the surrounding environment flat, hilly, mountainous, or other?

Jim Mehling: Hilly.

Diane Bramich: Hilly and mountainous.

Marc Malocsay: Yeah.

Attorney Havens: Hilly and mountainous. Okay. Are there visually similar projects within any specific range of distances—one half mile, one mile, two miles or three miles—visually similar projects within that distance?

Diane Bramich: Visual? No.

Jim Mehling: No, it's a pretty unique structure.

Attorney Havens: With respect to exposure, the annual number of viewers likely to observe the proposed project is? This is honestly just, I'm assuming a guess, I don't think any...

Attorney Havens: You guys traffic check?

Several speaking simultaneously <inaudible>

Jim Mehling: ...what the visitor log is down...

Attorney Havens: You have any rough estimate from that traffic study...

Keith Woodruff: I don't have...

Attorney Havens: ...as to what your annual viewers might be?

Keith Woodruff: I don't have the report in front of me just to say exactly what the number is. It wasn't a large amount. I do know that they said that the old Forge Road was rated for a thousand vehicle trips, but we're nowhere near that threshold. So I don't know what that would translate to as far as annual trips.

Attorney Havens: Okay. I don't know that we have that information specifically, but it is kind of like a quiet country road up in the hills. It's not like it's Route 17 or something.

Keith Woodruff: No.

Attorney Havens: So the context, the situation or activity in which the viewers that would see this are engaged while viewing the area of the proposed action. We need to identify the type of activity and whether the frequency of that activity would be daily, weekly, holidays and weekends, or seasonally. So with respect to activity, people traveling to and from work, would those type of viewers view the proposed improvements daily, weekly, holiday weekends, or seasonally with respect to commuters traveling to and from work?

Marc Malocsay: That's not a...

Jim Mehling: It's not necessarily a through road...

Marc Malocsay: Yeah...

Jim Mehling: ...it's more a side road.

Diane Bramich: It's a side road.

Jim Mehling: It's a side road.

Diane <inaudible>

Jim Mehling: Yeah, when they realigned Long Meadow...

Diane Bramich: Yeah.

Jim Mehling: ...that kind of got kicked out of the loop.

Diane Bramich: Right.

Jim Mehling: That was the original road way back in the day.

Diane Bramich: Yep.

Jim Mehling: But then they straightened it out and that just became an outlier loop that connects at both ends. So to be honest...

Attorney Havens: Low probability on that one?

Jim Mehling: For a regular commuter? Except for the people that are living across the street, no I don't think...it's more of a recreation.

Attorney Havens: That's fine. People involved in recreational activities: daily, weekly, holiday weekends, or seasonally?

Diane Bramich: All the time.

Marc Malocsay: All the time.

Jim Mehling: I'd say daily.

Diane Bramich: It's all the time.

Marc Malocsay: Yeah.

Attorney Havens: Routine travel by residents?

Jim Mehling: How many? I don't know how many folks are.

Roger Friedman: Not a lot of residents, but yes.

Attorney Havens: Would that be weekly, daily?

Roger Friedman: Daily, daily.

Attorney Havens: Can it be seen *at* a residence...from any one particular residence?

Roger Friedman: I would say no.

Jim Mehling: I would say no. Yeah.

Marc Malocsay: Yeah that's no.

Attorney Havens: And at a work site,

Jim Mehling: Unless they're doing work on the road...

Marc Malocsay: On the road or towards the road, yeah.

Jim Mehling: Or down...no, I would've to say no honestly.

Attorney Havens: Okay. Alright, we have covered that. Again, just want to clarify for you guys. I'm not trying to give you a hard time but even though it's a Type 2 action, and it's not ordinarily subject to seeker review because it's in ridgeline overlay, the visual EAF is a requirement within the ridgeline overlay

parameters. So we just needed to go through the exercise of taking this into consideration for the Board to be able to make a determination as to whether or not it's going to have a potential impact on scenic views and so forth, as required under the ridgeline overlay regulations.

Robert Krahulik: Dangerous precedent; you have to do this for every single variance application involving a residential structure? It's in the ridgeline overlay district, which...

Attorney Havens: It's my reading of the code.

Robert Krahulik: I'm not the Board.

Attorney Havens: My reading of the code.

Robert Krahulik: I don't think this was ever done before. Swimming pool, shed, addition to a house...?

Attorney Havens: So we have received the Orange County Planning comments, Zoning Board needs to determine whether a site inspection is necessary?

Marc Malocsay: No.

Attorney Havens: Okay.

Marc Malocsay: Other than what we've already done, no.

Attorney Havens: Zoning Board to consider whether any specific use or any other restrictions are to be imposed, keeping in mind that the Planning Board is doing site plan review on this.

Marc Malocsay: Mm-Hmm. <Affirmative>

Chairman Jansen: Leave that up to the Planning Board.

Jim Mehling: That's the Planning Board.

Attorney Havens: Alright. Then I think we're ready to close the public hearing unless there's any other comments?

Chairman Jansen: Any other comments?

Roger Friedman: Just one—on the question of bodies of water, there are <inaudible> pools right behind that parking lot. In fact, leaving the parking lot, you have to step over a seasonal stream.

Diane Bramich: It's seasonal.

Chairman Jansen: If not I'll close the public hearing.

Attorney Havens: All right; so reviewing the five criteria to be considered for granting of an area variance, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the variance requested? The applicant stated no. And reasons given is "previous use of the property exceeded lot coverage to construct a parking area. Proposed increase of impervious coverage as to widen portions of the parking area to bring into compliance with required fire code regulations." With respect to second criteria, I'm sorry, I want to ask the Board whether or not they think that an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the variance requested.

Marc Malocsay: I'm going to go with what they said. Only because it is that 1% increase. So even though so much on the ridgeline overlay was you might say against, it is such a small percentage. So I'm going to go with what they said in the answer "no".

Attorney Havens: Anybody else have any comments on that?

Chairman Jansen: Same.

Attorney Havens: So we're in agreement that the answer to the first question is no?

Marc Malocsay: Correct.

Diane Bramich: Correct.

Attorney Havens: On the second question, can the benefit you seek be achieved by some other feasible method other than the variance? The applicant stated yes. And the reason for their answer is "property could comply with lot coverage requirements by removing impervious areas within the existing parking areas." What's the Board's consideration on this, a yes or no?

Marc Malocsay: That's what we said, yes.

Jim Mehling: Yes.

Marc Malocsay: That then a variance would not be needed if they remove some of that existing parking.

Diane Bramich: If they remove some of the...Yep.

Attorney Havens: The Board in agreement on that?

Board Members: Yes.

Attorney Havens: Question number 3: Is the requested variance substantial? The applicant states no. And reason for the answer is, "Existing property is currently providing 36.3% lot coverage where proposed action would increase lot coverage to 37.1%, an increase of 0.8%.

Marc Malocsay: That is correct.

Attorney Havens: Everybody agree that's a no?

Diane Bramich: Yes.

Attorney Havens: And will the proposed variance have an adverse effect or impact on the physical or environmental condition in the neighborhood or district? The applicant states no. And the reason for their answer: "Areas to be disturbed for the construction of the additional impervious surfaces were previously disturbed during initial construction of the buildings and associated improvements."

Marc Malocsay: I don't necessarily agree with that answer other than it's so small.

Chairman Jansen: Yeah.

Marc Malocsay: But agreeing with what they said but not for the same reason.

Attorney Havens: So are we going to say this is a yes or a no on whether the proposed variance would have an adverse effect or impact on the physical or environmental conditions?

Board Members: No.

Attorney Havens: And is the alleged difficulty self-created? The applicant states yes. The reason for the answer: "Increase of lot coverage is self-created with the placement of additional impervious surfaces within the existing parking spaces".

Marc Malocsay: That is correct.

Diane Bramich: Correct.

Attorney Havens: Everybody agrees? Okay. Any deliberations among the Board members?

Marc Malocsay: I'll, before we vote just reiterate what I said. The first is if the Planning Board's going to require them for the taking of the property to make a new lot line along the road so it's not in the center of the road, it changes the application. And the other is by their own notes, which I didn't see because I didn't do calculations on the size of the building and the parking that they needed, they already have more than they need. They could simply remove some of the parking spaces, make the improvements for the emergency vehicles and squaring off and not need a variance. And again, as we've been told before, a person can ask. But I just would really rather go back to the Planning Board and say, what about the fact that they had more parking than the building requires? And what about the lot lane change in the front

of the road? So again, we can give them a variance and it comes right back to us because the Planning Board made a mistake. Or we could allow them just to go to the Planning Board and come back and see if they even made a variance at all. Or we can improve the variance or we can deny the variance.

Chairman Jansen: Well in order to go back to the Planning Board, you have to deny the variance.

Marc Malocsay: No, they have to go back before the Planning Board because they're not done.

Robert Krahulik: Because we're not what?

Marc Malocsay: I'm under the assumption that you are not...

Robert Krahulik: We're not finished with the Planning Board...

Marc Malocsay: Right.

Robert Krahulik: ...but we can't go back until we have a decision from you.

Marc Malocsay: Okay.

Robert Krahulik: So if you deny it, we're going to go back and say, "We would love to have done what you wanted us to do, but the ZBA denied the application, so we're removing parking spaces."

Marc Malocsay: Okay.

Diane Bramich: Agree with that. Totally.

Chairman Jansen: So...

Attorney Havens: Any further deliberation? Would someone care to make a motion either granting or denying a variance as advertised?

Jim Mehling: I'll make a motion to deny the variance as advertised.

Diane Bramich: I'll second.

Chairman Jansen: Jim, Second by Diane. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Robert Krahulik: Thank you.

PUBLIC HEARING OF 138 PINE ISLAND TPKE LLC - regarding property located at 138 Pine Island Turnpike, Warwick, New York, designated on the Town tax map as Section 29 Block 1 Lot 74 and located in a RU district for an area variance for the construction of a new detached two-story garage creating a singular accessory building comprising of 5,549 square feet, where a maximum of 1,200 square feet is permitted, and having a greatest median dimension of 80'6" where no more than 48' is permitted.

Representing the Applicants: Sabastion Carlton, Architect and Jesse Shih, Architect

Chairman Jansen: Please identify yourself for the record.

Sabastion Carlton: I'm Sabastion Carlton. I am the Applicant's Architect. This is my colleague, Jesse Shih.

Mary Garcia: I'm sorry, I couldn't hear his name.

Sabastion Carlton: Jesse.

Mary Garcia : Jesse.

Jesse: Shih. S H I H.

Mary Garcia: Thank you.

Chairman Jansen: Do you have any mailings also?

Mary Garcia: Thank you.

Sabastion Carlton and Jesse Shih hand out the amended application as well as copies of updated maps and elevation drawings. Board members review the documents presented.

Attorney Havens: This is your amended application. For the Board's information, this application was—a similar application was previously submitted on June 20th, 2023 for additions to an existing barn. Public hearing was held on July 24th, 2023. Significant documents and testimony submitted in opposition by neighbors of 15 Distillery Road were received. The application was denied because the existing barn identified in the application had already been torn down by the owner prior to submission of the application. The Town of Warwick Building Department did issue a violation in relation to the prior application that was remedied prior to the public hearing at which their application was denied. The parcel is in fact within the ridgeline overlay district and due to the fact that this property is within 500 feet of County Highway 1—in fact it abuts it—this was referred to Orange County Planning for GML 239 referral on August 18th, and Planning Department has not received a response on that. So it's still subject to review and consideration by Orange County Planning Department. The applicant was requested to submit an amended and corrected application form correcting various questions in the application, and also to submit amended corrected short form EAF reflecting and explaining answers to certain questions specified in the EAF—we'll cover that later. The applicant was directed to provide elevations for construction and to present certified return receipts, proof of mailings, we have those, and the applicant was directed to update the maps. So we are in fact in receipt of the amended application, just for the record.

Mary Garcia: I got it.

Attorney Havens: Like I said, just for the record, they did hand in the amended application.

Mary Garcia: Okay.

Attorney Havens: Elevations? So they turned in elevations.

Board members continue to review the updated documents

Chairman Jansen: You're on.

Sabastion Carlton: Alright. So thank you guys again for taking the time to do this again. Previously there was an application submitted and through accident the barn was taken down and so we had to resubmit the application. This project is basically an accessory structure that we're building to replace the one that was torn down previously <inaudible>. The purpose of this garage is <inaudible>.

Chairman Jansen: You have to speak a little louder so those folks can hear.

Sabastion Carlton: Yes. So previously, the original barn, he was storing like his tractor and some of his like equipment there. He wanted to be able to bring up some of his cars, motorcycles, and also have a workshop area. So previously we're going to increase the size of the existing barn. Since it was torn down, we're directed that we had to start a new application and resubmit. So this is what we're going through, the process of submitting the application to the Building Department. We submitted a minor construction building application under minor construction, which is what we followed as far as how we came up with the square footages. It doesn't actually ask whether they want building square footage or growth square footage. It just says size of the building. The Building Department then determined that all the square footage was over 5,000. Based on our understanding of how the code read and based on the definition, basements doesn't count as square footage, especially if it's unconditioned and uninhabitable space, which would've took all square footage down to 4,000 square footage in total, the footprint of the building, which is what is traditionally looked at for these type of projects. Based on some of the feedback we got from the last meeting, we made some concessions of actually moving the building away from the lot line. So we moved it to about 15 feet from the lot line. There was also some questions about height in regards to the ridgeline overlay. Based on the information that I presented before you guys, you can see that's well below that. But also, the ridgeline overlay expressively states that if we can demonstrate that the building can be built in such a way that it doesn't impede any views, that height can be waived to just have to conform with what is called for in the use and the bulk table, which is 35 feet, but the building is nowhere near that. If you guys would look at the last log page on the...

Attorney Havens: I'm sorry, before you move on, I don't want to message up your groove, but with respect to the fact that you were just addressing the height of the building, I understand that the elevations that you've provided reflect the average between the peak and the eaves, which is the standard calculation of the height of a building for construction purposes under the bulk table. But under ridgeline overlay regulations under code Section 164-47.1[7][e] regarding dimensional regulations, "the following dimensional regulations shall apply to development within the ridgeline overlay district." And Subsection E specifies that the "maximum building height requirements shall apply to the peak of the roof line...

Sabastion Carlton: Correct.

Attorney Havens: ...except for cupolas and turrets." So it doesn't follow the same standard calculation of building height measurement under the bulk table, that takes an average of eave to the peak.

Sabastion Carlton: Correct.

Attorney Havens: Instead you measured to the peak from the average natural grade.

Sabastion Carlton: Correct. Which was why I was also making the next statement. So if we look at—the statement also says if it doesn't impact any views, then that's can be waived—that height—that's the last portion of the ridgeline.

Attorney Havens: Right. And that same section—Subsection 10 of the ridgeline overlay district regulations and 10 specifies “that the applicable reviewing Board or Building Department may waive some or all of the regulatory requirements of this section in the ridgeline overlay district under any of the following circumstances: A) the structure or area within the ridgeline overlay district is situated so that it does not create a significant visual impact, but cannot be mitigated when viewed from visually sensitive areas including public view locations identified in § 164-47.1[f]”—and that's what we just went through, the whole list of potential visual locations with respect to the visual EAF for ridgeline overlay improvements or from scenic roads or important views identified in the Town of Warwick comprehensive plan. B) The reviewing Board or Planning Department finds that work to be done is of a minor nature and is consistent with the design standard set forth herein, or C) The use involves commercial agricultural operations. So C doesn't apply, this isn't commercial agricultural operations. It's going to be up to this Board to do an interpretation as to whether you qualify under A or if you don't qualify, under B. B is the reviewing Board or Building Department finds that the work to be done is of a minor nature and is consistent with the design standards set forth herein. So to the extent that you're not consistent, then you don't qualify under A —under B rather, and then you're only going to be able to qualify under A, and that's ‘are you minimizing visual site impact?’

Sabastion Carlton: Correct. Which is...

Attorney Havens: Okay. Just so we understand that.

Sabastion Carlton: Yes, yes. So in C2 we were able to generate a topographical cross section through the site and we inserted the building to scale. So we have the scale version of that.

Attorney Havens: Oh that's great, I didn't see that.

Sabastion Carlton: I can demonstrate where the building actually sits.

Attorney Havens: That's great.

Sabastion Carlton: Here. And it shows what's in between the road and where the building will be situated. As you can see, the building is located on a previously developed area of the site which was the plateau area. This area is shrouded by heavy vegetation in between the road and where the site would be. It's tucked in against considerable amount of bamboo growth. We have also demonstrated the average height of all those street growth along that ridge and in front of the structure, which is about 75 feet. So based on all evaluation of the site context and where the building would be situated, we felt that there was no individual impact as far as scenic and we feel that will be qualified to be able to construct it on what's required by the building code.

Attorney Havens: Okay. Did you want to...I don't want to mess up your groove, continue if you have more.

Sabastion Carlton: Well I also just had a question for the Board. I think the Board should also consider decreasing that square footage. Just based on what the building application asked for, I think it was incorrect to increase that square footage. Also that lower area, 52% of it is actually below grade which would then be considered a basement. You know, this area could have easily been left open, but based on aesthetics, we felt like closing it up because what he was really after was getting that workshop area which is above, and based on how it sits on the site, we kind of come off that slope. So we decided as a design feature to just kind of utilize that for extra areas, places, cars, and if you look at the elevations that I provided, you can see how we degraded the site in the back and the front.

Attorney Havens: So what you're actually proposing is to elevate the grade on the side of the building that's closest to the road in order to support the extension of the building as opposed to digging into the hill and putting...

Sabastion Carlton: Well we have to...

Attorney Havens: ...a lower level below grade.

Sabastion Carlton: We will have to based on how the site is now. So if we look at how the site is now...

Carlton demonstrates map to Attorney Havens and Board members. Discussions amongst Board members in background.

Sabastion Carlton: Number 8 excuse me, kind of shows how the site kind of drops off where that gravel is. Based on initial elevations, it's about a 6 foot change in elevation. So by time we level that area off to put in foundations and put in a adequate wall them holding up that existing slope would be almost at 8, 9 feet. So in essence, the back of the building would almost operate as a retaining wall. I also had an image kind of show because one of the concerns that was brought up was the view between the buildings. So I think in some of the image you can see a substantial amount of screening that is in between the building and we are actually going to propose to put in some more evergreens so the building, it won't be possible to see the building unless you come up the bushes and just peering through it won't create a substantial view from neighboring properties.

Attorney Havens: What's the height of this row of bamboo between the neighbor and...

Sabastion Carlton: That's about 70 feet.

Attorney Havens: Sorry?

Sabastion Carlton: 70 feet.

Chairman Jansen: High?

Attorney Havens: 70 feet tall bamboo?

Sabastion Carlton: Yeah. At the highest point. So when you're sitting from, and we researched it and they can grow up to...

Diane Bramich: That's his house. That's his house?

Attorney Havens: No, that's the neighbor's. This is the neighbor, this is the row of bamboo, this is the site development location.

Diane Bramich: And then their house is back here?

Attorney Havens: Their house is up here. This is the street down here, this is the driveway coming uphill. So see right here...

Board Members reviewing map and speaking amongst themselves.

Chairman Jansen: So my question is, did someone determine that this was the only suitable site for this structure?

Sabastion Carlton: Well I guess some of the things that were brought up last time was about environmental impact and where it would be most visible. And at the end it was recommended that maybe we can move it to the other side. We actually did take a look at that, but moving that building

actually makes it more visible than where it's currently located. Maybe prior to when it was developed it was put there because it was against that ridge with all that screening there and where it was situated in the road. The opposite side actually makes it more visible from the road, from neighboring, and from the top of the hill.

Jim Mehling: Right, cause the property slopes up.

Sabastion Carlton: Exactly. And you can see that kind of, if you look at image number 2, you can see that between the view facing the road and the view facing the back is where it sits in that flat spot, there's a level of screening that's there now. Behind that is the owner's property which it actually goes up considerably and you can actually see from his property and kind of see through that.

Attorney Havens: On this image that the trees here are different from the trees here.

Sabastion Carlton: <inaudible>

Attorney Havens: Because here you have the road,

Sabastion Carlton: Yes.

Attorney Havens: Here's the driveway, okay?

Sabastion Carlton: Correct.

Attorney Havens: And so you have trees here. You're saying the trees are going to be different on that side?

Sabastion Carlton: Because we would have to clear all these trees. Right? The trees here, the grove here, as you can see, it's a lot denser than the grove here.

Attorney Havens: Okay. And if you were to set it in that spot I understand you'd have to clear trees but according to the file map for the original subdivision...according to the original file map number 45 <inaudible - background noise> for the original subdivision, it specifies on that filed map that note A: on the filed map: no construction or accessory building to be placed within 50 feet of Columbia Gas transmission line.

Sabastion Carlton: Correct.

Attorney Havens: So what's demarcated here that was provided by the prior neighbor's submission, is if this is a 50 foot line, that's a 100 foot line.

Sabastion Carlton: Correct.

Attorney Havens: So you could actually move this 50 feet up and reduce the amount of trees that you have to clear in order to make space for it there.

Sabastion Carlton: But a visual is the impact moving it up the greater elevation actually makes it more visible for the neighbors because now we're putting it actually on the slope instead of the plateau.

Attorney Havens: Okay.

Sabastion Carlton: I have driven down that street hundreds of times. If you don't look, you'll miss it because you don't see where it is on that side after you come around the turn because it's so close to the turn on that bridge, that by the time you come around that turn...

Jim Mehling: Is the house visible from the road?

Sabastion Carlton: No.

Attorney Havens: I did want to just note for the benefit of the Board and the public that in accordance with our requests, the applicant has submitted detailed elevation drawings and also revised the site plan to include the Town of Warwick standard notes that are required if this were going before the Planning Board, then the Planning Board would require these standard notes to be placed on the site plan

application. And if this Board were to grant the variance requested, this application would not need to go before the Planning Board and that's why we're doing detailed site plan review. We could bypass the whole general site plan review and try to look at the square footage variants being requested. We'd still have to do the ridge line overlay view issues. And so it's almost impossible for us to do that without site Planning, without identifying where this thing's going to be located, how tall is it going to be, how much of it is going to be buried underground. And even just the calculation on square footage will be determined on how much of the total constructed area, usable floor space is below grade. As noted by the applicant's representative here, any square footage that is actually below grade would not count towards total building area for floor area calculation purposes, that would be excluded. So the updated site plan does include limit of disturbance, lighting notes, ridgeline overlay notes that are required under the ridgeline overlay regulations, notes with respect to the driveway, additional survey notes, bulk requirements, accessory use regulations. I just want to note you mentioned a minute ago about the calculation of the square footage.

Sabastion Carlton: Correct.

Attorney Havens: So the notice that was prepared and submitted for this public hearing the last time this applicant was before the Board, the notice said it was for development of a private garage of 3,952 square feet. That was based on a building permit application that was denied and rejected by the Building Department because the zoning code only permits an accessory building to comprise of 1200 square feet, although there are exceptions to that. And we'll do the calculations. In this notice the square footage was increased in the notice that went out to 5400...

Sabastion Carlton: 5,549.

Attorney Havens: I'm sorry?

Sabastion Carlton: 5,549.

Attorney Havens: Yes. 5,549. And that was specifically based on the denial letter that we received from the building inspector on the application for a building permit. So it's not our calculation of what the square footage was. The notice went out because you were appealing the denial from the building inspector and the building inspector's denial said that you were submitting an application for a building permit for 5549.

Sabastion Carlton: Unless...I just want to make it clear to the Board that that's really not how I submitted the application. I was very clear what was the actual square footage of the out print of the building...

Attorney Havens: Okay.

Sabastion Carlton: ...and what the building and I just included...

Attorney Havens: Sure.

Sabastion Carlton: ...the basement as a basement. But that was changed I guess based on how the <inaudible>.

Attorney Havens: So I just wanted to provide a clarification for you for the applicant as well as the public as to why there was such a significant difference in what was being publicly noticed. Because we prepare our preparation for the appeal based on what you're actually appealing. And that was the most recent building permit application that specified 5549. That's all.

Sabastion Carlton: Okay, thank you.

Attorney Havens: And yes, you're absolutely right. A lot of that is subject to additional calculation and exemptions for any below grade area. Alright. Could you please address...potential environmental concerns on the EAF form number 3b states total acreage of the site of the proposed action is 16 acres; total acreage to be physically disturbed is zero.

Jesse Shih: Oh yeah, that was updated on our amended EAF that Sabastion just handed out. So we anticipate the new disturbance to be around 0.49 acres.

Attorney Havens: Alright. What I just got handed is dated August 7th. I just realized this is still the old...

Sabastion Carlton: Yeah, I have because...

Attorney Havens: Sorry?

Sabastion Carlton: It's probably attached to the old document.

Attorney Havens: Oh, okay. Gotcha.

Sabastion Carlton: But I handed out the EAF as well.

Attorney Havens: Okay. So the new EAF does reflect that the total acreage to be physically disturbed is 0.49 acres. With respect to EAF question number 6, "Is the proposed action consistent with predominant character of the existing built or natural landscape?" You've stated yes. Can you just articulate for the Board and the public how that's going to be the case?

Sabastion Carlton: When I think of character of landscape, I think of what the building looks like. The client was very...I guess...precise in that he didn't want his garage to look like just a standard garage. He wanted it to look something beautiful and looked like almost like it was a dwelling. That's why we went through the painstaking task of adding a lot of these architectural details that you may see on a house. And if I guess you'd stack it up against other houses or other structures that's for residential use in the area, I think it stacks up and it matches.

Attorney Havens: Anybody have any questions on that issue before we move on?

Marc Malocsay: No.

Attorney Havens: EAF question number 13a, "Does any portion of the site of the proposed action or lands adjoining the proposed action contain wetlands or other water bodies regulated by a federal state or local agency?" The EAF says yes. Can you please explain that to the Board?

Jesse Shih: Yeah. The closest state classified water body we identified was Wheeler Creek, which runs south I believe of Pine Island Turnpike. And we anticipate no impacts, and it's not adjoining property.

Attorney Havens: Okay. Question number 15, "Does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal regulation government as threatened or endangered?" The new EAF identifies Indiana Bat and you've identified that as 'yes.' So you're familiar with the Indiana Bat limitations with respect to clear cutting the trees?

Jesse Shih: Yes.

Attorney Havens: And the durational time period for that?

Jesse Shih: Yeah. It's been noted on C2 of the site plan.

Attorney Havens: On C2. Thank you very much. And 16 on the EAF, "Is this project site located in the 100-year flood plain?" And the answer's no. Okay. Sorry I missed that. Maybe it was on the wrong one on the other wrong answer. 17: "Will the proposed action create stormwater discharge, either from point or non-point resources?" The EAF states yes, and "Will stormwater discharge flow to adjacent property?" The EAF says no, and "Will stormwater discharges be directed to established conveyance systems, runoff, or storm drains?" It says yes. Can you please explain?

Sabastion Carlton: On the site there's actually an existing swale that runs where the previous development occurred so most of the new runoff will be captured by gutters and so forth. There's going to be improvements to that existing swale.

Jesse Shih: Yeah, we think it's adequate just to any of the increasing impervious area from that larger roof that gets caught by the gutters. There's plenty of natural area downhill of the property that is more than adequate to dissipate that <inaudible> of stormwater.

Marc Malocsay: The Planning Board would always require a leveling pad especially for a roof of that size. So it would be an area to capture the water level rock filter. And then it can seep into the ground before it makes its way further down the hill. It's almost on every set of plans, *especially* for one of that size.

Jesse Shih: Sure. It's called a leveling pad?

Marc Malocsay: Leveling pad, silting pad.

Jesse Shih: Silting pad, yes. Okay. We can have that added.

Marc Malocsay: But we'll just see where it's going to go to see if any of this might end up going with the Planning Board. Because they'll immediately put it in, *especially* on the ridgeline overlay and especially because of the size of the roof.

Sabastion Carlton: One thing to note also <inaudible> based on the disturbance, it doesn't trigger any additional state water treatment for the size of the development.

Attorney Havens: Okay. I also noted on the comments to you, based on the original site plan that was submitted there was identified on the original survey that was the basis of the site plan, that there was a culvert crossing the existing gravel driveway immediately to the north and west of the proposed structure and its location. The neighbor addressed that issue and raised a concern about the culvert and the diversion of water that would need to be addressed as a result. Your new site plan doesn't show that culvert anymore unless I'm missing it.

Jesse Shih: No it doesn't. Yes, we would propose to remove pretty much that gravel road.

Attorney Havens: Oh, I'm sorry, it's just so small I did miss it.

Jesse Shih: Yeah, so it's still there. There would be a new one, a little downhill from there that would be below the proposed gravel area for access to the garage which would convey the stormwater.

Attorney Havens: So is the existing culvert getting moved, or are you just lowering it so it goes below the new addition?

Sabastion Carlton: So the existing culvert, are you referring to this culvert, correct?

Attorney Havens: Correct.

Sabastion Carlton: Yes, that culvert is just going to get renewed because we're going to be placing some landscaping walls so that's going to be replaced.

Attorney Havens: I only asked because it was (A) addressed at the previous application, and (B), according to your original site plan, with respect to the positioning and the layout...

Sabastion Carlton: Correct.

Attorney Havens: ...correct me if I'm wrong, but it looks like your building's sitting right in front of it.

Sabastion Carlton: Correct. It's going to get replaced and it's going to get renewed so that it runs underneath with a new pipe in and all that stuff.

Attorney Havens: Okay. As mentioned previously, any approval if granted by the ZBA would not necessarily be subject to final Planning Board site plan approval, so the ZBA needs to consider and impose any potential site plan and approval conditions or refer this application to the Zoning Board for establishment of such conditions. We've already covered the filed map limitation and prohibition of accessory buildings within 50 feet of the gas line. Site plan was updated to reflect ridgeline overlay notes and standard town of Warwick map notes site plan was updated to reflect limitation on tree clearing

imposed by known proximity to Indiana Bat hibernaculum from October 1st to March 31st. And the site plan was updated to reflect standard lighting notes and standard signature block and site plan approval of the chairman of the Zoning Board of Appeals. The final site plan would need to be signed and sealed by architect or other licensed engineer prior to actual signature approval from the Zoning Board if this appeal were to be granted. Unless the Board has specific questions for the applicant, then we're ready to open.

Marc Malocsay: No, on the Indiana Bat it's November 1st, not October 1st.

Attorney Havens: Alright, maybe that's November 1st?

Marc Malocsay: November 1st.

Attorney Havens: What I read was October 1st. Maybe I'm wrong, but okay. I'll double check it.

Marc Malocsay: Yeah, I'm pretty sure.

Jim Mehling: <inaudible>.

Chairman Jansen: Okay. Any other questions?

Diane Bramich: Yep.

Chairman Jansen: Yep?

Diane Bramich: I have a couple.

Chairman Jansen: Diane?

Diane Bramich: In elevations it has that it's 33 plus feet high and on your large survey it says 'structures with a height greater than 25 shall not be constructed unless specifically approved by the Town.'

Sabastion Carlton: So what we were demonstrating is that there's two criteria. So one criteria is for the ridgeline overlay, which is this (*pointing to diagram*), this is what this is citing, but also in the ridgeline overlay, it does allow for this to be waived, if it's demonstrated of how the building is being built doesn't impact the visual.

Diane Bramich: Okay. So I'm not done.

Sabastion Carlton: So the, sorry and the 33, it's as you said, it's basically from the lowest point, correct. Which would...

Diane Bramich: That's not the lowest...

Sabastion Carlton: ...I mean from to the highest point which we were demonstrating that basically.

Diane Bramich: Correct. And so it is higher.

Sabastion Carlton: Correct.

Diane Bramich: Alright. That's one question. Second question. This is a garage, not a house?

Sabastion Carlton: Correct.

Diane Bramich: Alright, 1, 2, 3. Stories.

Sabastion Carlton: But this...

Diane Bramich: It's a garage that's 1, 2, 3.

Sabastion Carlton: So this is not considered stories, 52% below grade. It just so happened because we had the workshop above this and the site is actually sloping downwards. I spoke to the client, he was even willing to say, 'okay, if they're going to consider the third story, I don't need this to be enclosed. We can open it up and it would just be a drive underneath through.' But aesthetically it looks better if it's closed up.

Diane Bramich: Why even have it if you can have...you got a garage here, why not put the garage there?

Sabastion Carlton: Because that's his workshop.

Diane Bramich: And what's this?

Sabastion Carlton: That's right now is where he's going to plan and store and all his like his gardening supplies and so forth. He wanted the...

Diane Bramich: Okay, what's up here?

Sabastion Carlton: It's just attic space but he didn't want it to look like just roof and like a conventional thing.

Diane Bramich: Okay, there's no way of making this smaller than this has to be this size with 3 enclosed garages with the same amount of space above that for a work area...

Sabastion Carlton: Well, you couldn't...

Diane Bramich: ...let me finish.

Sabastion Carlton: Alright.

Diane Bramich: ...plus a storage area up here because you got a full attic now because now you have a balcony with windows...

Sabastion Carlton: No that's not a balcony. That's...

Diane Bramich: Well what do you call it?

Sabastion Carlton: That's a shed, that's just a, that's not a balcony. If you look at this section, (*pointing to diagram*), this is what you're looking at, this—just looking at the covering over the door. It's not a balcony, it's not...

Diane Bramich: What's up there?

Sabastion Carlton: It's just attic space. It's not...

Diane Bramich: There's windows.

Sabastion Carlton: Yeah.

Diane Bramich: I...

Chairman Jansen: Any other questions?

Marc Malocsay: <inaudible> words just for everyone that's here, just so that they know we cannot make a decision tonight on this application. It was referred to the County. The County has to respond. For that reason, I'm hesitant to get into some things but definitely want everybody's input. But because there's a lot of information and even if the County wasn't or didn't have to respond, there was a lot of information that was brought to us. You're going to provide more. But like I said, we are not making a decision tonight which means it'll be held open and then you can do the same thing, review the minutes, review the application, come back to the next meeting. So I just wanted to make sure that you were clear in thinking that you had to get everything out and that was it.

Chairman Jansen: Okay. Now may I open it up to the public? Yes. Come on up and identify yourself.

Attorney Havens: I do have another question for the applicant real quick just to the point of clarification.

Chairman Jansen: Okay.

Marc Malocsay: For sure.

Attorney Havens: On Diane's question...

Marc Malocsay: Because it might really help with some of the questions they were asking.

Attorney Havens: Yeah, so on Diane's question with respect to the windows upstairs and you identified that it's an attic, what's the floor height within the attic <inaudible> height?

Sabastion Carlton: So the height in the attic currently is 7 foot high.

Attorney Havens: Okay so if it's 7 feet tall then under the off-street parking and loading requirements, zoning code 164-43.2 subsection A...sorry, subsection D—no, subsection C regarding definitions, my apologies. That's 164-43.2A subsection C, "occupied space includes any area enclosed or covered providing a ceiling height of 7'0" or more intended for normal use by people on an occasional or more frequent basis. Occupied space may include basements, cellars, penthouses, attic space, and interior balconies or mezzanines if the space is intended for use or habitation." So we would have to count the entirety of this attic space...

Sabastion Carlton: But it's not intended for habitation.

Attorney Havens: Is there going to be an access into it?

Sabastion Carlton: But habitation...

Attorney Havens: Other than...

Sabastion Carlton: ...means to live there.

Attorney Havens: ...other than like a ceiling porthole or something? Are you going to have a stairway going up there?

Sabastion Carlton: There is a stairway but habitation under the definition of habitation...

Attorney Havens: Well no, "if intended for *use*..."

Sabastion Carlton: —of habitation.

Attorney Havens: ...*or* habitation. If you're intending it for any use—even the storage of boxes—you have to count that as square footage that counts towards your total floor area.

Sabastion Carlton: Then we can look into lowering it.

Shannon Folino: He needs to stop.

Attorney Havens: It would have to be under 7 feet, otherwise it's going to count as square footage.

Shannon Folino: Okay?

Attorney Havens: Okay. I made my point of clarification.

Sabastion Carlton: I...

Shannon Folino: I...

Attorney Havens: I'm sorry, can...

Shannon Folino: Sure.

Chairman Jansen: One second.

Attorney Havens: The chairman's going to recognize one person at a time. They're going to speak, nobody's going to speak over them and then you guys will take turns.

Chairman Jansen: Does yours have something to do with his plans?

David Niemotko: Yes. Hi my name is David Niemotko, it's my firm. Sabastion, we work all together. I just wanted to address the ceiling height concern in the attic; that's not a concern to us as far as habitable space since it is only at the peak and I was just speaking to the owner, if need be we can eliminate the ceiling joist and that whole room could just be a cathedral ceiling. So there would be no access to an attic space. The attic space would be essentially eliminated.

Chairman Jansen: Okay. Thank you.

David Niemoetko: Thank you.

Chairman Jansen: Okay your name please?

Shannon Folino: Shannon Folino, F O L I N O.

Tyler Folino: Tyler Folino.

Shannon Folino: And my name has changed since the last time I was here because it legally has changed. So if that's confusing, that's what's happened here. So we prepared a letter for the Board that we're hoping to read aloud this evening. I apologize I didn't get it in ahead of the meeting like I did last time. We were truly preparing for this up until the very last second. In addition to the fact that the exhibits that you have before you apparently are outdated because they've amended some plans. However, I still think that the general message that we're conveying through these exhibits is going to be the same whether we had these old plans or the updated plans, maybe some minor changes. So feel free to stop me as I'm going through, but I would like to try to get through this letter if possible because I want the applicant to have the opportunity to revise plans taking into consideration my comments. So I think I mentioned this at the last meeting, I am a licensed professional engineer in the state of New York. My license is possibly still under my maiden name, I have a letter into the state for that. I have over 7 years of full-time experience, I'm very familiar with zoning reviews, interpretations of codes and apply them to a wide variety of different sites in both New York and New Jersey; I'm licensed in both states. My husband here, Tyler, is a Development Associate with the DeGraw & Dehaan Architects and also has a lot of experience with zoning reviews and in preparation of ZBA applications. So what you have in front of you is a couple of different packets, we've numbered them at the top corner for your convenience here. The first is a markup of the plans that were submitted to the building department by the applicant in which they received the denial. The second is a markup of the third level of the plans submitted by the applicant showing the calculated clearance height within that story on the associated floor area, which we kind of just touched up on here. The third is a packet of aerial exhibits. The fourth is an 8 1/2 x 11 of aerial exhibits. The fifth is a markup of the conditions, site plan, and a large site plan submitted by the applicant. And the last is a comparison of the front and side elevations submitted by the applicant with elevations showing what the actual dimensions should be based on the floor plans. I ran through that really quickly because as I go through I'm going to refer you to exactly which packet you need. But we've had a chance to review the documents that were submitted to the Zoning Board as well as the building plans that were submitted to the Building Department. We disagree that this is an accessory building that is a two-story garage. Based on Warwick's definitions, this should be a three-story structure. We also believe that based on the Town of Warwick's definitions, 2,459 square feet of the third story should be counted towards the overall floor area, bringing the grand total for the structure to over 8,000 square feet. If you are in fact going to be removing that third level like you just represented, I would ask that you lower the slope of the roof as well because there's no need to have that steep of a roof and ultimately have that volume available to potentially be utilized as a loft or some other form one day.

Sabastion Carlton: Okay.

Attorney Havens: Let her finish her letter and then you can address any concerns you have.

Shannon Folino: So including that all three stories would bring the grand total for the structure to over 8,000 square feet. This building is not a garage, it contains three garages as shown on sheet A204 in that first packet. One of the garages is roughly 1,597 square feet of the storage of six cars, which is in exceedance of what is defined in the Town of Warwick's definition for a private garage. And that's also neglecting the fact that the owner already has a three car garage that is 1,080 square feet attached to his home per the Orange County property records. The other garage at roughly 1,541 square feet for the

storage of heavy equipment as shown on A202. And also shown on sheet A202, the last is the storage of alpaca winter feed storage at roughly 700 square feet. Two out of three of these garages are in exceedance of the maximum permitted floor area of accessory structure just on their own. In addition to those three garages, there are also other uses within this building like the workshop, which does not appear to be a permitted accessory use to a single family home. As shown on the second packet of exhibits, roughly 2,459 square feet of parked storage and attic space with a separate entrance from the outside via an L-shaped staircase with no other connection to the inside of the building also isn't listed as a permitted accessory use. The largest standard storage unit that you can lease is roughly 10'x30', so that's 300 square feet and that storage unit would usually be large enough to hold all the furniture items for a four plus bedroom home. So why the owner would need 2,400 square feet which is over eight times the size of the largest storage unit you can lease, I think that was worth questioning. Again, I'm sure they'll get back into that in a response, but that was what I wanted to touch upon before they made that representation to the Board. The building is clearly intended to be used more intensely than your standard shed or detached garage or any of the other permitted accessory uses. The size of all the different areas for all the different uses within the structure are concerning and they lay the groundwork for the structure to be utilized as something other than what is currently being represented in the application. The applicants themselves even said that it would be built to look like a house. So what is stopping it from being one? A house has a garage doesn't mean the house is a garage. The structure has garages but that doesn't make the structure a garage. The proposed structure is more similar to the use of a single family home than that of any of the permitted accessory uses and should have to adhere to the principal building setbacks. The permitted accessory uses signify the intent behind the zoning ordinance and we continue to question if these uses proposed to this building are actually permitted accessory uses for a single family home. In the application where the applicant was asked to state the reason for appeal due to undue hardship and or practical difficulties, they described that the existing garage doesn't meet the storage capacity of the new owner of the property and make mention of things like valuable cars or vintage motorcycles in addition to the equipment. It makes no mention of the workshop, the alpaca feed storage, the storage, or attic areas. And ultimately this described nothing related to the hardship or difficulties, which we don't believe that there is one here. The owner knew the storage capacity of the different existing buildings on the property prior to purchasing it. This proposed structure as we've calculated, is over 6.6 times the size of the maximum permitted floor area located up against a property line where existing neighbor's home was located (our home), as shown on Exhibit 3 of the aerial exhibits packets—that's the large 11x17 packet with aerials, it should be the third sheet. The use is still unclear as the structure is so massive for many unknown reasons. There is another accessory use in the Table of Use Requirements for a workshop and it does not list a single family home as the principal use. In fact it's only permitted in the RU district under a special use permit and I believe it's related to commercial agricultural operations. Workshops are much more intensive uses than those which are permitted accessory uses to a single family home. Single family home permit accessory uses do not generally generate nearly as much noise, light, or odor as a workshop would. Accessory buildings are permitted within side-yards under the provision that they follow the maximum floor area and median dimension requirements. Since this structure is in substantial excess of both requirements, setbacks need to be part of the conversation here. I even think that this structure is larger than the owner's principal structure. This proposed structure would affect the property values of neighboring properties, potentially the general health, safety, and welfare of the neighbors directly adjacent to it. And the proximity of this accessory building is so close to existing neighbor's home is dwarfing their principal building. As shown on Exhibit 4 of the aerial exhibits package, the proposed accessory building is located roughly 315 feet in front of the principal building for 138 Pine Island Turnpike and only roughly 68 feet to the side of the principal building for 15 Distillery Road. Why would someone want a building that is intended to hold valuable and collectible items to be located so far away from their principal building or for a building that is intended for what I can only assume to be excess storage for the

principal building to be located so far from the principal building? Where the applicant answered that the benefit being seek could not be achieved by some feasible method other than variance, we believe that there are in fact multiple alternatives other than a variance. The owner could propose in addition to the existing three car heated garage that would be completely within the principal building setbacks or propose several compliance structures. They proceeded to identify the reasoning for this proposed structure of being in the same location as the previously existing structure was to limit the environmental impact of clearing several new sites to accommodate the space. This is false. As shown on Exhibits A and B in the small aerial exhibits packet, the owner already took it upon himself to remove trees at the current proposed location prior to obtaining his approvals—which he's allowed to move trees—but I just want to be clear, if we're talking about limiting the removal of trees for this application, trees have already been removed. Comparable clearing could have been done at an alternative location or locations and ultimately the location doesn't reduce the area variance that is required. As shown on A202 of the building plan markups, while it appears that the toilet and sink have been removed from the building plans, the room that was the bathroom is still there. If a bathroom is installed in the structure without approvals, it could have an adverse impact on the environment because there is a natural spring on the owner's property <inaudible> the proposed structure. There is also an existing culvert which you guys had talked about earlier, but that appears to take the storm runoff from the swale that's located next to the owner's driveway. But the proposed structure in the new location would in fact be cutting that off. So replacing an existing culvert isn't going to stop the issue that's there. You have to actually propose rerouting completely around the proposed structure, not just putting in a new culvert in the same location. The <inaudible> of difficulty is fully self-created. There are ways for the applicant to achieve the end goal without being as impactful to the surrounding properties and neighborhood. The argument regarding the maintenance and upkeep for the 16 acre estate doesn't make sense either since the prior owners maintained and kept up with the 16 acre state for almost 20 years using the three car heated garage attached to the home and the previously existing structure that was roughly 1,120 square feet as well as the other small shed located north of the principal building. Although the owner owns a 16 acre estate, it does not appear that the full 16 acres would require routine maintenance. As shown on the markup of the existing conditions plan there is roughly 9.6 acres of woodlands north of the fence that is located north of the owner's home. So within that fence area surrounding the home and the area south of the owner's home up to County 1B, I think on the turnpike, there is additional acreage that is wooded but we'll exclude that for the argument's sake and that means that there's roughly 6.4 acres that requires maintenance, which that also includes the driveway, the owner's home, anything that is not just lawn and area. So it's unclear why the owner would need so much more storage than the previous owners needed. While I understand that the argument that the owner is trying to make the realities that the square footage the applicant is requesting does not need to be nearly as large as what is requested. The need for a substantially large structure is very questionable and it does not appear that the current owner is clear on what he intends to store in the structure that is going to occupy all of this space. It just feels like there are a lot of changes between the original application and this new application. And there are also inconsistencies between the floor plans, elevations and sections that were submitted to the Building Department by the owner and applicant. How can the Board ensure that what is proposed will be what is actually constructed when the plans aren't even clear on what is intended to be constructed? Is there a mechanism for the town where what is said during these meetings is upheld and not changed during construction? And who is ultimately responsible for communication between the ZBA and the Building Department? What mechanisms are there for the Town to ensure that once the building permit is closed out the owner doesn't go and finish out the abundance of space for an alternative use? Is this structure just being used for alpaca winter feed storage as shown in A202? Because if so, where would the winter shelter for that alpaca going to be on the property? They require shelter during the winter as well as some of the summer months. So if this is envisioned to ultimately one day be a place where they can take

shelter, it cannot be within 150 feet of the property line for §164-46[J][16] for livestock. I have something else about alpacas but I didn't hear mention alpacas when they presented so we can get back to if they are going to have alpacas here. So I understand that the Board sees a lot of these types of area variances where applicants are requesting relief on the floor area for an accessory structure they want to build, but it is not often or if ever that you see one as substantial as this. There's an intention behind why the zoning ordinance is the way that it is. Twelve hundred square feet is a pretty large accessory structure for residential use, but it is reasonable that people within the rural district may have the desire or need to have a structure larger than such for a wide variety of reasons. It is also worth noting that the permitted accessory uses for a single family home in the rural districts are also very low intensity uses. They're primarily storage of equipment, tools, cars. They are the type of use where someone is accessing the building for maybe a few minutes to get whatever it is that they're storing or returning it to its storage and that is it. They're not spending time or a significant amount of time in these structures that are currently permitted accessory buildings for a single family home. When there's a scenario in which the structure is over 6.6 times larger than the maximum permitted floor area, then there are many factors that need to be taken into consideration when deciding if the application as it is proposed is appropriate. Per the state guidance, the Board can impose reasonable conditions related to the variances such as a greater setback or alternative location for the structure which would mitigate the impacts of the project on both the neighborhood and the integrity of the zoning law. Lastly, there are quite a few inconsistencies across the plans that were submitted to the Building Department by the applicant. That is that first packet that you'll see and I'm just going to run through a couple of the notable ones. So based on the floor plan dimensions submitted by the applicant as shown on sheet A202, A203 and A204, we are calculating 1,597 square feet for the lower level—that's that six car garage that you see, 3,961.25 square feet for the second level that's comprised of the heavy equipment garage, the alpaca or garden tool garage, and the workshop. And then the 2,459 square feet for the third level, which would total 8,017.25 square feet for the floor area of the proposed building. Based on the elevations shown on sheet A205 and sections shown on A401, the new equipment garage is three feet below the workshop area, yet no stairs are shown for the connection between the two different areas. Windows on floor plans are shown with different spacing, different quantities are not shown at all when compared to the elevations. The floor plans show the dimension of the workshop and six car garage at 45 feet wide, but the elevation shows it as only 30 feet wide. This affects the overall roof height that is shown and labeled on the elevations. The elevation exhibits, which was that last packet that we provided, we've prepared to show what the elevation should look like based on the floor plans at the top of the page and the corresponding elevation that was submitted by the applicant on the bottom of the page. The applicant identifies that the maximum building height is 35 feet. However as we discussed tonight, the ridgeline overlay district which has a maximum building height of 25 feet, unless proven that the proposed height will not impact the ridgeline and scenic views per §164-47[1][F][2]. It's also worth noting that the building heights within the ridgeline overlay district shall apply to the peak of the roof line except for cupolas per §164-4[7.1][F][7][e]. I just want to note that the testimony that was provided related to the scenic view along Pine Island Turnpike of where this building's going to be located, your eye may not be drawn to it right now at this moment because there's nothing there. It's trees and just general landscape. But when you have a structure that's 8,000 square feet your eye when you're coming from q towards Warwick, you're going around that bend, you have a direct sightline to where that's going to be. If you were to drive that road tomorrow during the day, you will see the path they're referring to—and keep in mind the building's going to be coming I think another 35 feet in front of where that pad is. So it's going to be very visible from County 1 and actually quite the opposite of what you said. When we're traveling from Warwick to Edenville because of the degree of the turn, you really don't see up in that opposite direction you actually see on the neighboring property when we're coming around that bend. If you try to stand on the neighbor's property, then in that case you probably would get into an accident versus the opposite direction. I know this because I've also

driven it millions of times. I've lived here for the better part of 27 years. So I know Pine Island Turnpike very well and we've driven it in regards and respect to this application. So it's very noticeable from County 1. The third level floor plan on sheet A203 is missing the large dormer that faces 15 Distillery property and shows three smaller dormers facing 138 Pine Island Turnpike driveway, whereas the elevation shows the large dormer but doesn't show the three smaller dormers. The building section on sheet A401 labels the roof slope as 8 on 12, but it is drawn as 6 on 12; 6 on 12 roof slope is not identified anywhere else in the plans. And this roof slope in elevation is drawn as 8 on 12. We've marked up what 8 on 12 would actually look like on the building section and calculated the overall building height based as such. I think it was roughly 37'7" from the bottom most elevation to the peak of the roof line. So obviously we do have to take into consideration existing grade or average natural grade around the building. However the way that the average natural grade around the building that the plans that we had received didn't really make sense. So I didn't even really take a stab at trying to calculate the average grade around the building. In the large aerial exhibits packet we prepared an exhibit that shows an alternative location that we believe is better suited for the proposed accessory structure/use. We feel that the alternative location shown in Exhibit 5 is the most appropriate location for the structure as it appears to the principal building setbacks would not be seen from the road and likely would not be seen by any of the adjacent neighbors, therefore mitigating the overall impact that it has on the surrounding neighbors and overall neighborhood. This structure would be roughly 100 feet behind the principal building at 138 Pine Island Turnpike. Setback requirements influence the development of neighborhoods and are intended to help ensure home security, privacy, a uniform appearance, and environmental protection. Setbacks typically differ between principal structures and accessory structures because accessory structures are rarely built to the same size or larger than the current primary principal structure. So they can fall under a different setback because there's normally little concern that a shed will be built large enough to dwarf the appearance of a neighboring home. Setbacks are created to protect homeowner's properties and neighbor's properties from potential problems like an oversized building encroaching on a property line or exceeding a reasonable height for a neighborhood. Structure heights are also factored into setback considerations to prevent the disruption of natural lighting, clear ventilation, and increased sound installation ensuring adequate access to sunlight, fresh air, and a relatively private place to live. When we look back at all the information we've provided this evening, it becomes extremely evident that this proposed accessory structure is not in character with the surrounding area. The vast majority of the accessory buildings in the surrounding area are significantly less—well over half than what is proposed under the current application. It's also worth noting that the vast majority of principal building footprint areas and floor areas are also less than what is proposed under the current application. This is critical to note because principal buildings are held to a much larger setback than that of a fully compliant accessory structure. When considering such a substantial differentiation from maximum permitted floor area and greatest [inaudible] mention for an accessory structure, the setback needs to be a part of the conversation. The location of accessory buildings being within, inside, or rear yards with a minimum setback of five feet is based on the provision that is fully compliant with the floor area and median dimension requirements, which the structure of this application is not, given the fact it is over 6.6 times maximum allowable floor area and over one and a half times the greatest median dimension. So that was the letter I prepared, but I do have a couple of comments just based on the testimony that was provided. To be clear, the original application was submitted well after the existing barn was demolished. So the presentation that they found out that they couldn't reuse the existing structure after they submitted the plan saying that they were doing additions is untrue. The existing structure was removed in March.

Sabastion Carlton: Can I stop you there? I submitted the application...

Attorney Havens: I'm sorry. Are you done?

Shannon Folino: No.

Attorney Havens: Hold on one second. Please make a note and you can address, request your issues.

Shannon Folino: The basement as you said, should be included in the calculation. Also, as we had noted based off of the plans that we had received, greater than 50% of the lowest level is above natural grade, which therefore defines it as a basement, not a cellar. And when you're looking at these applications that are accessory structures, a shed isn't a habitable space. Like you've seen many applications come before you where it's a garage. Well a garage typically doesn't count towards the habitable floor area in a home, but this is an application for an accessory structure. So you need to look at all of the floor area, not just areas that are habitable. And I think that that was driven home earlier, but I just wanted to state that I agree with that interpretation. Just a thought, I don't know if there's any real anything to it, but I didn't see the updated plans. There was talks about filling the area to cover some of that lower level and just interested to know how the slope of that ties into our property because if you're building it up, then ultimately it has to come back down, right? And our property is on the opposite side of where it's going to come back down ultimately. So just want to make sure that the applicant take into consideration not introducing additional stormwater to our property. In terms of the thought of planting evergreens, evergreens take how many years to mature and what's the ultimate full height of a tree? The existing bamboo is 27 feet tall. I can tell you that 100% a fact because we took down a bunch of the bamboo on our property and measured it with the measuring tape. It is nowhere near 70 feet tall. I don't even think that bamboo in this area can actually achieve 70 feet tall in like its most healthy environment. Another thing that I just wanted to mention, the applicant spoke about the quality of the materials being used for this garage and making it a beautiful structure. There's no denying that this structure is a fairly attractive structure. That's not what I'm here to say. I'm just here to say that it's not appropriate in the location that it's proposed. The density by having that structure of that size so close to our home actually goes exactly against the comprehensive plan of the Town of Warwick in which the most recent plan had increased or decreased the density so you need to have a larger lot area for a single family home. So by introducing this large structure in such close proximity to an existing structure which would not be anywhere near what the required setbacks would be for a principal building, you're going against the comprehensive plan of Warwick and it's not in line with the neighborhood as it exists today. And then lastly, I just wanted to identify when talking about the culvert, they expressed that they were subbing the driveway, they were removing a portion of the existing gravel that's there today. I just found it really interesting because the new heavy equipment garage is beyond that sub's driveway. So why you would be removing the gravel between the sub and where your heavy equipment garage is was just a little odd to me. It's like more work for what is actually worth the effort at that point. It just seems like something that wouldn't actually happen through construction. They would just leave the gravel that is there up to the proposed heavy equipment garage. And that is everything.

Shannon Folino turns to Tyler Folino and asks: Unless you wanted to add something else?

Tyler Folino: Just the uses. Because tonight just in discussion, they decided they could concede on the lower level vintage car storage area. They either could be just completely exposed or nothing. So that's one large chunk of the building now that they're saying that they don't really need. On top of that, they're saying the storage area they no longer need that. That's another 2,000 square feet that they're saying isn't needed. So we're left with the alpaca feed, which wasn't touched upon by anyone tonight, the workshop, which may not be an accessory use that's allowed with this building, and then the heavy machinery, which could be a conforming building at less than 1,200 square feet, but they're a little bit over that.

Shannon Folino: Yes, and the workshop; I'm just curious what type of workshop it's going to be. Because I don't think we've heard anything else beyond just it's a workshop area. So what are you workshopping in that area? I would be curious to know because I think that should be part of the conversation and yeah, if you're getting rid of the lower level and the whole attic level, then you can actually propose a

significantly smaller footprint building and not have as much impact to a lot of areas that you're going to be impacting as currently shown.

Attorney Havens: Okay.

Sabastion Carlton: Couple things...

Attorney Havens (to Shannon): You finished?

Shannon Folino: Yes I'm finished. Thank you.

Attorney Havens (to Tyler Folino:): You done?

Tyler Folino: Yep. Thanks.

Sabastion Carlton: A couple things. As far as the neighbors saying that it wasn't true that we knew that the barn was down. That is not correct. The intention was always to do the addition. There hadn't been some communication between me and the owner for some time at the time that we submitted the application. It was never the intent of us to deceive the Board in saying that it was going to do an addition. That is just her feeling about it. That's not a fact. There was a lot of comments made about why he needs the space and why does someone need this thing. I think in trying to differentiate between someone needs and someone has the ability to do something, it should have no bearing on whether what he's saying he's going to use it for is true or not. If he's saying that he's going to use it for his storage of his equipment, his stuff that he uses for hobby and his personal use, then that's what it is. I think we can't sit here and say, 'well, maybe it might be for residential or maybe it might be for future use, or it could be a house'. We can apply that reason to anything. The fact is he wants to use his garage to be able to work on his motorcycles and store his equipment. The size of which he defined is the size of which he defined. The fact of us lowering the attic space yeah, we can lower the attic height because it's not necessary for him to have it that high. It was that high because that's the peak that we wanted the roof line to have to achieve the aesthetics of the building. She cited some stuff about the plans. The plans that we submitted was pretty much the same plans that was in progress. We were trying to make the meeting so those were progress plans. We received the email from the attorney asking to adjust and address certain things. So we kept on working on the plans. We always knew that we were going to have to keep working on the plans, but we needed to get before the ZBA. There was one other thing about the open space. Yes, we said that we could do away with having it closed in, but we never said we could do away with the space. What we said it would be just an open covered space that he could then drive under. And the attic space? Yes, I guess it was just inadvertent to having that roof line and so forth. That's why we said we could lower that roof line because all that's impacted is where we inadvertently put all <inaudible>.

Chairman Jansen: Okay. Did you have some comments?

David Niemotko: No actually we quite honestly, we stand by our recent submission.

Chairman Jansen: Okay.

David Niemotko:" I appreciate the thoughts but they were based on the old submission. So our current submission is within reason, that's what we're presenting before you. I will emphasize the fact that the building code and the zoning code qualified that lowest level as a basement. It is 50% below grade, end of discussion. So the zoning code and the building code support that, our plans show it. So that square footage or areas should be eliminated from the calculations that are being used or the total calculations of the building that are being presented to you. So again, we'd like to keep our current submission, continue working with that. And as Sabastion <inaudible> stated, what the owner wants is something that can be addressed, can be given him, and it's not impacting the surrounding areas.

Chairman Jansen: Okay. Yes.

Shannon Folino: I just need to go through something that's really bothering me. The existing structure was removed in March of 2023. The initial application to the Building Department was in June. Is that correct? *(Shannon Folino directs the question to Sabastion Carlton but receives no reply)*. I believe that's correct based off of the documentation that's in the zoning board application. The original ZBA or the original submission to the Building Department was in June of 2023. And the existing structure was completely demolished in March of 2023. You cannot say that you were going to use that structure and put additions to it if it was removed before you submitted in June. That is what I was trying to convey.

Sabastion Carlton: Okay, the Board has a photo which I presented because that's the photo I used when I went to the site, initially looked at the project, and took the photo, that's the photo, that's what we based our design on. We worked on our design, we submitted it. The owner actually didn't even realize it would be an issue because he thought that since it was on this map, it wouldn't be an issue until it became an issue. Then it was communicated to us that the barn was down. He went to the Building Department, he paid the fine, he rectified the issue, and now we're back again presenting <inaudible> application.

Shannon Folino: I understand the issue. I just wanted to be clear the timeline there because it's in my mind.

Sabastion Carlton: There can be a lot of things that could be thrown out that can kind of bias the application, but I think we need to stick with the facts. Trying to paint a picture of like this <inaudible> ulterior motives, I think that is just...

Shannon Folino: It's a very real issue in the town unfortunately...

Sabastion Carlton: But then every client that comes before the Board can...

Shannon Folino: ...and people should care more.

Sabastion Carlton: <inaudible> and based on what people have done in the past, then it just makes this a very confrontational process instead of the process of trying to get I guess residents and so forth things that they need.

Chairman Jansen: Okay. Can we ask if there's anyone else from the public that wants to address this?

David Guthaim: I guess I'll address that. David, last name is Guthaim, G U T H A I M. I'm on the adjacent property.

Mary Garcia: I'm sorry, G U T H...

David Guthaim: G U T H A I M.

Mary Garcia: Thank you.

David Guthaim: I'm on the adjacent property 17 Distillery. So I have a direct view west towards Anthony's property. So my only concern is that I don't want to see a change of use on the piece of property. So as it's intended as a garage, I believe property rights that people have every right to do what they want to on their property. It's part of why I moved to Warwick from Vernon. They have that luxury. But people's freedom to be them is also the same as freedom to be free from them. So the last thing I want to see is the structure that's used is a domicile, a structure that's used as something for an Airbnb type of thing. And I don't really know what the zoning regulations are in this town, so I just want it to be publicly known that if that is the case, I'd really prefer the setback to be a little bit further back than where it potentially is.

Chairman Jansen: Okay.

David Guthaim: <inaudible>

Chairman Jansen: Thank you.

David Guthaim: Thank you.

Chairman Jansen: Yes.

David Niemotko: I think that's a great point I'd like to expound on a little further. You work for DeGraw & Dehaan, you know this already what I'm about to say. There is a mechanism in place between the Zoning Board and the Building Department to enforce the Zoning Board's decisions and that is the Building Department. So to project into the future what this could be used as has no basis. The basis is right here, it's the decision that you make. The Building Department enforces that decision and in fact, probably periodic visits are associated with it. So there could be, our decisions here can't be in conjecture on the future. It's based on the plans that are before you and confident in the fact that the Building Department enforces your decision in those plans. That's the mechanism in place.

Chairman Jansen: Thank you. Anyone else?

Jennifer Guthaim: Hi. <inaudible> I feel like it is a larger building that actually needs to be right there. I agree with the fact that it's very close to their property line. You drive down the long driveway, you're going to constantly see that house and if their property value goes down, because someone's going to try and...sorry, I don't do well speaking...

Chairman Jansen: Breathe, relax.

Jennifer Guthaim: Yeah, yeah, breathe. It's going to bring our property value down too. It's just a huge, it looks like a house. It's beautiful. I mean I want our neighbor to have a garage, but I think it's just excessive and it's very close to the property line. It's just a little excessive.

Mary Garcia: I'm sorry, what was your name?

Jennifer: Jennifer.

Mary Garcia: Jennifer...?

Jennifer: Yeah.

Mary Garcia: And your last name?

Jennifer: Guthaim, same name as David.

Mary Garcia: Okay, thank you.

Sabastion Carlton: Can I address that? I think everyone is thinking that basically having a big building depreciates value, but if he puts the building on his property, you're saying it's going to depreciate their property value?

Crosstalk among several people at same time

Sabastion Carlton: ...the property value in the area usually goes up. It doesn't depreciate.

Jennifer Guthaim: No but if...

Sabastion Carlton: Or if there was some kind of avert usage that was being used as.

Jennifer Guthaim: Right, right. But...

Sabastion Carlton: But just because it's a big building...

Jennifer Guthaim: <inaudible> if I'm going to go sell our house. If you drive down the driveway, you're going to immediately—they're not going to see her house—their house. You're going to see a huge building which could then deter someone <inaudible>.

Sabastion Carlton: So what if it was a castle that was a hundred years old?

Crosstalk among several people at same time

Chairman Jansen: Alright, we can go on with this forever.

David Niemotko: When she makes the documents public, they'll see the cross section that we did through the site, which conveys the tree heights and the building heights and all their association. I think that would answer a lot of questions.

Jennifer Guthaim: Well yeah I haven't seen everything, so...

David Niemotko: Yes that's done to scale and it does depict the actual conditions that we're proposing.

Chairman Jansen: Okay.

Jennifer Guthaim: I would just have to see it.

Chairman Jansen: One more time.

Shannon Folino: Once presented with area variances I just want to remind everyone that the Board is required to give the minimum variance that is required for the use that is being proposed. Just because I'm saying out these hypothetical situations related to it potentially being used as an apartment or an Airbnb down the line doesn't take away from the fact that things that are currently proposed are an issue in and of themselves. So if we want to remove the scenario of it being used for an apartment or it being used for an Airbnb, I'm fine with that. The workshop is problematic because it's not explicitly listed as a permitted accessory use. It is in fact listed as a permitted—not even permitted—accessory use for a rural district. It's a special use permit for commercial agricultural operations and that is the principal use in the rural district. And that is defined, that is listed as like the maintenance and repair of machinery equipment used on that property on that site. That right there, I'm going to keep speaking because everyone has gotten to come up here and continue to speak without being told they can speak and I've been shut down. So I'm saying what I have to say one final time. The workshop is not explicitly permitted use. I think the Board needs to take that into consideration. All these different areas that are being talked about being reduced, it's not making sense to me right now. I'll just have to wait for the resubmitted plans and that's fine. In terms of them sticking by the plans that have been submitted, based off of what I heard, the elevations that were submitted showed a building height of 33'1", which tells me that you're still showing that front dimension as 30 feet wide and not 45 feet wide, which is what is shown on your floor plans. If it's 45 feet wide, the roof line's going to be taller, it's going to be a taller height, it's part of the conversation.

Sabastion Carlton: You finished?

Shannon Folino: Yes.

Sabastion Carlton: Okay. The roof line, they get higher, but the slope also changed. Okay? They have the sections. I mean you can look at them when they're made available. As far as the workshop, when they say workshop it means an area that he can go, he can clean his motorcycles, he can shine them up, make sure they're clean. If he has to put on any parts on them like a **hobby**—not in terms—not for commercial use. I think someone is entitled to do that in their garage if they need the space to do it.

Shannon Folino: Can I go?

Sabastion Carlton: Sure.

Shannon Folino: The motorcycles are being stored on the lower garage. The workshop is on the second level, which is also three feet above the new equipment garage. So how are you getting motorcycles into the workshop to shine and repair? Like that's where things start to not make sense to me and I question that.

Sabastion Carlton: Well because we've been working with the building, the thought was that we're going to have to put a ramp that he's going to be able to push it up. Because that was one of the issues because of the elevation. But that is things that we work out in construction that has nothing to do with what we say we're going to use it for.

Shannon Folino: But it goes into like the integrity of the drawings that you're presenting to the Board and what's going to be constructed versus what's being presented at this Board meeting. And that's my concern. I just want to go back to one more thing related to the property value. In the rural district, you're not buying seven and a half acres of land if you want to be right on top of your neighbor's home. And even though you're saying it's not his home, we are all saying it looks like a home. It is going to impact the property value. The bamboo that exists there between the properties is roughly four feet in depth. You can see through it; it does not completely screen it out. You can add in evergreen trees. They're going to be spaced. They're not going to get as tall as you're building, no matter what it's defined off. If it's defined off of the average grade, I don't care what it's defined off of, those evergreens aren't going to reach that full 37 feet height for a very, very long time. It's not in compliance or it's not aligned with the town board's comprehensive plan where they adjusted the density of the rural district to have less homes per the acreage, you need to have a greater number of acreage for a single family home. And what you're doing is going directly against that because the distance between the proposed structure as it's currently proposed and our home would be roughly 63 or 68 feet, whatever I showed on the plan. That is significantly less than if you had the 75 foot side yard setback and our 50 foot rear yard setback, it should be closer to 125 feet if it's within full compliance. These types of Board meetings aren't there to just sign a blank check to anyone who wants to do something that's not aligned with the code. It's created for people who have actual hardships where they can't feasibly get the value out of their property by doing something in compliance. The applicant has 16 acres and again, 9.6 of which is wooded land, so I get that. But there's 6.4 acres which are not. And he has ample room up near his home to build that structure. Why doesn't he want it by his structure? Because he doesn't want to see it. So why would I want to see it? It goes directly against, your testimony keeps contradicting itself.

Sabastion Carlton: It's there because there was an existing barn that the site...

Shannon Folino: That was in compliance, it was a shed. He could put (8) 1,200 structures...

Chairman Jansen: Excuse me, I'm sorry, we can keep going on this for the rest of the night.

Tyler Folino: Can I ask one thing just about submissions, just because we've been going back and forth to the Building Department to get the plans. So going forward, what is the process? When is their stop date? Because we can't comment on something that we don't know.

Shannon Folino: Yes.

Tyler Folino: So we're wasting your time, we're wasting our time by them coming in and saying, 'oh, we workshopped it a little bit more and now things are changed.' So when are they going to submit? What's the date of submission and those are the plans that we're reviewing at the meeting? Or is the plans that are submitted at the meeting what we're reviewing?

Attorney Havens: So technically speaking we're not permitted while we opened the public hearing tonight, that was to afford people like yourselves who dedicated a lot of time and energy preparing for tonight. Instead of you showing up and saying, 'sorry, we're not ready to open the public hearing, you'll have to come back another time.' We wanted to give everybody that opportunity to express whatever concerns that they have and give the applicant an opportunity to address some of those concerns in the middle of a public hearing. We're not permitted to close the public hearing until we get comments back from the Planning Board from, I'm sorry—Orange County Planning Department as a result of the GML 239 referral. So this will be put over until the next zoning board meeting next month. And this Board will not be able

to make any determination between now and then. We presume that we will hopefully be in a position to make a determination by receiving either comments or the 30 day statutory time limit as required Under GML 239 referrals to Orange County Planning has passed. Now under the referral process, the Orange County Planning Department has 30 days minimum from the date of receiving what's considered a full package. Full package is complete set of plans, complete application, final application. If there's amendments to the application, those amendments must be sent. This Board has a duty under the state law to forward any copies of revisions to Orange County Planning. And then from the point when they receive a final full application, they statutorily have a minimum of 30 days. But they don't have to take that full time period. We've already submitted an application, it wasn't complete, we knew that, but we wanted to give Orange County Planning an opportunity to start reviewing it knowing that we needed an amended application and this way they could at least initiate the process and they're not just, we're not sitting on our hands leaving this going on forever. We'll submit the amended documents, the amended application, the amended EAF, the drawings, anything that we receive we're required to send to the Planning Department—every document. Then they'll review it and send comments to us and hopefully they'll do that before the next ZBA meeting. But it depends on when they actually get all of those documents and how quickly they review. So it is theoretically possible that *<inaudible - background noise>* wait until the last possible day and they don't get this stuff until tomorrow or the day after, then it could be potentially we might not get a response from them before the next ZBA meeting. And so I can't promise you that a determination is going to be final and made at the next ZBA meeting. It depends on when we get final drawings from the applicant with the revisions that are being discussed, as well as submitting that to Orange County Planning after we get those revisions and then allowing them to comment on the application.

Shannon Folino: Yeah so I guess like the issue that that presents us is we don't want to be harassing the Building Department and Zoning Board. We knew that the date for submission for this hearing was I think August 8th. That was the 21 days prior. We had emailed the secretary for the ZBA multiple times to try to chase down and get a copy of the plans which were submitted to us. And those had only included the site plan and existing conditions plan to which we then had to chase down the Building Department. Summer months are difficult, people are out of office. So we ultimately had to pay \$40 for the building plans that were known were going to be outdated. Comments were given from the Zoning Department and that was known, and yet we still had to pay for it. So it's just like, it would be nice to understand so like you said, we're not exerting all this time and energy on plans that are already going to be updated because they're continually being workshopped after the point of submission for the ZBA hearing. It typically would be, it would make sense if that was at least public notice or there's some other mechanism to make that aware to the public. And I think that's just the intricacies of what we ran up against with the summer months and everything.

Attorney Havens: Unfortunately the difficulty that we have here is we debated that very point of having people waste their time and come down here when we anticipated there's a high probability that we're not going to be able to close the public hearing and really do the final deliberations and so forth. We know we don't have all of the final updated drawings and et cetera, but we also didn't want to waste people's time in the event that this was somebody rearranged their whole schedule and spent countless hours preparing for this like yourself. And maybe you're on vacation next month and you wouldn't have the opportunity to present. And so that's why the public hearing was opened despite the fact that the application was incomplete. It's really out of genuine consideration for the public to be able to have an opportunity to present. In your particular case I understand your difficulty, you may need to present more than once, but we have to consider everybody.

Shannon Folino: Understood.

Chairman Jansen: Okay, so...

Diane Bramich: Can I ask a question?

Chairman Jansen: I don't know whether it's going to be on the next month because it depends on whether everything gets in.

Diane Bramich: Can I ask a question?

Chairman Jansen: Yeah.

Diane Bramich: It was stated that you were going to lower the roof line for the attic and then the gentleman that spoke from the firm said 'no, plans are as is'. So is it or is it not?

Sabastion Carlton: What he's talking about in general—the overall, not talking about...

Diane Bramich: No, I'm talking attic.

Sabastion Carlton: What he's saying is basically if we need to make the attic compliant that it's not considered habitable, we'll make it compliant but that's...

Diane Bramich: But that's not what he said. He said the plans are **as is**.

Sabastion Carlton: I think he's talking about in general about the whole...

David Niemotko: I'll address you directly. Yes, the plans that we submitted and the concept that's proposed, we stand by without question. If there was a comment about the ceiling type <inaudible> meets building code, then we'll revise it in the next submission. It's not going to change the concept of the building.

Diane Bramich: But are you going to, I'm asking you, are you going to lower it?

David Niemotko: Well, we'll see in our next submission—hopefully.

Diane Bramich: So we don't know. So the next submission, we don't know if we're going to have it ahead of time or that night...

Sabastion Carlton: No, we'll <inaudible>...

Chairman Jansen: Well you have to get it ahead of time because it's sent to you two weeks prior to the meeting.

Sabastion Carlton: We'll have it to you...

David Niemotko: <inaudible> zoning has a submission date just like the Planning Board. So we'll submit that submission date and that's usually 10 days before a Board meeting and you'll have time to review it.

Shannon Folino: The time is 21 days in the Town of Warwick and like the attorney just represented, your previous plans were incomplete or insufficient to their <inaudible> information which you then provided plans within that timeframe of what plans to be provided. So that theoretically could happen again, just to answer the question.

Sabastion Carlton: Well you gave comments that were addressed.

David Niemotko: Whatever the submission date is, we'll make it.

Chairman Jansen: Okay.

David Niemotko: Thank you.

Attorney Havens: I just wanted to note, Mr. Napolitano?

Anthony Napolitano: Yes.

Attorney Havens: You had your hand up earlier but you never got a chance to speak. Would you like to? I'm not asking you to...

Anthony Napolitano: Absolutely not.

Attorney Havens: Okay.

Anthony Napolitano: Thank you.

Attorney Havens: I saw your hand up earlier and I wanted to make sure you had the opportunity.

Anthony Napolitano: <inaudible> and the time you put in tonight. No, thank you. I'm sure we'll be here *several* more times.

Attorney Havens: I hope not.

Chairman Jansen: Okay. Thank you all for being here.

Attorney Havens: I'm sorry...

Chairman Jansen: We've got to do the minutes to the last meeting.

Marc Malocsay: We're not...

Chairman Jansen: What else?

Marc Malocsay: I'm sorry, go ahead.

Attorney Havens: I was just going to say you're going to dismiss this application, hold it over for the next meeting?

Marc Malocsay: Yeah, but I had...

Attorney Havens: We need to...

Shannon Folino (to Mary Garcia): Here's the letter. *Shannon Folino hands the letter she addressed and read to the Board to Mary Garcia.*

Mary Garcia (to Shannon Folino): Perfect, thank you so much.

Chairman Jansen: <inaudible>

Attorney Havens: Yeah. Not close it and to hold it over.

Marc Malocsay: Yeah but I had a question and it was more for the applicant and the other people really ought to hear because they presented everything. Now I have a few questions.

Attorney Havens: Oh, well I'm sorry. Do you want to try addressing those? Marc? Marc, do you want to try addressing them?

Marc Malocsay: Yeah, just...

Attorney Havens: Jan, is that okay?

Chairman Jansen: Fine with me.

Attorney Havens: I'm sorry. Just for your information, one of our Board members has specifically asked to address a question to the applicant. So the public hearing hasn't been officially adjourned just yet.

Marc Malocsay: So when we have applications like this there's a couple of things that we look at and almost all the points you had brought up, and you know all of them already. The first one is the proximity to the property line. Yes, you're allowed 5 feet for the accessory structure. The other one is the size of the building and we always look at giving the least variance possible. So if you were listening on some of the other applications, there are things you can do to avoid some of the...so that we don't have to issue a variance at all, which I doubt because that means putting up (5) or (6) 1200 square foot buildings. But what was brought to our attention and it came out in one of *your* drawings was you have the topos of the property, the building could be put behind the house with the same or less grade than where it's proposed. So you really have to give us some good reasons on why it can't go there. Okay? And it's important. And again, on the topos, it shows the grades. They are not as steep as where the old one was. Granted you already have a pad there from where the old one was, but the point is that if it's behind the

house it's 75 feet off of the property line probably. It's almost as if it were to be a house. I'm venturing a guess on their end and all of the neighbors, you probably wouldn't hear another word from them. And then it's up to us if we're going to give that size. So I would just...hopefully you have a really good reason on why it can't go there...

Chairman Jansen: Okay.

Marc Malocsay: ...because I'd like to hear that in order for us to get started.

Sabastion Carlton: Okay.

Marc Malocsay: Okay.

Sabastion Carlton: Thank you guys.

Others simultaneously: Thanks.

Shannon Folino: Thank you, your Honor.

Attorney Havens: Note on the record that we cannot identify whether this is going to be a Type 2 action or an unlisted action because we don't know if we're over or under 4,000 square feet.

Marc Malocsay: Right.

Attorney Havens: And if we're dealing with less than 4,000 square feet of floor area, it will be a Type 2. And if it's over 4,000 square feet of floor area based on their calculations, then it will be an unlisted action.

Chairman Jansen: Okay.

Attorney Havens: So we can't even make a determination because we have insufficient information to type it.

Marc Malocsay: Okay.

Chairman Jansen: So do you need a vote on that?

Attorney Havens: No I don't.

Chairman Jansen: Okay.

Attorney Havens: I just need it noted on the record that we have insufficient information in the application to type it. Because the only way this is going to qualify as a Type 2 is if it's an accessory building of less than 4,000 square feet. Keep the application open, hold the public meeting open to the Board meeting.

Jim Mehling: I'll make such a motion.

Marc Malocsay: And I'll second it.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Motion carried.