

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 138 PINE ISLAND TPKE LLC - regarding property located at 138 Pine Island Tpke, Warwick, New York, and 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 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. **Continued from the 10/23/23 ZBA Meeting.**

Representing the Applicant: Dennis Lynch, Attorney, and David Niemotko, David Niemotko Architects, and Sabastian Carlton, Architect

Dennis Lynch: Good evening Chairperson, Members of the Board; we have our architects with us tonight, David...

David Niemotko: David Niemotko.

Dennis Lynch: I believe at the last meeting, the Board had made a negative declaration and indicated they needed time to come back and look at this matter further. So, we're here tonight to answer any questions you may have and to have the Board proceed as it wishes.

Chairman Jansen: Thank you. Right now we don't have any questions yet, do we?

Board Members: No.

Chairman Jansen: No. Okay. So as we go through it you'll get a chance to...

Dennis Lynch: Do you want a brief presentation or...whatever you want. We're here just to, we're not here to crowd your calendar. I know you're busy, but I think you covered a lot of the points. So we made some concessions. I think you wanted to get us to the point where the SEQR was able to be handled. So if you have anything for us, we're here to answer it. If not, we'll ask you to proceed as you wish.

Chairman Jansen: Okay, thank you. I've asked the attorney to take the lead in going through the reviews.

Attorney Havens: Okay. So because this parcel is located in the Ridgeline Overlay District, a review of the criteria provided in SEQR Visual EAF is required under a separate Town Code, §164-47.1, Ridgeline Overlay District Regulations, subsection F(3)(a). With respect to subparagraph C regarding location, this area encompasses those lands identified in the Town of Warwick comprehensive plan as important views in scenic roads, Ridgeline Overlay District 1 areas constitute elevations of the town 600 feet or more above the mean sea level west of the Wawayanda Creek. Pursuant to the elevations presented by the applicant, it appears that all of the applicant's property is above 600 feet or more above mean sea level, and it's west of the Wawayanda Valley within the Ridgeline Overlay 1 District as shown on the applicant's site plans. Does the Board have any comments/questions about that?

Marc Malocsay: No.

Jim Mehling: No.

Attorney Havens: Does the Board concur with it?

Board Members: Yes.

Attorney Havens: I'll walk you guys through the Visual EAF. Copies for you guys to review while we go through it if you'd like.

Attorney Havens passes the copies of the Visual EAF to Board Members

Attorney Havens: With respect to the visual EAF, we're first looking at Item Number 1 regarding visibility and what we need to ascertain is whether the project would be visible from a number of different locations. And if so, we have to articulate from approximately how far—a rough estimate—just for scale and reference purposes. So, would the project be visible from a parcel of land, which is dedicated to and available to the public for use, enjoyment, and appreciation of natural or manmade scenic qualities?

Chairman Jansen: Are you referring to public lands at that point?

Attorney Havens: Yes.

Chairman Jansen: So I...

Attorney Havens: Any questions, comments, any thoughts? Can we determine?

Chairman Jansen: Well the closest public lands would be the road, right?

Attorney Havens: Yeah, that's (inaudible).

Chairman Jansen: Okay. Then if that's the case...

<crosstalk>

Chris Daubert: It says park, right?

Attorney Havens: Available to the public for the use, enjoyment and appreciation of natural or manmade scenic qualities.

Jim Mehling: Hence the term scenic drive. You can see it from the road.

Chairman Jansen: Right.

Chris Daubert: Yeah.

Attorney Havens: Okay. So would the the project in distance from there be zero to one quarter mile, one quarter to one half mile, one half to three miles, three to five miles, or five plus miles?

Chairman Jansen: That's...I would say a quarter to a half.

Jim Mehling: I'd agree with that.

Attorney Havens: Okay.

Chairman Jansen: Okay. Does everyone concur?

Chris Daubert: Yes.

Marc Malocsay: Yes.

Attorney Havens: Would the project be visible from overlook or parcel of land dedicated to public observation, enjoyment and appreciation of natural or manmade scenic qualities? Essentially a public park for the most part, or other public establishment?

Jim Mehling: No.

Attorney Havens: Okay. Would the project be visible from a site or structure listed on the National or State Register of Historic Places?

Chairman Jansen: I don't believe so.

Diane Bramich: No.

Chairman Jansen: No.

Attorney Havens: Visible from State parks?

Chairman Jansen: No.

Attorney Havens: From State Forest Preserve?

Chairman Jansen: No.

Attorney Havens: From the National Wildlife Refuge or State Game Refuge?

Chris Daubert: It's all private land.

Diane Bramich: It's all private.

Attorney Havens: No?

Chris Daubert: No.

Attorney Havens: National natural landmarks or other outstanding natural features?

Board Members: No.

Attorney Havens: National Park Service lands?

Board Members: No.

Attorney Havens: Rivers designated as National or statewide scenic or recreational?

Chris Daubert: No.

Jim Mehling: No.

Chairman Jansen: Yes? No?

Board Members: No.

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

Board Members: No.

Attorney Havens: A governmentally established or designated interstate or inter-County foot trail or one formally proposed for establishment or designation, like the AT or something?

Board Members: No.

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

Chairman Jansen: So...

Jim Mehling: I would say no.

Chairman Jansen: I don't believe the road is designated specifically as scenic, so I would have to say no.

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

Jim Mehling: No.

Marc Malocsay: No.

Attorney Havens: County road?

Chairman Jansen: Yes.

Marc Malocsay: It is a County road.

Attorney Havens: And zero to one quarter miles?

Marc Malocsay: Yes.

Attorney Havens: Agreed?

Board Members: Yes.

Attorney Havens: State road?

Chris Daubert: No, that's a County road.

Attorney Havens: Agreed, no?

Board Members: Yes.

Attorney Havens: Local road?

Marc Malocsay: If you look at your scale, because on the local road, yes.

Chris Daubert: Yeah because it would be Feagles or...

Marc Malocsay: Distillery...

Chris Daubert: Jessup...

Marc Malocsay: Jessup...

Chris Daubert: Yes. Distillery.

Marc Malocsay: Yeah.

Attorney Havens: Okay. So are we talking zero to a quarter? Quarter to a half mile? Half two quarter half, three miles.

Board Members: Quarter to half.

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

Chairman Jansen: Well that...

Chris Daubert: When the trees are fully grown you're not going to see this.

Diane Bramich: I thought you could see.

Chairman Jansen: Right now you can.

Chris Daubert: Right now you can see up in there.

Chairman Jansen: Yes so the answer is yes for now.

Diane Bramich: Yeah.

Attorney Havens: You want to pull the Board on that?

Marc Malocsay: Yes.

Jim Mehling: Yes.

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

Board Members: Yes.

Attorney Havens: Alright, on the other side, description of existing visual environment from each item checked in question number one, we have to check those which generally describe the surrounding environment. So what we need to do is identify whether the items that we checked off, the County road, the local road, and parcel of land dedicated to the public use are essentially undeveloped.

Chairman Jansen: Other than the residential area around it or the road, most of it is forested or rural residential.

Attorney Havens: So would you say that within, well...we have to specify either within a quarter mile or within one mile, right? Because it's the items we checked were all within one mile. So either within a quarter mile or within one mile. Is the surrounding environment essentially undeveloped?

Chairman Jansen: Yes.

Diane Bramich: Yes.

Attorney Havens: Within a quarter mile, how many houses do we have within a quarter mile?

Jim Mehling: Well, the next door neighbor.

Marc Malocsay: Within a quarter mile...

Jim Mehling: Within a quarter mile.

Chairman Jansen: So you say that there is some development within either a quarter or one mile, right? So the question is kind of...

Attorney Havens: So the question is whether or not the immediate surrounding environment within a quarter mile is essentially undeveloped?

Chairman Jansen: No, because you got a dwelling that's within 15 or dwelling that's going to be within property lines of 15 feet.

Jim Mehling and Marc Malocsay discussing how many structures there are.

Jim Mehling: Yes, according to the site plan, you've got three structures including the next door neighbor's house. There's three structures in total and four parcels of property all within a quarter mile.

Attorney Havens: Okay so then that would be a no. Is the surrounding environment forested?

Board Members: Yes.

Attorney Havens: Within a quarter mile or within one mile?

Board Members: Within a quarter mile.

Attorney Havens: Is the surrounding environment agricultural?

Board Members: No.

Attorney Havens: Is the surrounding environment suburban, residential?

Board Members: Yes.

Attorney Havens: Within a quarter mile or one mile?

Board Members: Quarter mile.

Attorney Havens: Is the surrounding environment industrial?

Board Members: No.

Attorney Havens: Is the surrounding environment commercial?

Chairman Jansen: No.

Attorney Havens: Is the surrounding environment urban?

Chairman Jansen: No.

Attorney Havens: Is a surrounding environment a river, lake or pond? Is a river lake or pond included within a quarter mile or one mile?

Board Members: One mile.

Attorney Havens: Is the surrounding environment, does it include cliffs and overlooks?

Marc Malocsay: No.

Jim Mehling: No.

Attorney Havens: Does the surrounding environment include designated open space within one quarter mile or one mile?

Chairman Jansen: Not officially designated, no.

Attorney Havens: Is the surrounding environment flat?

Jim Mehling: No.

Chris Daubert: No.

Attorney Havens: Is the surrounding environment hilly?

Chris Daubert: Yes.

Jim Mehling: Yes, quarter mile.

Attorney Havens: And is the surrounding environment mountainous?

Board Members: No.

Attorney Havens: So are there any visually similar projects that are nearby within a half mile, one mile, two miles or three miles?

Diane Bramich: No.

Chris Daubert: Within a mile.

Attorney Havens: Visually similar projects.

Chris Daubert: Across the street.

Attorney Havens: Where's that?

Chris Daubert: On Silo Lane, there's a big building.

Attorney Havens: And how far is that? Half mile, one mile, two miles?

Chris Daubert: A mile.

Attorney Havens: Okay.

Chris Daubert: Maybe, yeah. About that, right Marc?

Marc Malocsay: Yeah.

Chris Daubert: You know which one I'm talking about?

Marc Malocsay: Yeah.

Chris Daubert: It's back up by the pond?

Marc Malocsay: Yeah.

Chris Daubert: About a mile, right?

Diane Bramich: So there is a pond?

Chris Daubert: Yeah, there's a pond.

Diane Bramich: Less than a mile?

Chris Daubert: Yeah.

Diane Bramich: Okay.

Attorney Havens: Exposure. The annual number of viewers likely to observe the proposed project is blank. And it specifically says if we don't have specific user data available or unknown, use a best estimate.

Diane Bramich: Every day.

Marc Malocsay: Yeah, I wouldn't even know where to start.

Attorney Havens: Well, we'll get to the frequency in a minute. So if you want to first go over the frequency, we can come back to the number if you'd like. That might help you get a better guesstimate. Number 7, the situation or activity in which the viewers are engaged while viewing proposed action is...now with respect to the activity, we have to identify the frequency as being either daily, weekly, holiday and weekends or seasonally. So with respect to the activity of travel to and from work, would that be daily, weekly, holiday and weekends or seasonally?

Diane Bramich: Daily.

Jim Mehling: Daily.

Attorney Havens: Involved in recreational activities, daily, weekly...

Jim Mehling: People walking their dogs or just going out for a walk for the day, I would imagine. Don't know how many but there's always somebody out walking on the road.

Chairman Jansen: It's not exactly, so I would say seasonally.

Attorney Havens: This is up to you guys.

Marc Malocsay: Yeah.

Attorney Havens: Would it be daily, weekly, holiday and weekends or seasonally, most likely. This is would the viewers engage in recreational activities?

Diane Bramich: Recreational activities, right?

Chairman Jansen: So would you consider...

Attorney Havens: ...to the proposed project.

Chairman Jansen: Would you consider walking a dog a seasonal activity? To me that's a daily activity but...

Jim Mehling: Daily.

Chairman Jansen: So what do we make it, daily?

Board Members: Daily.

Attorney Havens: Routine travel by residents. Would it be seen daily, weekly, holidays and weekends, or seasonally?

Board Members: Daily.

Attorney Havens: At a particular residence, would it be seen daily, weekly, holiday or weekends, or seasonally?

Board Members: Daily.

Attorney Havens: At a work site?

Chairman Jansen: Well if there's a work site nearby, it's going to be daily.

Diane Bramich: There's nothing there.

Chairman Jansen: Well is the site itself a work site?

Attorney Havens: I wouldn't consider the site itself. We're talking about people from outside the property being able to visually observe and see the project.

Diane Bramich: Oh. If people are going to see the project and what it's going to be doing and even afterwards, it's going to be every day because they're passing it, walking it...

Attorney Havens: From a particular work site that we're aware of.

Chairman Jansen: No.

Diane Bramich: We don't know of any work site going on out there right now.

Attorney Havens: Okay. Then we would potentially say no to that, correct?

Chairman Jansen: Yes.

Diane Bramich: Yes.

Attorney Havens: Does everybody agree that would be a 'no' for 'from a particular work site?'

Diane Bramich: Yes.

Marc Malocsay: Correct.

Jim Mehling: No.

Attorney Havens: Alright, so going back to Number 6: The number of viewers likely to observe the proposed project is? Any concept?

Chairman Jansen: Well, if you have 20 vehicles going by at 12 hours a day, you're looking at least 240 people on a daily basis, and I think that's being very conservative.

Jim Mehling: A couple school buses with 30 kids in each of them, just saying add 60 a day for the school buses.

Attorney Havens: This is a question of making a ballpark estimate as it specifically states on the form. Whatever you guys feel is a rational basis for calculating a ballpark estimate is up to you.

Chairman Jansen: If you add the school bus, let's say 300.

Jim Mehling: I'm up for 300. I think that's...

Diane Bramich: Fair.

Marc Malocsay: I think it would be a lot more, but go for it.

Chairman Jansen: Still being conservable.

Marc Malocsay: Yeah.

Attorney Havens: So you agree with 300?

Board Members discuss number (300) amongst themselves

Attorney Havens: So with respect to the ridgeline overlay design requirements, all developments it states and Subsection F that all developments within the ridgeline overlay district shall comply with the design standards and principles provided herein. The requirements are also intended to ensure that future development within the ridgeline overlay district creates no more than a minimal impact on the district and surrounding area, and provides general sighting principles to help landowners plan projects that fit into the scenic and rural countryside found in the higher elevations of the town. Subsection F Subparagraph 2 specifies the restrictions on height. We've discussed this, but for the record within the ridgeline overlay district, no principle or accessory structure with building height of greater than 25 feet shall be constructed unless visual cross sections or other appropriate methods demonstrate subject structure could be constructed with a building height greater than 25 feet in conformance with the bulk tables without unduly impacting ridgelines and scenic viewsheds. Subsection F subparagraph 7E specifies maximum building height requirements shall apply to the peak of the roofline except for Coppola's and turrets, as well as silos and barns when used in conjunction with agricultural operations, which may exceed the maximum building height. In reviewing the applicant's submitted drawings, identifying the proposed building height specifies under accessory use regulations on sheet C2 that the building height is

33 feet tall. However, the applicant's drawing does specifically show this measurement on the elevations as previously requested, but instead presents calculations under §164-22 of the average roof height, 23'8" on the taller side of the structure facing south towards the road and total building height of 25'5" on the north elevation on sheet A3.01 from ground level to the tallest peak of the shortest side of the building. These calculations could be misleading because they do not calculate or show the building height from the <inaudible> grade as required under Code § 164-22 regarding building height definition to the highest peak of the roof under § 164-47.1, paragraph F2, as specifically requested by the ZBA. During the testimony, the applicant acknowledged that the height of the building exceeded such 25 feet height limitation, based on discussions of this height, calculations under the Code on more than one occasion and specifically requested that the ZBA waive such limitation. The applicant's own resubmitted design drawings on sheet A3.02 show a combined maximum height of 30 feet, 1 1/2 inches when calculated from average natural grade to the highest peak of the roof, not including the Coppola that the applicant intends to add. As required under the ridgeline overlay district regulations, this is more than 5 feet in excess of the 25 foot maximum height limitation imposed under ridgeline over the district regulations as compared to the 5 inch exceedance identified by the applicant on the north elevation on sheet A3.01. Furthermore, even this calculation 30 feet, 1 and 1/2 inches is likely understated. The overall building height from the bottom of the lowest level of occupied space to the top of the highest ridge, not including Coppola, would be 34'7" based on the elevation drawing submitted by the applicant. However, based on testimony from the neighbor architect, this dimension would actually be 37'7" high, an additional 3 feet because the applicant's floor plans show the south wall of the garage to be 45 feet wide. But the applicant's elevation drawings depict this wall as only being 30 feet wide with an 8 on 12 pitch. The additional 15 feet of width while maintaining an eight on 12 pitch would result in a higher roof level as articulated in the marked up comments from the neighbor architect and support the testimony. The properly calculated building height would be approximately 33 feet tall from average natural grade of the south elevations showed a 45 foot width as shown on the floor plans instead of a 30 foot width or nothing at all, as shown on the elevations on sheets A2.05 and A4.01. This calculation made by the neighbor architect matches the 33 foot building height stated by the applicant on sheet C2 of their plans. So if calculated correctly based on the floor plans submitted by the applicant, it appears the actual building height be approximately 8 feet or 32% higher than the 25 foot maximum permitted under the ridgeline overlay limitations despite contradictory elevations shown in the submitted elevation plans. Would the Board care to discuss that or make any determination or finding of fact with respect to that point?

Chairman Jansen: Are we agreed with what has been said so far about that height?

Marc Malocsay: Absolutely, yes.

Jim Mehling: Yes, I agree.

Chairman Jansen: Okay, yes.

Attorney Havens: Everybody agree that we're looking at a 33 foot building height?

Board Members: Yes.

Attorney Havens: Okay. Additionally, with respect to the proposed size of the garage, the applicant argues that 2,312 square feet of "attic" or "storage space" with multiple dormer windows, which is only accessible from the exterior staircase, should not be counted as usable floor area space due to a proposed reduced ceiling height of 6'6". However, the applicant refused to lower the building height below the 25 foot height limitation imposed by the ridgeline overlay regulations based on the applicant's wish to create a certain aesthetic and visual appearance as stated by the applicant on several occasions. So the ZBA certainly has the ability to waive the 25 foot maximum height limitation imposed by the ridgeline overlay regulations, but the ZBA has no obligation to do so. Does the Board believe that under one of the conditions in which the ZBA could grant a waiver of the 25 foot maximum height is if the Board were to

determine that the work to be done is of a minor nature, does the Board feel that the project is of a minor nature?

Board Members: No.

Dennis Lynch: Could the architect be heard on that point? I'm not sure if you will let it, but he raised his hand and he wants to address...

Attorney Havens: That's up to the Chairman, not me.

David Niemoitko: We also brought up at the last meeting how the attic space would not be included because of the zoning code definition of occupied space. So since the ceiling height was reduced and the zoning code shows the definition of occupied space with that type of ceiling height, that the area would be eliminated from the square footage. We would also like to have the definition included...

Chairman Jansen: On the square footage, not necessarily from the height.

David Niemoitko: No, the square footage.

Attorney Havens: Right. For purposes of calculating a floor area under that definition, the Board debated that and made a determination last month that that space wasn't counted for purposes of floor area.

David Niemoitko: Correct.

Attorney Havens: And that hasn't changed.

David Niemoitko: Okay.

Attorney Havens: So the question that this Board needs to determine is whether the architect and or owner's vision of a grand aesthetic and visual appearance by inclusion of a large attic space that's not intended to be used on such a large structure that's so close to neighboring residences, is that a sufficient basis to waive the 25 foot maximum building height limitation of the ridgeline overlay regulations that are specifically intended to reduce visibility of buildings within the ridgeline overlay district? That's a determination this Board needs to make.

Chairman Jansen: Okay. No. Diane, no?

Jim Mehling: No.

Dennis Lynch: Can I ask what's being asked, no? Is that as no is a major or no is a minor? Just so I understand.

Attorney Havens: There was already a determination made. Everybody agreed that it was not a minor nature; that the project was not a minor nature.

Dennis Lynch: Is there a definition of minor versus major? I didn't see in the Code.

Attorney Havens: I don't have a definition in front of me.

Dennis Lynch: Did the Board have a definition in front, what's major versus what's minor? I don't see; the reason I raised the questions, in all due respect Counsel, you and I discussed this from the beginning, the concept of Void-for-Vagueness. I see the Board going through the ridgeline overlay and being asked questions. I don't see any papers in front of you about studies or analysis or what a pond is versus this. I hear about two buses going every day for a total 300 students. I don't know the basis for any of what you're doing. Is there something in the record? You look at each other and see which agrees with whom? So is there something that the Board has in front of you that backs up what your conclusions were? I don't see it.

Attorney Havens: I can't speak for the entire Board, but...

Dennis Lynch: Could the Board tell me, could the Chairman tell me?

Attorney Havens: Excuse me. I'm trying to respond.

Dennis Lynch: But you did.

Attorney Havens: Well, it is my understanding that the members of this Board have spent a fair amount of time driving around these roads and know the neighborhood relatively well.

Dennis Lynch: Is there a record of that? Is there a record of when they did it, what they saw? I mean, that's what I'm trying to find out. You have to believe it's not going to end if your Board says no.

Attorney Havens: Okay.

Dennis Lynch: And so I'm trying to figure out, is there something that's a matter of record that I can look at?

Attorney Havens: Alright.

Dennis Lynch: There's nothing I see in front of the Board. If you're saying that there's a memory the Board has...

Attorney Havens: Alright...

Dennis Lynch: You know a site visit by a ZBA council, you must know this has to be placed on the record—when it was, what was seen, and provide evidence. I don't see any of that right now.

Attorney Havens: Okay. So...

David Niemotko: I just want to remind the Board that in your Section F of the ridgeline overlay district, and I think it was paragraph 2 or 3, it says about the height of the building, or we could provide a visual study to show that. Just wanted to remind the Board that we did provide that; you had the two site sections that were done through the property showing the house and the proposed garage, and then a blowup of that on C2 showing the profile of the site with the location of the garage in relationship to the house. So we did provide that visual impact that actually...

Attorney Havens: Did you provide an additional visual impact from the adjacent neighbor's property?

David Niemotko: No.

Attorney Havens: Or any of the neighbors' properties?

Dennis Lynch: I can speak to that issue. The adjacent neighbor who you said was a licensed architect, you referred to this particular person. I'm not sure if you said that. I know you said architect. We asked the neighbor where they would rather have the building located and the neighbor said, I have an email confirming it, saying we can't tell you.

Attorney Havens: So we're not reopening the public hearing for comment. We've...

Dennis Lynch: I'm not the public. I'm the applicant.

Attorney Havens: I understand that. We've given you an opportunity to make a couple of comments. I want to let the Board address some of your questions.

Dennis Lynch: Happy to hear it.

Attorney Havens: Can members of the Board identify what the basis of your knowledge and understanding is with respect to your experience in and your familiarity with the area in general, but more specifically this particular site?

Dennis Lynch: Counsel, I object. That's not the law. The law is that they have tell me...

Attorney Havens: You can object all you want.

Dennis Lynch: ...when they're going to a site...

Attorney Havens: You can object all you want.

Dennis Lynch: ...what they're doing, when they went there, provide evidence of it. You know that too.

Attorney Havens: Okay. You can...

Dennis Lynch: Not what their general knowledge is, not how many times they rode by here. I need to know specifically when they went there. If they did go there.

Attorney Havens: Whatever. I'm not going to argue with you.

Dennis Lynch: I don't want you to argue.

Attorney Havens: Thank you. You've made your comment, I've asked...

Dennis Lynch: There's nothing before the Board members as they looked at each other and said 'well, what about a dog walking? Would that be recreational? Yeah, that would be recreational. What about a pond?' What about there's nothing that gives dimensions. You admitted Counsel, you admitted there's no definition of major versus minor. How are we to understand what we can or can't qualify for? I said this from the beginning, Counsel.

Attorney Havens: Okay.

Dennis Lynch: Due Process, Void-for-Vagueness, Federal rights. You all took an oath when you became members to support the Constitution of the United States and New York State and you're not doing it.

Diane Bramich: We're following the Code.

Dennis Lynch: You're not following the Code.

Diane Bramich: Yes we are.

Dennis Lynch: Because the Code has something above it; it's called the United States Constitution.

Diane Bramich: The Code of the Town of Warwick is telling us what we can use and what we can't use, not what you can use and can't use.

Dennis Lynch: So what does the Code say about minor versus major?

Diane Bramich: <inaudible> *Interrupted by Dennis Lynch*

Dennis Lynch: What does the Code say about minor vs major?

Diane Bramich: Excuse me sir, stop interrupting me.

Dennis Lynch: When you're finished up, let me know.

Diane Bramich: I'll let you know when I'm done.

Dennis Lynch: Thank you.

Diane Bramich: Alright. First of all, the Code does not say you can have 5549 square feet where the maximum is 12. That's a law; that's in the Code. Yes?

Dennis Lynch: When you're finished, I'll answer all your questions.

Diane Bramich: That's one. The second one is the height. You are over the height of the code. The third one is the dimension. It's 48 feet is permitted. You've got 80.6. That's the code. Go ahead.

Dennis Lynch: First of all, the Code provides for variances. The Code provides for provisions where we understand. Let's talk about the ridgeline district, where we understand what we have to meet as a qualification. And you sat here tonight and went back and forth about how many buses and whether it's major or minor and other things. Walking a dog is recreational, public road is a public area. There's nothing in the Code that says how, what we know the Code you're talking about. Right? It's not there. I told Counsel from the beginning, this Board is in danger of being sued in Federal Court for Void-for-Vagueness applying a Code that we don't know how we meet it. And you have the complete discretion to deny it, which I think from the beginning is what you wanted.

Attorney Havens: Thank you Counsel.

Dennis Lynch: Thank you for your time.

Attorney Havens: I would like to actually go back and reiterate for the record if the Board would be so kind as to each individually provide just a very brief summary of your experience on this Board, your experience in the neighborhood and specifically in that particular area surrounding this particular parcel.

Dennis Lynch: With this application I hope you're asking about not just...this application.

Attorney Havens: That's what I just said.

Dennis Lynch: I didn't hear the part about this application.

Chairman Jansen: Well, this whole thing didn't come to our attention until you applied for these variances, okay?

Dennis Lynch: No question.

Jim Mehling: So in my travel through that area, since that time, I would say I've been through there at least 15 or 16 times and been able to visually look at that site because now it's in my database as my attention. So as such, I feel that looking at that, that the height limits that the town has set for the ridgeline are appropriate and also that the views from that road are very appropriate.

Dennis Lynch: Did you have any measurements that would show what the proposed building would look like under the Code as your <inaudible>?

Chairman Jansen: Only from what you you've supplied us.

Dennis Lynch: No. Did you have this in front of you when you rode by and said, 'okay, they're looking to do so many things.'

Chairman Jansen: I'm trying to drive safely. I'm not looking at the map at the same time.

Dennis Lynch: But you're looking at the application. That's what I'm asking.

Chairman Jansen: I can look at the application before and after and I do, I have many times in the evenings looked through it again to see if there's any other possibilities. But I don't see any right now.

Dennis Lynch: Did you make any notes that I could look at and see when you did it so I could have somebody analyze what you did? Did you give notice of when you were going to do that?

Chairman Jansen: No, we don't have to do that.

Attorney Havens: Counsel...

Dennis Lynch: I'm asking a question that's all.

Chairman Jansen: No, I did not.

Attorney Havens: I asked the Board to provide information. Give them an opportunity to do so, please. Thank you.

Dennis Lynch: Okay.

Jim Mehling: I don't recall taking an oath. I've been on the Board a little over a year. My educational background is I've got a Bachelor's in Mechanical Engineering from the LC SIS School at Syracuse University. I graduated in 1984. Born in Tuxedo. I've lived in Orange County my entire life. My father was building inspector in the town of Tuxedo from 1972 to 1978. He was a building inspector in the Village of Greenwood Lake for six years. Spent a lot of time riding around with my dad, looking at things. My dad was fair, but he was tough. Old school German. It was either right or it wasn't. It was black and white. It wasn't gray. The Law and the Code he upheld and he believed very strongly, as do I even as the most junior member of this Board. Personally, I don't appreciate individuals coming into our Town and into this Board and reprimanding and lambasting into members of this Board who pretty much, for the most part, volunteer our time. We receive a very, very small stipend. \$123 I get every four months for coming in

here. Which I donate. Do I have a degree in architecture? No. Am I an engineer in civil matters? No. I trust in common sense of the good Lord. I believe strongly in the Constitution of the United States and I don't appreciate it being waved in my face. I've been a New York State EMT for 22 years. I've ridden in this town for the time. I've been a member of the National Ski Patrol for 18 years and a nationally certified educator. I've run 18 honor flights down to DC as a safety member and a medical member of their team. I've got a little bit of time and dedication to this country and to this town. That's why I sit here. This is not entertainment for me. I believe very strongly this is a civic duty that I uphold and I give everyone fair and equal billing and opportunity, provided the same respect as afforded to myself and the other members of this Board. Sir, you quite frankly do not grant that to us. Whether it is intended or not, that is how I personally perceive it. I bear no ill will towards you or any negative thought, comment, or feelings. I keep it professional. Always. I ask you to do the same and not threaten and control about federal lawsuits. You're so far ahead of this; focus on what's in front of us, my friend. That's why the windshield of the car is this big and the rear view mirror is this big. Look ahead, not behind. Let's focus on the matter before this Board. Thank you.

Dennis Lynch: Should I respond to each member or wait till the end, Counsel or Chairman?

Attorney Havens: Chairman can answer you.

Chairman Jansen: Go ahead.

Dennis Lynch: Go ahead, respond?

Chairman Jansen: Yes.

Dennis Lynch: Asserting constitutional rights is not something that is inappropriate, unprofessional, or otherwise improper. You have a wonderful background, I don't dispute that. What I question is what did you do with this particular application when you went out there and looked at things, what's the record that you made? You admitted you had no notes—that's my point.

Jim Mehling: I didn't say I had no notes. Don't put words in my mouth. I never said I had no notes. If you want to know specifically up into the site six times, if you want to know the day of the time, which of my three vehicles I drove, what I wore that day, what I had for breakfast, what I was thinking as I drove by the site. Do you want me to have all that written down for you? Perhaps you can furnish a copy of the videotape you made of us several meetings ago?

Dennis Lynch: Maybe.

Jim Mehling: I haven't seen that.

Dennis Lynch: I apologize if I heard you wrong. I thought you said from the beginning, 'I didn't take notes' when you made observations.

Jim Mehling: No.

Dennis Lynch: If I'm wrong, I apologize.

Jim Mehling: Thank you.

Dennis Lynch: Do you have your notes with you that you can preserve them then I can look at them later on? Will you produce them?

Jim Mehling: For you?

Dennis Lynch: No. For the record. For the record of this Board.

Jim Mehling: Absolutely no problem. I have nothing to hide. I have nothing there.

Dennis Lynch: Chairman, can I ask when those records will be produced by this Board member?

Attorney Havens: Whenever they get produced.

Chairman Jansen: Whenever they get produced.

Dennis Lynch: I'm sorry?

Chairman Jansen: Whenever they get produced, within the next three months.

Dennis Lynch: Well, we'll be in court before that.

Chairman Jansen: Are you finished?

Dennis Lynch: Well, yes. I responded already to that particular Board member. I'm not asking for Board members to tell me what their background is. I'm sure you're volunteers. I'm sure you have great backgrounds. I want to know one thing and one thing only with regard to this application. What are the records that you went out there, that you took observations, you had pictures, if any, you had videos, if any, what records is there that supports your determinations when you looked at this ridgeline district? That's what I want to have. I'm going to stipulate you are all wonderful people. You are all volunteers. You all have great backgrounds. I'm just asking about this particular application.

Chairman Jansen: Well I think most of the information was given by you and your team that we have to act upon, correct?

Dennis Lynch: I'm not sure what that means to be honest with you.

Chairman Jansen: Well, you've come up with the design, you've come up with the height...

Dennis Lynch: No question.

Chairman Jansen: <inaudible> line and stuff like that. Okay. So what are we supposed to do? Go out there with a measuring stick?

Dennis Lynch: No, I think what the law says you're supposed to do is if you make field observations, you should give us notice of it and or make a record. And then when you come in, before you vote, *before you vote*, you place on the record what your observations were. Now you placed an observation on the record *after the vote*.

Attorney Havens: Excuse me, Counsel. That would be the case if the Board held a concerted meeting of members of the Board.

Dennis Lynch: Okay.

Attorney Havens: If they make their own individual inspections, then it's not an official...

Dennis Lynch: We'll disagree.

Attorney Havens: ...ZBA...

Dennis Lynch: We'll disagree on that.

Attorney Havens: Okay, that's fine.

Chairman Jansen: We can't even go out there with more than two people.

Dennis Lynch: No. You're Council Chairman, you are 100% right about a quorum. But a site visit by individuals still requires to be a record produced before the vote. So we can...look, we all know there's no record you have before you. You probably have great credentials. You probably drove by this part of the town like any other parts you have. But there's no record before you, there's no notes before you, it's established. That's all I need to know. If you want to add to it, add to it.

Chairman Jansen: Alright. Can we go on?

Dennis Lynch: Unless you have questions of me, I'm happy to answer them.

Jim Mehling: Let me ask you a hypothetical if I may...if we're going to compare minor and major, what would you consider an acceptable threshold of visits and/or onsite hands-on grabbing the earth and

rubbing it between our fingers events for us that would somehow justify our decision? Because It seems like it's more about you trying to create this climate of fear that if we don't produce a certain amount of data, I don't know what that threshold of data is, if it's a minor data or if it's a major data where that delineates how that all comes to be. What, how, give me a number. What do you want for a number? How many do you want us to 6, 8, a dozen, 20, 30? I mean, do I get a Gold Club membership if I go there more than 50 times? It's not going to change the parameters of this application. We've had exhausted amount of data and information supplied, not just by you, but the next door neighbors who had expended a serious amount of time and money of their own to put their point of view forward. Do they also not deserve the same due consideration? They put a hell of a lot of time and effort into this too, and provided us with a lot of very viable facts and information starting from the time the original structure was demolished without a permit, okay?

Dennis Lynch: Can I answer?

Jim Mehling: Please.

Dennis Lynch: I think you've got it backwards. Okay. In all due respect. Okay.

Jim Mehling: Go for it.

Dennis Lynch: It's not up for the applicant to make the definitions understandable.

Jim Mehling: Okay.

Dennis Lynch: It's up for the town to make the definitions understandable. And when a town doesn't make definitions understandable that a reasonable person can know and can comply with and that also acts as a check on a Board going rogue or going beyond what they should. That's what the Void-for-Vagueness issue is. That's the first issue I raised with your Counsel in my letter weeks ago, months ago. Void-for-Vagueness. You know what that concept means?

Jim Mehling: Yes. As my esteemed colleague...

Dennis Lynch: So would you want to tell me what it means?

Jim Mehling: I'm sorry?

Dennis Lynch: Would you want to tell me what Void-for-Vagueness means and <inaudible>?

Jim Mehling: I'm not an attorney, sir. I'm not going to go tit for tat sir.

Dennis Lynch: If you want to tell me, go ahead.

Attorney Havens: Enough with the debate.

Jim Mehling: Sorry.

Attorney Havens: It's ok. We had a point that this Board was attempting to make and we got sidetracked with the applicant questioning whether or not the Board has any basis to make such a determination. Whether the applicant feels the Board's qualifications and capacity to make such a determination or not, the Board nonetheless needs to make a determination as to whether the applicant and their reference to maintain a roof line higher than 25 feet is a sufficient basis. What they've presented, is it a sufficient basis to waive the 25 foot maximum building height limitation of the bridge line overlay regulations? This Board needs to make a determination on that whether the applicant thinks we're qualified or not.

Diane Bramich: No.

Marc Malocsay: I got a question. Just procedural denial from the building inspector didn't say anything about the height on the joint overlay. It came up as we did some investigation and found, so I don't know that it's something that we act upon or not. Clearly, what was before the Board was the size of the building. If the applicant then, we make a decision. If the applicant then brings in plans for a building

permit and they find that the height is too tall, then they'd be back before the Board. I'm just wondering if we right now have the authority to continue with the height in the ridgeline overlay without the denial from the building inspector.

Dennis Lynch: Could the architect...

Attorney Havens: Well the...

Dennis Lynch: I'm sorry.

Attorney Havens: ...the building inspector denied the submitted plans specifying a building permit for a 5,549 square foot building. The submitted plans included as referenced previously on sheet C2 'accessory use regulations' that the building was 33 feet tall because it's within a ridgeline overlay district. In order to approve the application under the ridgeline overlay regulations we're required to complete the visual EAF. To complete the visual EAF, we need to ascertain what the height of the building is going to be and whether or not it's going to be visible from various locations. As a result, we requested that the applicant provide elevations which weren't previously provided in the initial submission. The applicant submitted those elevations. We've just reviewed those and went over the details and the facts and their sheet C2 even on the initial application as well as on the resubmitted application, specifies a 33 foot tall height in that particular location. And I've already articulated the rationale based on prior testimony and the markups and so forth of the drawings as to how all of the testimony that was previously submitted supports the fact that it's actually 33 feet tall as opposed to —based on proper calculations—as opposed to the figures that are specified in the elevation drawings that were submitted. Does that clarify it for you?

Marc Malocsay: It does, but it was just as a technicality, I'd hate to have a Article 78 and find out that it wasn't before the Board because of a denial from the building inspector.

Attorney Havens: No. Whenever we get a denial, it's six words on the denial letter from the building inspector based on whatever the principal basis is to deny the application.

Marc Malocsay: Okay.

Attorney Havens: That doesn't limit the scope of our review.

Marc Malocsay: Okay, clear.

Attorney Havens: So back to the question at hand, Mr. Chairman. Can you pull the Board to determine whether or not the applicant has presented a sufficient basis to justify waiving the 25 foot maximum height limitation imposed by the ridgeline overlay district?

Chairman Jansen: Okay. Do you do you wish to enforce the 25 foot overlay height limit or do you want to pass over that and not consider it?

Marc Malocsay: Enforce.

Chairman Jansen: Jim?

Jim Mehling: Enforce it.

Chairman Jansen: Diane?

Diane Bramich: Enforce it.

Chairman Jansen: Chris?

Chris Daubert: I say we pass over.

Chairman Jansen: Okay.

Chris Daubert: There's a building across the street that's higher. Looking at that building, it's twice the size.

Attorney Havens: Alright. The...

Chairman Jansen: He wants to ask a question.

Attorney Havens: What's that?

Chairman Jansen: Want to let them ask a question?

Attorney Havens: That's up to you.

Chairman Jansen: Go ahead.

Sabastion Carlton: I actually wanted to address the Board about a misunderstanding I think that I keep hearing repeated.

Diane Bramich: You name for the...

Sabastion Carlton: Sabastion Carlton. There was an initial application that was presented prior to the building being torn that I...

Dennis Lynch: I wouldn't talk about the prior ones. What happened, what didn't happen. I would focus on what's before the Board right now.

Sabastion Carlton: But there's a basis for this because I think it's the basis that's been used as far as the discrepancy between the width of the building and the height elevation. So there was an initial application that was done. This application was done knowing that we're going to need a denial letter from the Building Department to get a size variance. When we found out the building was torn down and we came before you guys and the application was denied, at that point in time, some plans were brought before you guys that were mocked up. These plans, the elevations on those plans were then scaled, which in the process of flux, knowing that the building most likely was going to get adjusted based on the ruling that was going to get from the Board. That elevations were never intended to be scaled. The floor plans, however, was the dimensions that we were using to ask to get the height. Based on that meeting, certain comments was made. We then, when we submitted the second application, adjusted the elevations and we adjusted the elevations based on our understanding of the ridgeline overlay where it says '27 feet off, you provide a section showing how the building sits on the site and that it's not going to impact the ridgeline view.' We also then provided some plans from the town, I guess master plan, where it showed the scenic routes and the scenic roads and we demonstrated that it wasn't in the scenic road. And we actually presented at the section that we showed where the building height was in relationship to the trees. We also at time provided photos of where the building sat to the neighbor and had those photos were provided to the Board and we showed the pictures of where it sat, the height of the bamboo that sat there, and where the building was. So it was said that there was this discrepancy. There wasn't any discrepancy. It was, we were trying to adjust our plans based on the requirements of the Board and based on the application of the Code as it respects to the ridgeline overlay, and what we're able to do within that height, once we provided the cross section. Because it stated that if we provided the cross section and we demonstrated how the building sits, which it sits on that plateau. So it doesn't even sit at the tallest peak, that we are allowed to build the building based on the bulk table, which is what we demonstrated in all elevations. So it wasn't done to be misleading, we did it based on the bulk table and what the bulk table describes as how to demonstrate the height, medium height as far as you know, top of peak. That's what we demonstrated on the plans.

Attorney Havens: Okay.

David Niemothko: And that's consistent with Section F paragraph 3, because it does give that option in your zoning code.

Attorney Havens: Does the Board have any other questions on that point?

Board Members: No.

Chairman Jansen: Continue.

Attorney Havens: Moving on to the applicant's stated or intended uses under §164-40[M] Table of Use Requirements commonly referred to as Use Table provides the permitted uses for those uses which require a Special Use Permit. So that's the principle governing Code with respect to uses and with respect to a determination of a particular use Town Code §164-40[J] which covers generic descriptions provides that "Where permitted for special permit uses are identified by generic words or descriptions, Board shall determine whether a specific use shall be construed to be part of such generic class. In making such determination the Board shall consider to what extent proposed use is similar to the class of use indicated in the Table of Use Requirements. If a use is specifically listed elsewhere in the Table of Use Requirements, it is excluded from a generic classification." So the parcel in question is a single family dwelling on 16 plus or minus acres and it's identified as Residential Use Number 1 in the RU or rural district. And we have to make determinations as to whether the stated and identified uses as presented by the applicant are permitted uses under the Table of Use Requirements. So can the use of the proposed accessory structure be classified as a barn?

Diane Bramich: No.

Attorney Havens: So specifically barns are identified as accessory use number 5, which is only authorized in the rural district as an accessory use to business uses, number 14, which applies to commercial agricultural operations and business use 39, extractive operations including 'sandpits, gravel banks, removal of topsoil and fill, quarries, mines,' and other extractive activities. So does the Board agree that a barn is not a permitted accessory use to a one family dwelling?

Marc Malocsay: That's correct.

Jim Mehling: That's correct.

Diane Bramich: Yes.

Attorney Havens: With respect to the applicant's assertion that the proposed structure is merely a replacement of a pre-existing non-conforming use as a barn, if you refer to Town Code §164-45, which covers non-conforming buildings and uses, section A(1)(a) covers alterations, which specifically states that "non-conforming buildings and uses shall not be enlarged, extended, reconstructed or restored except in accordance with §164-45B(3), which relates to damage of less than 50%, nor shall it be placed on a different portion of the lot or parcel of land. Nor shall any external evidence of such use be increased by any means whatsoever except that the Board may permit an expansion not to exceed 15% of the existing ground area of said non-conforming use, provided that the most restrictive bulk requirements specified in the district in which the said non-conforming use is located shall apply to any extension". So what we need to determine is given that the applicant removed the prior barn—if in fact it was one—and that's been debated between the applicant's own representatives as well as his neighbor. And we did state previously at last month's meeting that the County Tax record shows the improvements on the property identify it as a shed with carports, not a barn. But in any event, this Board needs to determine whether the applicant's removal of the prior barn—if it was one—precludes the applicant from replacing it with another non-conforming barn, which fails to meet the most restrictive bulk requirements.

Diane Bramich: It's not a barn.

Attorney Havens: Okay. Just simply put not a barn.

Diane Bramich: It's not a barn.

Attorney Havens: So does the Board agree that this is not a pre-existing non-conforming barn replacement?

Marc Malocsay: Correct.

Jim Mehling: Correct.

Chairman Jansen: Correct.

Attorney Havens: The applicant's plans show that over 3,000 square feet of the intended use comprising 5549 square feet or more of combined occupied space, not floor area—that's a different definition, is specified for "heavy equipment garage for a heavy loader and other machinery to be used to maintain the applicant's estate property and for storage identified as parts storage". And in the application it specifies for repair and cleaning collectible cars and motorcycles identified as a workshop, all shown on sheet A2.02. The generic terms 'heavy equipment garage', 'parts storage', and 'workshop' are not defined in the Town Code, nor are they identified in the Use Table as a permitted use in any zoning district. However, in reviewing exhaustively the Table of Use regulations, there is a use identified as "maintenance, repair and storage of machinery equipment and fuel used on site", which is identified as accessory use number A21. This use is only authorized in the rural district as an accessory use to business uses number 14 and 39 just like barns and therefore such uses are not permitted accessory uses to a single family dwelling. There's an additional accessory use A5 that is described as "barns, silos, produce storage, packing warehouses and greenhouses". This is accessory use A5 is only authorized in the rural district as an accessory use business use number 14 and is not therefore not permitted accessory use to a one family dwelling. Additionally, in the Table of Use regulations accessory use A9, which is identified as "bulk storage including warehouses, oil, gasoline, and gas storage" is only authorized in the office industrial district and is not a permitted accessory use to a one family dwelling. Accessory use A16, which is, "garages, private utility structures" is only authorized in the RU District as an accessory use to business use number 14 Commercial Agricultural Operations and is not a permitted accessory use to a one family dwelling. So what this Board needs to determine is whether or not the above stated accessory uses are the only accessory uses listed in the Use Table that might reasonably and adequately describe the applicant's proposed intended use related to as stated in the applicant's submissions, "heavy equipment garage, parts storage, and workshop."

Diane Bramich: They said he was going to work on motorcycles in there—that was stated and that there would be parts stored.

Attorney Havens: Okay.

Chairman Jansen: I think that was only parts...

Diane Bramich: And that was stated by the the attorney when they gave him one of their presentations.

Attorney Havens: Okay.

Chairman Jansen: That's only one. But most of the other things that were just mentioned are not permitted uses.

Jim Mehling: There was also mention of feed for Alpacas as well.

Attorney Havens: We'll get to that on the next one.

Jim Mehling: Okay. Gotcha.

Chairman Jansen: Okay.

Attorney Havens: So with respect to the heavy equipment garage, parts storage, and workshop, does this Board believe that the definitions that I just read are the only uses listed in the use table that might reasonably and adequately describe the applicant's proposed intended uses related to heavy equipment garage, parts storage and workshop?

Jim Mehling: I would say yes.

Diane Bramich: Only part of it.

Attorney Havens: Well, it doesn't have to apply to all of them. Each one applies to a greater or lesser degree to one or the other.

Chairman Jansen: Right. So the answer is yes.

Board Members: Yes.

Attorney Havens: Alright. The applicant identified 699 square feet of space as, "alpaca winter feed storage" on the floor plans sheet A2.02. Accessory use A20, which is identified as "keeping domestic pets and livestock" is a permitted accessory use to a single family dwelling within RU district. Keeping livestock under accessory use A20 is subject to Town Code §164-46 J(16), which includes the following "no animals, bees or fowl shall be housed within 100 feet of any lot line, except where livestock animals are housed, then such housing shall be set back 150 feet from any lot line. Any penning area less than one acre in size shall be set back 50 feet from any lot line, all animals shall be contained on the property. No storage or spreading of manure or other odor-or dust-producing substance or use shall be allowed within 150 feet of any lot line." As noted by the neighbor, the applicant specifically failed to identify the location of where such livestock would be housed on the property. The applicant did, however, take the time to submit an updated drawing on September 25th, 2023, showing the proposed locations for eight other garden features, a shooting range, an aviary, and other improvements that the applicant intends to develop on the parcel as a reason for why the garage that was being presented could not be located anywhere in the back of the property. Since no other structures for the housing or penning of such livestock was proposed, the ZBA has to determine whether it was the applicant's intention to house such livestock within the excessive extra space, or whether or not they've complied with the Code requiring specifying the location for housing such livestock. And whether such use would violate the setback requirements for the housing or penning of such livestock since the structure as proposed would be nearly 15 feet from the side property line, nearly 68 feet from the neighbor's primary residence next door at 15 Distillery road.

Diane Bramich: What was the distance to be of from the neighbor?

Attorney Havens: Fifteen feet from the side property line and 68 feet from the neighbor's residence. And the setback requirements are either 100 or 150 depending on what the nature of the livestock is. So since the applicant failed to identify a permissible location for housing the alpacas for which the applicant intends to allocate 699 square feet for "alpaca winter feed storage", does the proposal meet the setback requirements of the Code?

Chairman Jansen: Definitely not.

Diane Bramich: No.

Jim Mehling: Not a surprising statement.

Chris Daubert: I thought in one of the discussions that it was squashed.

David Niemojko: Yes.

Chris Daubert: Right?

David Niemojko: That's going way back.

Chris Daubert: Yeah. And I thought we squashed it after the first meeting that we did away with the alpacas from my...

Attorney Havens: That's still reflected on the revised submissions that were submitted.

Chris Daubert: I thought he said he wasn't going to do any livestock.

Inaudible - several conversing about the applicants plans to have alpacas

Sabastion Carlton: He said 'I'll do something else.' (Inaudible) I'm positive he said he was only thinking about it.

Chris Daubert: Yeah he was only thinking about it.

Attorney Havens: Okay. I don't specifically recall that and looking through the documents...

Chris Daubert: It was way back in the beginning.

Diane Bramich: I know it was a future thing. It wasn't something he was going to do tomorrow. It was something he was thinking about.

Attorney Havens: Okay.

Chairman Jansen: Well, regardless, he can't do it anyway.

Sabastion Carlton: So if he can't do it, he won't.

David Niemoetko: That's fine.

Chairman Jansen: Continue.

Attorney Havens: Alright. Code §164-43.2 governs off street parking and loading requirements. Subsection A of the off street parking loading requirements covers the purpose and it states the purpose of the off street parking and loading regulations is to ensure that such uses are treated as accessory uses, that they do not predominate the site, are placed to the side and rear of principal buildings to minimize their visibility and feature quality landscaping to reduce the visual impact of glare headlights and parking lot lights from roadways and neighboring properties. So if you look at the applicant's submitted plans, the location of the proposed garage is approximately midway between the front property line and the front line of the primary residence. It states on their plans, the primary residence is 645 feet from the front property line, which puts the garage approximately 300 feet plus or minus in front of the applicant's primary residence. Is there any question that it's not placed to the side or rear principal building?

Diane Bramich: I asked that at the last meeting; why it couldn't be put in the back.

Attorney Havens: So does the Board agree that the proposed structure is not placed to the side or rear of the principal building? I don't think the applicant debates it, but just for the record.

Board Members: Yes.

Attorney Havens: With respect to siding by comparison, the proposed garage is merely 15 feet from the side property line and merely 68 feet from the neighbor architect's primary residence next door at 15 Distillery Road, based on the testimony from the neighbor. The neighbors also testified that the sheer size of a proposed massive structure was substantially more than twice the size of the neighbor's primary residence, which they said is 1,950 square foot footprint. And the exceptionally close proximity would "dwarf" the size of their primary dwelling. The existing bamboo between their property and the proposed structure as measured by the neighbor was stated to be approximately 30' tall. And the neighbor testified that it would be inadequate to provide sufficient visual screening or sound barrier resulting in a significant reduction in the neighbor's everyday quality of life, as well as the marketability or resale value of their primary residence. The neighbors also testified that the applicant's proposal failed to provide sufficient details to address the anticipated new stormwater runoff created by the proposed changes in topography slopes, the moving of an existing culvert at the location of the garage, and the dramatically increased impervious surface from the new roof of such a large structure and expressed significant concern regarding the direct negative impact such stormwater runoff would have on their property and home immediately adjacent to the proposed structure. At the August 28th, 2023 ZBA meeting, the ZBA requested that the applicant install a leveling head or silting pad to capture stormwater runoff from the

proposed larger roof. The applicant agreed verbally but from what I can tell, this was not included in the revised plans. There was no specific stormwater management feature incorporated into their plans, nor did the plans provide any detail regarding stormwater discharge, capture, and or mitigation from the roof of the new garage with a 3,952 square foot footprint. So the Board has to determine whether or not the applicant adequately addressed the concerns or whether or not the concerns of the neighbor are sufficient to be concerns. And if so, whether or not the applicant adequately addressed those concerns regarding the potential adverse impact on the neighboring properties.

Diane Bramich: No (inaudible).

Chairman Jansen: They did not because...

Diane Bramich: They did not.

Chairman Jansen: No.

Marc Malocsay: Did not.

Chairman Jansen: Okay.

Jim Mehling: Yeah.

Attorney Havens: So first before you determine whether or not they adequately addressed it, the question that you have to first determine is whether or not there's a potential adverse impact on neighboring properties with respect to stormwater runoff and also the sheer size and scale.

Chairman Jansen: Well if you have a 3,950 square foot roofing area, there's going to be significant amount of water, particularly if we have more than a normal rainfall. Anyone else?

Marc Malocsay: Yes. However when you talk about with the issue with the neighbors, it's downhill. So is there the potential for some? Yes. But the water's flowing downhill, which is down basically their own driveway. So yes, there should be one put in there, but it's not as if the water's going directly from that onto the property.

Chairman Jansen: Okay. Everyone else agree?

Chris Daubert: I agree with what Marc said.

Chairman Jansen: Okay. Go ahead.

David Niemotko: Also, once the project's approved during the building permit process, we can show them a stormwater management system to accommodate for the roof. We're just looking forward to getting the variance so we can get to that phase. Also, I was hoping the other comments from the public would be brought into this. There were other comments that said the project would not be visible from the road, it would increase the value of the land or increase the value of the properties. I believe those comments should also be...

Marc Malocsay: They're in the record, they don't have to reiterate everything that everybody said.

David Niemotko: That's fine.

Marc Malocsay: Okay. But as far as what you've mentioned before on the stormwater runoff, unlike the Planning Board and putting the conditions on, we would put that on as a condition.

David Niemotko: Yeah.

Marc Malocsay: And then you get your permit. It's not one that you get your permit or your variance and then go and show them something that we didn't necessarily ask for. It's something that has to be a condition...

David Niemotko: A condition of the final function.

Marc Malocsay: Yeah.

David Niemoetko: We agree.

Marc Malocsay: Okay.

David Niemoetko: We have no problem with that.

Dennis Lynch: We don't agree you have jurisdiction to do Planning Board matters, but we agree that the Planning Board had a reasonable condition, we'll comply with it.

Attorney Havens: So I can't say that I know based on the comments that were made whether the Board feels that the size and scope of the structure the existing bamboo between the proposal and the neighbors and the potential for stormwater runoff would create an adverse impact for neighboring properties.

Marc Malocsay: I don't think anybody can argue that the houses of that size bigger or even something at 2 or 3000 square feet the setback is 75 feet from a property line. When we have the restriction of 1200 square feet and being up to 5 feet from a property line, it's something that is only 1200 square feet. So I don't think anybody could argue that something of that size 15 feet from the property line is a detriment to the person that's right there.

Jim Mehling: I agree. And I would add to that the caveat that the neighbor has no option; their house is where it is. This proposed structure is yet to be realized and has the ability or could be theoretically moved to another spot on the applicant's property that would pose no unsightly or unseemly. I always try to put myself in each person's shoes. How would I feel if this was coming next to where I live? Would I be thrilled with it or not? I don't use that to necessarily make my decision for this. However, it's something that I have to keep in mind. We talk about constitutional rights. The Bill of Rights is life, liberty, and the pursuit of happiness. Everybody has equal rights. I'm a big believer in people being able to do as they choose with their property providing there is a reasonable expectation of the things done in a responsible manner. As far as this is, it's a huge burden on the neighborhood neighbors. It really is.

Marc Malocsay: We had said this before too, that what's before us is the size of the building on the variance, not the proximity to the property line. Correct. But when we go through our criteria, one of the first ones is a detriment into nearby property owners. And in this case, the answer is yes because of its proximity to the property line. If it were moved someplace else, they'd still need a variance from us. But that first question now becomes a little easier in that it doesn't in any way affect anybody because it's, and again, we could use something at 75 feet away where a house would be, it would be the same thing as having a house there. So, just to go along with what you said...

Jim Mehling: Right, and that keeps in mind with what you stated earlier about the other people that came up and had spoken and said they had no issue with it. The thing is, the people that are closest to this project, it's a significant impact in their day-to-day life. This isn't a party tent that's up for a weekend and taken away and gone; this is there forever.

Attorney Havens: Alright.

Diane Bramich: It's hard to reiterate. I go along with both Marc and Jim. I feel personally that the building is far too large for the placement on that piece of property. It's bigger than most houses, living houses where people are bringing up their family. Is it a detriment to the site? It could be. It could be a detriment to those driving through there and seeing this large building. I believe that that building can be put someplace else on the property and they would probably get the variance they need for something like that. It's just, and it definitely does not fit on site plan that was there.

Attorney Havens: Okay. So do you feel that the proposal as submitted would create an adverse impact?

Diane Bramich: Yes.

Jim Mehling: Yes.

Marc Malocsay: Yes.

Chairman Jansen: Yes.

Attorney Havens: On the neighboring properties?

Diane Bramich: Yes.

Attorney Havens: Okay. We're going to go through the five legal questions of the area variance. I'm sorry?

Diane Bramich: You've got one more person on the Board.

Chris Daubert: I'm good.

Attorney Havens: Oh, yeah.

Chris Daubert: I agree with everything. I mean, you're going to see it regardless.

Attorney Havens: Alright. So we'll get to in just a minute the five criteria that the ZBA has to take into consideration and make determinations on. One of the things that is to be considered is what type of hardship or practical difficulty the applicant is facing that may warrant a variance in this particular case. It was previously testified and shown that the applicant does have a three car garage of 1,080 square feet attached to his home as per the Orange County Property records. And for this Board's information, the Appellate Court in Berkhart, the Zoning Board of Appeals Citation 169, Appellate Division 2nd, 977, Third Department 1991, determined that the owner of lakefront property was not entitled to an area variance to permit construction of a 28 x 40 foot, which is 1,120 square feet, garage to house 4 automobiles, motor home, 2 trailers, 3 boats, 3 jet skis, snowmobile, 2 all-terrain vehicles, a dump truck, plow and backhoe. And that the hardship created by the property owner's personal desire for a multitude of vehicles was not the type of practical difficulty that warranted the variance. In looking for a case law on this, so that we can at least have some rational basis as to whether or not the hardship or practical difficulties that the applicant is facing, that was the one that I found that was closest in similarity to this particular application. With the respect to the five statutorily required criteria to be considered by this Board regarding the granting of an area variance, the first one: will an undesirable change be produced in the character of the neighborhood or detriment to nearby properties be created by the granting of the variance requested? The applicant states no. And the reason for their answer is 'the garage will be built to look like a house. The architectural elements will be what you would find on a high-end customer home in the area. Additional landscape and screening will be added to ensure that the structure visibility will be minimal from both street side and neighboring houses.' Does the Board agree with the applicant's answer that the proposed application would not create an undesirable change? Sorry...Will an undesirable change be produced in the character of the neighborhood or detriment to nearby property to be created by granting of the variance? Yes or no?

Chairman Jansen: What's your answer?

Jim Mehling: I'll say no.

Diane Bramich: No.

Chairman Jansen: No.

Jim Mehling: I don't agree.

Attorney Havens: Marc?

Marc Malocsay: No. It's interesting they said that it would look like a house. It might look like a house that's sitting a heck of a lot closer than it should be to the property line. So if it's looking like a house and it's 75 feet away, I would say it's looking like a house. So I disagree with their answer to that question.

Diane Bramich: I disagree.

Attorney Havens: Okay.

Chairman Jansen: Also disagree.

Attorney Havens: Question Number 2: Can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant stated no. And the reason for their answer is that 'a previous garage was located at the area of the site the new garage is to be constructed. The variance would limit the environmental impact of clearing several new sites to accommodate the space required.'

Diane Bramich: I believe the tax map showed it was not a garage; it was a shed.

Attorney Havens: Okay.

Chairman Jansen: And also the environment.

Attorney Havens: So the question is can the benefit that the applicant seeks be achieved by some feasible method other than granting the variance?

Diane Bramich: No. Unless they move...No? Read that again.

Attorney Havens: Can the benefit that the applicant seeks be achieved by some feasible method other than granting the variance?

Board Members: Yes.

Three Board Members suggest relocation.

Jim Mehling: But relocating it doesn't address what you're seeking the variance for, which is the overall size of the structure and the variance for the ridge overlay district height restriction.

Marc Malocsay: But it goes back to what we said before with the proximity to the house is the undesirable change. If it was someplace else probably nobody would have a problem with it. But we do have the issue of the size of the building. So can it go someplace else? It's not before the Board because it meets the setback requirement.

Attorney Havens: Right. What's before the Board is the square footage. So is there any other method that they could achieve where they wouldn't need such a substantial variance?

Diane Bramich: Not on the side.

Marc Malocsay: That's not, and it's a difficult question to answer again, because that's what they're asking for. Could it be made smaller? Yes. But it wouldn't suffice to what they wanted to do. However, going through your list before, it seems that most of the things that they want to do in there, they can't do anyway. So I would say yes, the building could be made smaller.

Diane Bramich: I agree.

Chris Daubert: Agreed.

Jim Mehling: Agreed.

Attorney Havens: Thank you. Number 3: Is the requested variance substantial? The applicant states, "Yes. The size of the garage being proposed is double what is permitted."

Diane Bramich: Agree.

Chris Daubert: It's actually triple.

Jim Mehling: Yes. It's substantial.

Marc Malocsay: Yes.

Attorney Havens: Substantial?

Diane Bramich: Substantial.

Attorney Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states no. And the stated reason for their answer is 'the nature of the structure does not place a burden on any natural resource beyond what is typical for this type of project.' So the question for the Board is will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Marc Malocsay: Now, we hit upon this briefly, and it's on a hill, the water flows down, which doesn't necessarily affect the neighbors, although the pitch does allow for some water to go there. But in a building of this size the gutters are usually captured and put into a leveling pad. There's culverts that direct the flow of the water. There's usually some kind of sediment control. So I'm going to say no, because there could very easily be conditions in there to eliminate any of those problems. If the house in question and the water were flowing directly to it heading downhill, I would say that would be a totally different answer. But for the most part, water flows downhill, which isn't necessarily right to the neighbor's house.

Attorney Havens: Okay. So does everybody agree that it will not have an adverse impact on the physical or environmental conditions of the neighborhood or district?

Chairman Jansen: I don't know if we could tell at this point.

Marc Malocsay: Yes, to the best of my knowledge, there wasn't any testimony with the building that was there for a while. Even though it wasn't as large, we didn't hear of substantial runoff to the neighbor's property. So maybe I missed it, but with the topo, I'd be surprised. The water is going to flow that way, but mostly heading downhill.

Diane Bramich: Agree with Marc.

Chairman Jansen: I don't believe that we can justifiably say that it's not going to affect anybody or the neighborhood.

Diane Bramich: You're not going to know.

Chairman Jansen: No.

Jim Mehling: The only thing that troubles me on this is getting back to the ridgeline height. And I give great pause to thinking about what we could start; it's hard to put lightning back in the bottle, so to speak. And again, we've granted variances for hard structures before, but the height restriction exists for a reason. Because when zoning was created they drafted these different districts, it was in an effort to try to somehow maintain responsible development without significantly impacting the appearance of the property. Warwick benefits from the PDR program, which the town fathers sought out to try to protect to a degree and enhance and ensure that the appearance of our area was maintained in a sustainable way and done responsibly. And that's before this Board, is how do we continue their work, keeping in mind people's rights to property and doing things as they see fit within the wall. But once you go above, you go to 33 feet, 35 feet. Do we stop, do we redraw it? That's the yes to me. It's the aesthetics, having lived up here my entire life and watching how certain areas have been irreparably just destroyed. And I don't want to see that in Warwick.

Chairman Jansen: Okay.

Attorney Havens: Mr. Chairman, would you pull the Board?

Chairman Jansen: Sure. What's your answer?

Jim Mehling: Yes.

Chairman Jansen: Yes.

Marc Malocsay: Yes. Guess I never considered the ridgeline overlay.

Diane Bramich: Yes.

Chairman Jansen: Daubert?

Chris Daubert: No.

Chairman Jansen: Yes.

Attorney Havens: Okay. And question number 5, is the alleged self difficulty self-created? The applicant states no. And the reason for their answer, "the property and structures that exist preceded the current owner. Therefore, his needs couldn't be anticipated as a new owner. Technology and social advancement have also changed individual habits, behavior, and trends." So the question before the Board is the alleged difficulty self-created?

Diane Bramich: Yes.

Jim Mehling: Yes.

Marc Malocsay: Yes. I've never heard the answer that way before. It could fill in a lot of gaps. The answer is yes, self-created.

Chris Daubert: Yes.

Attorney Havens: Okay. So would someone care to make a motion either granting or denying the variance as advertised or amended?

Diane Bramich and Chris Daubert simultaneously: I'll make a motion.

Diane Bramich: Go ahead.

Chris Daubert: I'll make the motion.

Chairman Jansen: Motion by Daubert, Seconded by Diane.

Jim Mehling: Make a motion for what?

Attorney Havens: Yes.

Diane Bramich: To do what?

Chris Daubert: To grant it.

Attorney Havens: To grant it.

Diane Bramich: No, I'm not seconding.

Chairman Jansen: Any second for the granting?

Marc Malocsay: I'll second it.

Attorney Havens: Any discussion?

Chairman Jansen: Can I ask for a motion to deny?

Diane Bramich: You have to vote on this first.

Attorney Havens: You have a motion to grant it and a second on that motion. So we have to vote on that first, whether or not that gets approved.

Chairman Jansen: Okay. How do you vote?

Chris Daubert: Yes.

Diane Bramich: No.

Marc Malocsay: No.

Jim Mehling: No.

Chairman Jansen: No.

Dennis Lynch: Sorry. Was that a 3-2 vote?

Chairman Jansen: 4-1.

Dennis Lynch: Thank you.

Attorney Havens: All right, so we had a motion by Chris to deny the application and a second by Marc. And if I understand correctly, we have four against the resolution and one in favor.

Marc Malocsay: Correct.

Jim Mehling: Correct.

Attorney Havens: Okay. You'll receive a ZBA determination for the denial that will provide all of the findings.

Dennis Lynch: Have a good night.

David Niemoetko: Great, thank you.

Attorney Havens: No problem.

Cristina & Johannes Van Bladel – regarding property located at 3 J P LN, off Pulaski Hwy, Pine Island, NY 10969, and designated on the Town tax map as Section 14, Block 3, Lot 14.1 and located in the SL district for area variance in relation to the denial of a building permit for construction of a 8' X 10' greenhouse adjacent to existing 4'x 6' & 4'x 8' chicken coops where the existing chicken coops do not meet the 100' setback required by Town Law §164-46J(16).

Representing the Applicants: Cristina & Johannes Van Bladel, Applicants

Chairman Jansen: Do you have mailings or do we have the mailings?

Attorney Havens: No, there's no mailings because there was no public hearing scheduled for it; this is a workshop.

Chairman Jansen: Okay, so go ahead.

Attorney Havens: Alright, so we've reviewed your application. And the reason it wasn't scheduled for a public hearing is you have a couple of issues. First of all, you have a Building Department violation for existing chicken coops that don't meet the required 100 foot setback. You may have heard, we were just discussing the setback requirements. And additionally, with your application, you submitted a business certificate and stated in the application that you're selling eggs from your chickens and running a farm business. Legally speaking, your house is identified a primary use for your house is a residential dwelling. The Town Code only permits one primary use. It can't be a residential dwelling and a farm unless you have a large farmstead property and you're actually registered as a farm operation and generating the necessary \$10,000 a year in agricultural products kind of thing. And so in order to qualify as a primary use as a farm, and then it wouldn't be a primary use as a residence. So you can only have one primary use. However, as stated earlier the keeping of chickens, up to 10 of them on your primary residence is permissible so long as you meet the setback requirements. Looking at the site plan that you submitted, it doesn't appear that you can meet those setback requirements and hence you would need an area variance. Unfortunately, this Board can't give you that. It appears from my measurements; I used your survey from John McGloin and it appears that your property at the widest point in the back area where your chicken coops is located is measured to be 190 feet.

Cristina Van Bladel: May I see what you are looking at?

Attorney Havens: Yes, sure. So here's your property. (*Attorney Havens shows Cristina Van Bladel the survey and explains the situation*)

Cristina Van Bladel: Yes.

Attorney Havens: The chicken coops are over here.

Cristina Van Bladel: Yes.

Attorney Havens: Ok. And the distance from this point to this point on your property appears to be 190 feet based on scale of this map. That means no matter where you put it and since this dimension here is the biggest dimension on your property and it's approximately located to your chicken coops, you are still going to need a variance. But before we can grant a variance, you would have to go before the Planning Board and request a Special Use Permit in order to operate a Class 2 home occupation. And so, while this Board may have the ability to grant the variance because it's impossible for you to place your chickens more than 100 feet from all property lines, you would nonetheless have to go before the the Planning Board to seek a Special Use Permit for the Class 2 home occupation for running your at-home farm.

Cristina Van Bladel: I also want to mention that this is the only place where I'm far away from each house.

Attorney Havens: All the other residences around it.

Cristina Van Bladel: This area here is wooded.

Attorney Havens: It's also commercial farming. I'm not saying the location is a bad location, it's probably like you said, the best location on your property for it to have the least impact to all the surrounding property owners. But this Board has no capacity to bring your application for variance without a Special Use Permit because you're actively engaging in a business.

Cristina Van Bladel: Okay. So what should I do?

Attorney Havens: You need to submit an application to the Planning Board for a Special Use Permit for a home occupation.

Cristina Van Bladel: Okay. Where do I do that?

Chairman Jansen: The Planning Department.

Cristina Van Bladel: Planning Department? Okay.

Chairman Jansen: And then once they grant that, I'm assuming they're going to grant it, then you'll be back here for a variance.

Attorney Havens: Correct. But we can't grant it until you get your Special Use Permit to run your little chicken farm here.

Cristina Van Bladel: I don't have a chicken farm; it's a farm and I have chickens additionally to the crops I'm growing.

Attorney Havens: Right.

Cristina Van Bladel: I'm not planning to have a million chickens.

Attorney Havens: No, no. I totally understand that.

Johannes Van Bladel: We don't try to have (inaudible).

Attorney Havens: Right. But you did state in your application that you're operating...

Cristina Van Bladel: I do sell the eggs, sure.

Attorney Havens: You're operating fruits, flowers, and herb farm.

Cristina Van Bladel: Yes.

Attorney Havens: So you still need a Special Use Permit for a Class 2 home occupation.

Cristina Van Bladel: Yes. Ok.

Attorney Havens: And here you can take this; it has all of my comments. (*Attorney Havens hands paperwork to Cristina Van Bladel*)

Cristina Van Bladel: Okay.

Attorney Havens: And it includes the specification on Item Number 1 that you need to apply to the Planning Board for Class 2 Home Occupation Special Use Permit.

Cristina Van Bladel: Okay.

Attorney Havens: Alright.

Johannes Van Bladel: Your Honor, thank you for your attention to this and your time.

Jared Schutzman & Andrea Klein – regarding property located at 282 Bellvale Lakes Rd., Warwick, NY 10990, and designated on the Town tax map as Section 47, Block 1, Lot 82.222 and located in the MT District for an area variance permitting an existing 1,440 square foot single-story garage, where a maximum of 1,200 square feet is permitted.

Representing the Applicants: Jared Schutzman, Applicant

Chairman Jansen: Ok. This is an existing barn, correct?

Jared Schutzman: Correct.

Chairman Jansen: Yes.

Attorney Havens: So as you may have also heard, we were just discussing the whole having a barn as an accessory use to a principal primary dwelling.

Jared Schutzman: Well, I wouldn't say...it's more of a garage.

Attorney Havens: Okay.

Jared Schutzman: It is a garage. And, and that's essentially my comment here is if you submit an application for a barn, we're going to have to deny it because that's not a permissible use.

Jared Schutzman: Okay.

Attorney Havens: You need to revise your application to specify that you are submitting an application for a garage as opposed to a barn. Apparently there's an open fence permit that was denied in 2020 and the Building Department asked that you address that. That'll have to be resolved before we can grant the variance.

Jared Schutzman: Okay.

Attorney Havens: And you'll need to amend and correct when you submit the new application, specifying that it's a garage instead of a barn. You'll also need to correct a few other items on your Environmental Assessment Form, the short form EAF. There's a bunch of questions on there where you have both the 'yes' and 'no' checkmarks marked off. And the the final page that identifies what the public record shows for certain questions is actually from the sample form as opposed to your property. So when you were given the application, there's a set of instructions to go online and go to the EAF Mapper, and put in your address, click here, click there, whatever, and generate the report and then fill in the answers that aren't checked off and leave the ones that are checked off.

Jared Schutzman: Okay.

Attorney Havens: So you'll need to resubmit that with the revised application. And also your deed and your prior application to the Planning Board specifically note that your property is abutting the Appalachian Trail at the back end of your property.

Jared Schutzman: Correct.

Attorney Havens: And so even though the Appalachian Trail is more than 500 feet from where you're placing this garage, because your property line is within 500 feet of the Appalachian Trail, we're still going to have to do a Orange County GML 239 referral. Simple process for something like this. I doubt they'll have any problems or issues, but it's a technical requirement that we would have to comply with in order for us to have the legal capacity to grant the variance.

Jared Schutzman: Okay.

Attorney Havens: So when you're filling out the application, there's a particular part, and I'll show you here so that you know what I'm talking about.

(Attorney Havens shows the application to Jared Schutzman)

Attorney Havens: You see these questions here in section 5A through E? On B, you said no. "Is it within 500 feet or boundary of any existing or proposed State or County Park or other recreation area?" So that needs to be 'yes'.

Jared Schutzman: Okay.

Attorney Havens: And also identify that appropriately on the revised Environmental Assessment Form.

Diane Bramich: Does he have to re-advertise?

Attorney Havens: He never did.

Jared Schutzman: Oh okay.

Diane Bramich: Oh.

Attorney Havens: I saved him the trouble of publishing.

Diane Bramich: Oh, okay.

Attorney Havens: We didn't do a public hearing so he never advertised.

Diane Bramich: Oh, okay.

Attorney Havens: So he's going to amend his application, resubmit it, and when everything looks good, we'll give you a public notice so that you can advertise it instead of having people come in and complain about your application.

Jared Schutzman: Okay.

Chairman Jansen: It's not like you're being moved out or anything.

Jared Schutzman: No. It's pretty rural, so... No one even could see the barn.

Chairman Jansen: Well I don't think anyone...

Attorney Havens: Well that makes it certainly easier for you.

Jared Schutzman: Yeah. I wouldn't even call—it's a garage, sorry. It looks like a barn but...

Jim Mehling: Call it a garage.

Jared Schutzman: It's a garage.

Chairman Jansen: Call it whatever it was.

Jared Schutzman: It is a garage. I have no garage in my building. My house never came with a garage, so I have to store my cars there.

Attorney Havens: So, if you can revise the application to specify that it's a garage, check 'yes' at number 5B on the application that it's next to a recreation area and redo the EAF form, resubmit and then we'll get you scheduled on the next public hearing.

Jared Schutzman: Last time I had a subdivision, but like two years ago I had an engineer that I called, he kind of helped me walk through that. Do they usually...would be the people that would fill this out? Because obviously it's a little complex all these questions.

Chairman Jansen: It's not that hard.

Jared Schutzman: Okay.

Marc Malocsay: No, it's not that hard. Save your money.

Attorney Havens: If go online, fill out the EAF Mapper online, leave those answers that are automatically checked, break out the one that you download from that and then just fill in the ones that aren't answered. We should be all right.

Chairman Jansen: I'm not sure whether there's going to be a December meeting, but if not, it'll be January.

Diane Bramich: It doesn't look like it, it's Christmas Day.

Jared Schutzman: If this was filled out right there would've been a public hearing, and I would've went through like the first guy?

Attorney Havens: Correct.

Jared Schutzman: So I just didn't fill it out right. So I probably should have hired somebody to do it for me.

Marc Malocsay: Well are you in a rush?

Jared Schutzman: I mean, no, I would like to keep my cars in there. I stopped working so the only thing that I didn't do was pour concrete on the floor, so I can't really get my cars in there yet.

Marc: Because with the County response, they need 30 days to respond. And so by the time everything's done, meaning that if the application's in and we don't have the...if you came in December, we probably couldn't act upon it because the County needs that time.

Jared Schutzman: Yeah well to be honest, it was a garage that literally was supposed to be coming in January. It was the Amish and they like rushed it. They called me up, they told me it was ready to go and they kind of just dropped it off and it was very prefab modular, so they kind of just plopped it on the property.

Chairman Jansen: Alright, well you know what to do.

Inaudible — several speaking at the same time

Attorney Havens: What these guys were saying, they were trying to do is save you a little bit of time if you revise your application and get it to us sooner than later...

Jared Schutzman: Appreciate it. Okay.

Attorney Havens: we'll submit it to the Orange County Planning Department even though we're not having a meeting in December. And that way they have their 30 days to respond before you even have your public hearing after the new year.

Jared Schutzman: Perfect, thank you.

Attorney Havens: Alright.