

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 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 36'x40' (1,440 sq. ft.) single-story garage, where a maximum of 1,200 square feet is permitted.

No one present for the Schutzman-Klein application.

The Jared Schutzman & Andrea Klein application would be carried over to the March 25, 2024 ZBA Meeting. The application would have to be re-noticed and re-advertised.

PUBLIC HEARING OF Mountain Green Partners, LLC - regarding property located at 5 Hathorn Rd., Warwick, NY 10990, and designated on the Town tax map as Section 43, Block 1, Lot 28 and located in the SL district for an area variance from the access requirements under Town Law §280-a to permit access to the property from a 50' private right-of-way for new construction of a proposed lodge and tourist accommodations with caretaker house, meeting room, pavilion, pool, maintenance shed and parking areas where the property does not directly abut a public street or highway.

Representing the Applicant: Dan Getz, Engineering and Surveying Properties

Chairman Jansen: So please identify yourself for the record.

Dan Getz: Yes. Dan Getz from Engineering and Surveying Properties representing the Applicant.

Attorney Havens: I just want to start off by noting that a GML 239 referral was made for this application on February 7th, 2024. Basically, the same day the application was submitted. We haven't received any response on that yet from Orange County Planning. We can hold the public hearing. We're not going to be able to make any determination specifically because we haven't received any response from Orange County Planning and we haven't met the 30-day requirement yet.

Dan Getz: Understood.

Attorney Havens: The public hearing would have to be held over to the following month. We need to wait the 30-day to hear from Orange County Planning.

Dan Getz: Okay.

Attorney Havens: Have you presented the certified return receipt proof of mailing for the notice of hearing?

Dan Getz: I have them here.

Attorney Havens: And as the Chairman said, if you'd like to discuss the project, please.

Dan Getz: This is a property at 5 Hawthorne Road in Warwick. The proposal is to build tourist houses, a lodge and other buildings, associated stormwater, and access. The reason we're here tonight is for the 280a variance because this property (*pointing to diagram on easel*), these are the boundaries of the property, so it's landlocked. It has two access easements; one's on Hathorn Road and one to County Road 1A and the better site distance is the one on Hathorn Road and the existing dirt driveway access is already there. It's our understanding that under Town Law, to build new buildings we needed a 280a variance because the property doesn't directly front on the road. So this is an existing driveway, the initial part of it would be paved as part of this project. We don't believe this would have any significant negative impacts on the neighborhood. The buildings to be built are screened by some existing trees near the property lines. We don't believe it would have any negative impacts there.

Chairman Jansen: Do we have any questions?

Jim Mehling: No.

Diane Bramich: Did we hear anything from...

Chairman Jansen: The county? No.

Diane Bramich: No. From the fire department or, I mean, they have to do that also if we're going to take this, this is a small dirt road.

Chairman Jansen: Well, if that is something that we need to do...this is not going to get passed tonight anyway.

Chris Daubert: I'm sure the road's going to be all redone then.

Chairman Jansen: Yeah, we can put that note on there for that. It looks to me that...

Chris Daubert: Are they going to keep the road the way it is?

Dan Getz: They're going to be widening the road.

Chris Daubert: Yes, I was going to say it's wide enough. You could squeeze through, but it'd be tough.

Dan Getz: Right. It is proposed to be widened. And we've been working with the DEC to get a permit for the widening in the area that would be within their wetlands buffer. No wetlands would be directly impacted though.

Diane Bramich: To widen it...the easement is how wide?

Dan Getz: The easement is...

Chairman Jansen: 50 foot.

Several agree to the 50 foot width

Chairman Jansen: I drove up to the gate yesterday; it's accessible but it's not wide enough yet.

Dan Getz: Right. It is to be widened.

Attorney Havens: I had a question I noted on the plan right by the connection to Hathorn Road. It says 'widen existing driveway to 20 feet and pave the first 350 feet minimum.' Is there not an intention to pave the entire length?

Dan Getz: That's correct. Actually we're discussing that same thing with the Planning Board. The Planning Board asked for the entire driveway to be paved. We're proposing 350 feet because that gets us...you can actually kind of see it on the picture (*shows picture on the easel*) of the existing road, that gets you to the top of the hill. So here's the driveway and 350 feet, I think is somewhere around that crest where we're proposing to pave to. And the idea is that that would be well past the neighboring dwelling. So that by paving we would be avoiding dust going there. But for the remainder of the drive, there aren't any real steep slopes on that drive. It's proposed to remain unpaved.

Attorney Havens: Okay, thanks.

Chairman Jansen: So is there any reason to open this to the public? There's no one from the unless you <inaudible>.

Attorney Havens: Are you done with your initial presentation?

Dan Getz: Yes. Unless there is a question.

Attorney Havens: Then yes; go ahead and open.

Chairman Jansen: Okay. So open to the public, anyone from the public that would like to address this application? I'm going to leave that open for now.

Attorney Havens: The Zoning Board needs to discuss SEQR. The Planning Board has already declared lead agency status under coordinated review and typed the action as a Class 1 action. At tonight's meeting because we're not planning to finalize this because we don't have Orange County Planning referral response, there's no need to take any further action under SEQR. I recommend we're not prepared to close the public hearing because we need to get the Orange County Planning Department referral response. And...

Chairman Jansen: So would you address this other thing about the legal authority for granting a 280a?

Attorney Havens: We could do that now if you want, or we could do that at the next meeting.

Chairman Jansen: Mr. Krahulik, what do you want to do, wait until the next meeting for that?

Bob Krahulik: Well since the public hearing's remaining open, I see obviously no harm in waiting a month to resolve that issue once and for all. There's been considerable correspondence and communication. I think I presented the position of the Planning Board on this issue but I don't know if it's been resolved with respect to your Board yet.

Chairman Jansen: Well our Board probably didn't even get your letter because it came on Friday.

Bob Krahulik: Right.

Chairman Jansen: And I don't think Connie was able to get all that information out in time. So they never got all of that. And the way I understand it now, is that we're going to have to try and have a meeting between you, the engineer, Ben Astorino from the Planning Board, myself and Jesse on the 6th?

Bob Krahulik: Correct.

Attorney Havens: Yes. To try to coordinate these types of referrals and so forth.

Chairman Jansen: Okay. So right now to do anything...

Bob Krahulik: You can keep the meeting open so there's no harm in...

Attorney Havens: Right, exactly. That would be my recommendation so we can address this next month if that's okay with you.

Chairman Jansen: Okay. Sounds good.

Attorney Havens: You'll need a motion to keep the public hearing open and adjourn it until next month.

Diane Bramich: So moved.

Chairman Jansen: Motion by Diane.

Chris Daubert: Second.

Chairman Jansen: Second by Mr. Daubert. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Richard Jacobs & Diane Jacobs - regarding property located at 24 West Cove Rd. and 2 Sanders Lane, Greenwood Lake, NY 10990, and designated on the Town tax map as Section 76, Block 2, Lot 4.12 & Section 76, Block 1, Lot 55 and located in the SM district for an area variance in relation to facilitating a lot line change between two pre-existing nonconforming lots allowing for variances from the Warwick Town Code §164-40N Table of Bulk Requirements for lot area, lot width, side yard setback, & both side yard setbacks, and also an area variance from the Code §164- 401(a)(4) allowing one or more garages within the front yard setback where a 30' setback is required.

Representing the Applicant: Bob Krahulik, Attorney

Bob Krahulik: For the record Mr. Chairman, I'm submitting proof of our certified mailings. Let me start by saying that my name is Bob Krahulik, I'm the Attorney for the applicant. I want the Board to know as I do not plan on making it a habit of appearing before you, I was recently appointed the Planning Board Chairman Attorney. I'm sorry but to avoid any, even the appearance of impropriety, I don't plan on appearing before the Board. I do have one or two matters that I have a conflict on that I have to recuse myself from before the Planning Board, this is one of them. I do have one other act of file, but I'm slowly trying to bleed these off as quickly as I can. With that being said if I may, Mr. Chairman, I can quickly introduce the project. Here with me tonight I've got Tom Martin, our Engineer, and Richard and Diane Jacobs, the Applicants. This application involves a piece of property over in the Sterling Forest area of Greenwood Lake. I did submit a color-Coded site plan that shows where the boundary lines of this property exist today. And then in blue and green, what we're proposing. We're proposing no new construction whatsoever. We're simply trying to shift the boundary line so that the existing 30 x 40 garage will be attached to the Richard's dwelling on the lake, that they use and live in, and detaching that garage from the small dwelling on West Cove Road. It's a simple concept, but very tricky to realize, which is why I submitted the two color-coded maps. Does anybody have any questions about...

Diane Bramich: I was there today.

Bob Krahulik: Ok. So in order to do this, we have two lots that are substandard; neither lot meets current minimum lot size requirements under today's Code. These properties were all developed decades ago and constitute pre-existing lots. However, as a result of the lot line change, Lot Number 1, which is already small and non-conforming, will become even smaller and more non-conforming. So we're seeking a variance allowing the creation of that new lot. The benefit to Lot Number 2, which is also an undersized lot, will now acquire more land and will become not conforming, but more conforming.

Jim Mehling: Closer to it, gotcha.

Bob Krahulik: Closer to it. In the Applicants' opinion, we need a variance for the resulting lot line sizes because we do not meet the minimum lot size requirements. And perhaps a front yard setback variance for the garage, which faces Sanders Lane. In our opinion, all the other structures are preexisting, the non-conformity will not be increased, and whether we need a variance or an interpretation from the Board, is in your discretion. But we think a simple interpretation that no variance is needed for the remaining structures would...this is all we need before you today.

Attorney Havens: As the applicant, do you want to present any other summary? We can get into questions if the Board has any, but I just wanted to cover a few points of clarification.

Tom Martin: He did an excellent job.

Richard Jacobs: Excellent job.

Attorney Havens: The applicant has previously updated their site plan from the initial submission, so there has been a newer submission with all of the respective setbacks that are identified for each respective building. So the new plan that was submitted identifies the principal buildings: Dwelling A on Lot 1, Garage B on the original Lot 1 and Garage C on Lot 2 and Dwelling D on Lot 2. And they've created a table that identifies what the required lot area is for each lot as existing as well as proposed, variance lot area request for each of the respective lots based on what's being presented, the required lot width in feet, the proposed lot width in feet, the variance lot width request, the required front setback in feet, the existing front setback in feet, variance front setback request the required rear setback in feet, the existing rear setback in feet, the variance rear setback request being none. Required setback in feet, existing side setback in feet, and the variance side setback request. The required both side setback in feet and existing both side setback in feet and the variance for both side setback request. So in the initial review of this application, I had identified for the applicant that the ZBA would be unable to grant specific variances without knowing the specific footage and distances. And they have updated the site plan accordingly to show each and every potential setback and variance that's being requested. I just wanted to make the Board aware of that. Orange County Planning Department GML 239 referral was received on January 19th, 2024. And the recommendation was a local determination. They had no further comments or concerns about this particular application. I did have a couple of questions.

Chairman Jansen: Was that environmental concerns?

Attorney Havens: Yes, just a couple. Question number 7 on page 2 of 3 on the EAF short form, "Is the site the of the proposed action located in or does it adjoin a State listed critical environmental area? If yes, identify." It's selected "Yes; it's lakefront property located on Greenwood Lake." So if the applicant wishes to address that particular environmental concern for the benefit of the Board?

Bob Krahulik: Well, we are lakefront on Greenwood Lake, but we are proposing absolutely no construction, no work to be performed whatsoever, so there will be no impact on that sensitive environmental body of water.

Attorney Havens: Great. And the only other one was 13a on the EAF form, "Does any portion of the site of the proposed action or lands adjoining the proposed action contain wetlands or other waterbodies regulated by a federal or state local agency?" And the answer was yes. And is it for the same purpose?

Bob Krahulik: It's the same answer. We are on Greenwood Lake but there's absolutely no activity and no work proposed so there will be no impacts on the waters of Greenwood Lake.

Attorney Havens: So Mr. Chairman, do you want to open it up for a Public hearing?

Chairman Jansen: Do you have any questions, Diane?

Diane Bramich: No. I was down there. It's typical property for down there. You know it James, you've been down there. All the properties are...

Jim Mehling: Nonconforming.

Attorney Havens: And this particular property is exceptionally unique in the extension out into the lake as well.

Diane Bramich: There's other extensions into the lake in Greenwood Lake. This one is unique, to say the least, but I don't see a problem with it, with the area because of the way it was subdivided years ago. These homes are right on the line on some of them...I don't have a problem with it.

Chairman Jansen: Okay, thank you. I can open it up to the public, but I don't see any public here.

Attorney Havens: You still need to officially do it anyway.

Chairman Jansen: I open it up to the public.

Attorney Havens: Any questions from the public? We're not ready to close it just yet. The Zoning Board needs to discuss SEQR in reviewing this, it's a Type II action under Section 617.5(c) subsection (16) and (17). Would someone care to make a motion typing the application as a Type II action with no adverse environmental impact?

Marc Malocsay: So moved.

Jim Mehling: Second.

Chairman Jansen: Motion by Marc. Seconded by James. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: The next item on our comment list would be whether a site inspection is necessary. You already....

Diane Bramich: I did it.

Attorney Havens: Does anybody else have any concerns about whether or not site inspection is necessary?

Board Members: No.

Attorney Havens: ZBA to consider any use restrictions or any other conditions to be imposed? They're not really doing much of anything but it's up to you guys.

Chairman Jansen: I don't...

Marc Malocsay: No.

Chairman Jansen: Diane, I think you would be the only one that would be able to tell and you said...

Diane Bramich: No, there's access to Lot 2 through Cole Road and there's access to both pieces of property on two separate roads. So I don't know—actually on three, Sanders Lane.

Chairman Jansen: Okay. So if there's no other restrictions, is it okay for me to close the public hearing and then we can vote?

Attorney Havens: Yes.

Diane Bramich: I'll make a motion that we approve...

Attorney Havens: Close the public hearing.

Chairman Jansen: I'll close the public hearing. Go ahead, Diane.

Diane Bramich: ...that we approve this as advertised.

Chairman Jansen: We have a motion to approve.

Chris Daubert: I'll second.

Attorney Havens: I just want to add one additional thing here. Motion—just for the record—is that you're approving all of the specific variances requested because there's really nowhere that they can move these improvements on the property to make it conforming and therefore the minimum variances being requested are reasonable and adequate to ensure the safety of the public, correct?

Diane Bramich: Yes.

Attorney Havens: Before you do that, we have to go through the five questions. So with respect to the area variance statutory requirements, question number 1, "Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance

you request?" The applicant states no. And the reason is "No new construction is proposed; simply a lot line change." Does the Board agree?

Board Members: Yes.

Attorney Havens: Number 2, can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant states no. And the reason for the answer, "There's no other land available." Does the Board agree?

Board Members: Yes.

Attorney Havens: Question 3, "Is the requested variance substantial?" The applicant states no. And the reason is "These are two pre-existing non-conforming lots, there is no net change in acreage." Does the Board agree?

Chairman Jansen: Yes....Everyone? Yes?

Attorney Havens: The record can't hear your nodding.

Board Members: Yes.

Attorney Havens: Question 4, "Will the proposed variances have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?" The applicant states no. And the reason is "There is no new construction proposed." Does the Board agree?

Board Members: Yes.

Attorney Havens: Question 5, "Is the alleged difficulty self-created? The applicant states no. And the reason for the answer: "Both lots are pre-existing, undersized, non-conforming lots."

<Inaudible - several speaking>

Attorney Havens: Does the Board agree that the difficulty is not self-created?

<Inaudible - several Board Members at the same time>

Diane Bramich: It is self created.

Chairman Jansen: Well it was self-created when it was first developed, so I don't know...

Diane Bramich: And now you're splitting it into two, which makes it self-created.

Chairman Jansen: Okay, fine.

Board Members: Yes. Self-Created.

Attorney Havens: Okay. So with those five criteria being evaluated, would someone care to make a motion granting or denying the variance as advertised and amended?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motion by Diane. Seconded by Mark. All in favor? Aye. Any opposed? Motion carried.

Discussion: 138 Pine Island Turnpike

Chairman Jansen: So now we have a discussion with 138 Pine Island Turnpike. Can you come up and identify yourself for the record?

Sabastion Carlton: Good evening everyone. I'm Sabastion Carlton from D Architects. It's nice to see everyone again. I don't think you guys have the updated plans from the Building Department, so I brought some so everyone can look at.

Carlton hands out copies of the updated plans to Board Members

Chris Daubert: You made everything smaller, right?

Sabastion Carlton: Well I know that it's difficult for the Members here to have the big sheets and unfold them, so I figured we'll have one big one for the record and...

Jim Mehling: That's alright.

Chris Daubert: So you took out that top layer, right?

Sabastion Carlton: Most of it is gone.

Board Members review and discuss the updated plans. Carlton answers questions.

Sabastion Carlton: So the plan reviewer where they sent the plans out, the gentleman from Cortland Manors down in Westchester, who is a NY State Plan Code Reviewer, he had us go through an exercise of determining the height of the building, what's above grade, what's below grade, this is actually...if you can just pass it around...a code section, that we refer to, a diagram that we follow under engineering. In the engineering plans you also have the Light Study that was done as well. If you <inaudible> with me I can present what we are doing and kind of walk through it.

Diane Bramich: Is this the basement?

Sabastion Carlton: There's a garage below but it's a basement because of the grade. In an essence it's a walkout basement.

Diane Bramich: That's the double doors?

Sabastion Carlton: Correct. If you're looking at the elevations, this is here...

Carlton shows Diane Bramich where it is located in the diagram

Sabastion Carlton: And I do have an email from the Building Reviewer confirming that it's a one story building.

Diane Bramich: What's upstairs at the 3 windows—over the 3-car garage?

Sabastion Carlton: This here is an attic with a hatch.

Discussions continue amongst Board Members

Sabastion Carlton: These are also one of the things I think you mentioned...about colors and so forth. We also brought what colors and lighting that will be used. We did a lighting study for the site, which is included in the engineering packet.

Diane Bramich: So is this going to be a new application?

Sabastion Carlton: Correct, this is a new application.

Chairman Jansen: So total height now is going to be 24...?

Sabastion Carlton: So the total height, we're supposed to get the Building Department come out and look to waive that 25 max height but in the interim of the building inspector retiring, the new plan reviewer says he doesn't do that. And the Building Department, they have nothing to do with the plan review as far as <inaudible>. It was recommended that we ask the Board for the waiver of the max 25, seeing that I think we're about 27 feet. We're also proposing a significant amount of screening in front of the building as illustrated on C2 of the <inaudible> plans.

Chairman Jansen: So of the concerns that were expressed at the end of the last presentation, what have we addressed? We've addressed the height....

Carlton. We've addressed the height, we have addressed the amount of square footage even in the attic, we have reduced that significantly, and whether is a second story or it's one story, or whether it's a basement, that's the size that was conducted as far as determining that through the guidance of the Plan Reviewer. It's confirmed it's only one story building cause the side is a slope you're inevitably going to have a lower area which we did take advantage as a walk up basement for him to store his tractor.

Discussions amongst Board Members regarding front of building and driveway

Chairman Jansen: Does anyone have any concerns with any of this?

Diane Bramich: I'm still...it's very confusing, I'm sorry.

Marc Malocsay: Jan?

Chairman Jansen: Yes?

Marc Malocsay: No. I'm just a little slow in answering that question but I did have some questions for our lawyer. I guess we've just haven't dealt with it at all. Ridgeline overlay height restriction that the it seems that the building inspector and/or I don't want to say the planning department but it believes that they can waive these things. And I know they can only from houses where I do site work for and they are in ridgeline overlay but they are a few feet more. So I know that that is a common practice but before us is it in any way something that because we don't handle this that it goes before the planning board for review because it's ridgeline overlay but at the same time what we have before us is so minor that I don't really see it being necessary. So that's *my* opinion.

Attorney Havens: So on that point, I looked at it and I'll provide for the applicant's reference...

Sabastion Carlton: Oh yes, I have it.

Attorney Havens: ...Code Section 164.46 site plan and special permit approval, it says, "the intent is to ensure the development and use of individual parcels of land do not have an adverse effect on adjacent lands or on the character of the community." And under Section B(3) regarding specifically, "Site plan approval may be required" in certain potential respects. And it goes on to say, "applications for building permits within the following areas shall be reviewed by the Building Inspector against the criteria

identified in 164-46H.” And it lists several areas and that’s lands lying within the town of Warwick flood hazard area or a FEMA zone. Subsection (b): For lands lying within the ridgeline overlay district. So any application that involves construction or excavation within the ridgeline overlay, the building inspector is supposed to review it against the criteria identified in 164-46H which relates to different site plan elements. And there’s a whole host of site planning elements including individual buildings shall relate to each other and color. And it goes on and there’s lots more that the building inspector is supposed to evaluate because it involves construction or excavation within the ridgeline overlay. And it actually directs that the building inspector consult with the town engineer and the town planner regarding the site plan for these types of applications. And so what this Board needs to determine is whether this Board wishes to review the details of this application as submitted or refer it to the Building Inspector for potential site plan review by the planning board in consultation with the town engineer and town planner and then once they come up with a final proposal, for example, this time and this application the applicant has already updated their proposed plans with details regarding new screening to be put in as well as creation of regrading and installation of a retaining wall, etc etc. A lot of this and the lighting, slot of this are details that the planning board would cover. This board has the authority and discretion under zoning regulations to review it based on the direct denial of the building permit from the building inspector but if the board feels that the scope and details of this are beyond its level of expertise, it also has the ability to refer it to the planning board for consideration of those site plan issues. So that this board is simply saying ok well the planning board reviewed the site plan issues and addressed all of those, and the only thing we would make a determination on is the calculation based on code interpretation of what the actual square footage is, what the actual dimensions are, what the actual height is under the ridgeline overlay, and the extent to which the variance is or isn’t going to be granted and any conditions that would be imposed by this Board.

Marc Malocsay: Okay. So I’ll get back to you in a second.

Sabastion Carlton: When you asked a question I was going to weigh in the whole height issue...

Marc Malocsay: Don’t bother. Because as I said, it looks like you’re only a couple feet higher than what’s allowed. And for different people to make that determination, it doesn’t matter, it’s still going to be just a few feet and it’s not you’re going to be 15 feet, or another story higher. And with ours, we always look at the character of the neighborhood. And I can guarantee that the houses there, most of them being built before the ridgeline overlay, which is probably 20, 25 years ago when that came into play, so with that said, would you have a problem with it going before the planning board as opposed to us making a decision?

Sabastion Carlton: I guess I would have to present that to the client.

Marc Malocsay: And here’s the reason why. I think it’s something that with them would move along relatively quickly because I feel that they would think the same thing as we do, that these things are so minor—and there are a bunch of them—but most of them you’ve addressed and even things like colors—there’s only certain colors that you’re allowed to do. So again, the only thing that I’m seeing right now is the height. We have the ability to do the variance but at the same time if, I’m under the impression that the building inspector does not want to do that and would rather the planning board do that.

Chairman Jansen: He said as much, didn’t he?

Sabastion Carlton: Well they don’t have a Building inspector...so the Plan Reviewer actually actually to review it based on some of those criteria that’s why he required us to put stormwater, because based on the ridgeline...so he did review it for some other conditions under the ridgeline so he required that stormwater be addressed, the colors, and lighting he addressed. Which we addressed, those things because those were the major things that he saw for this type of construction.

Marc Malocsay: Yes.

Sabastion Carlton: It's residential. And then there was the conversation about what you asked. About who has the authority to kind of waive that. And he did cite in the towns ridgeline overlay, it expressly said, "either the building inspector or or the board can waive those requirements if for example, we have demonstrated that we're going to be able to screen this building or if it's in a place in an area that is not significantly high in the ridgeline.

Marc Malocsay: So...

Chairman Jansen: We had asked him to do that and I think that they <inaudible> and I don't know about sending him to the planning board because you're holding up a couple of months.

Marc Malocsay: I agree. But I was hoping the building inspector would waive those requirements but...

Sabastion Carlton: They don't have one right now, and...

Marc Malocsay: So then it goes to are we going to give the variance or are we going to have the planning board look at it with their recommendations. I don't have a problem giving the variance. And we can state enough in there, and I'm only looking at the height because the other ones you should easily be able to address. So, and again, that's why we're here more or less to discuss it without the public...

Chairman Jansen: So can just the Town Engineer do that?

Marc Malocsay: I don't think so.

Sabastion Carlton: Because the last time we tried, and she wouldn't...

Marc Malocsay: Yes, she was very...

Jim Mehling: She was hands off on it.

Marc Malocsay: Yes.

Attorney Havens: Yes.

Jim Mehling: Because when we raised the issue of the square footage because that was a significant thing obviously.

Sabastion Carlton: And I raised it again...

Attorney Havens: Unfortunately, even if this did go back to the building inspector, town engineer, planner, and the planning board, when it comes to calculation of the square footage and calculation of the specific variances to be granted, only this board has that ability to grant specific variances.

Marc Malocsay: Yes.

Attorney Havens: So it would still ultimately have to come back for us for the granting of variances.

Marc Malocsay: Yes. And that's why I said I don't have a problem doing it because even in the calculations on the square footage, you're allowed 1200 square feet.

Sabastion Carlton: Correct.

Marc Malocsay: We're a heck of a lot more. At that point, if our calculations are coming out 500 square feet in either direction, to me doesn't make a bit of difference.

Jim Mehling: Not to interrupt you but <inaudible> had said a couple meetings back when we had a private conversation, we've approved buildings far bigger...

Marc Malocsay: Yes. So on the square footage, we need something that we can hang our hat on and put it in there that we're giving a variance for this. Yes, that keeps him happy. But as far as it's a variance because it's larger than the 1200 square feet and I spoke, and I think everybody was on board with, and

as Chris said, we don't have a problem with it, but it has to go someplace else. And when it wasn't moved, we denied the application because of a neighbor, and it sat pretty close.

Sabastion Carlton: Yes.

Marc Malocsay: Going forward, I don't have a problem with us and looking at the ridgeline overlay, but when we go through those questions that really don't apply to anything that we've done before, I'd hate to have to do that.

Jim Mehling: So you're looking for kind of a confirmation or at least like the planning board to kind of say, ok listen, we're going to look at this as well, you're right, it's only a couple of feet, well set the precedent so we're all in agreement so it's not going to come back down the road at some point. Someone's going to go before the planning board and it's going to create this maelstrom of nonsense.

Sabastion Carlton: I could also agree on that. We have a ton of these, right? So the planning board also will never say the height is ok because it's not.

Marc Malocsay and Jim Mehling : They can't.

Sabastion Carlton: They can't. So it's only you guys that can say that or the building inspector...

Marc Malocsay: Right.

Sabastion Carlton: ...didn't retire. And we had conversations with him <inaudible> would say, yes, based on where you're putting it, you're showed in the cross section for example, where the main house is even higher in the ridgeline, we don't have a problem as long as it meets the building code bulk table which is what the zoning code specifies.

Chairman Jansen: So what are you saying, we should turn it over to the planning board first?

Marc Malocsay: No. The only thing is in going through, is it a SEQR review, when its ridgeline overlay and we have all those additional questions?

Attorney Havens: Yes.

Marc Malocsay: And I know we have to do that but it's so many other things just don't pertain because if we're only looking at 2 feet higher and we're looking at the number of cars that we'll see each day, it doesn't matter how many cars see it each day because the houses that are <inaudible> than this one. But I don't know we can actually say that when we're answering the questions.

Sabastion Carlton: Well one of the things that with the proposed planting that were going to do, we're going to do those concurrent with building the building. So most of these I think we will be able to answer those questions as far as how visible is going to be the building. How many people will see it per day. Eventually it will be just like his building on top of the hill.

Marc Malocsay: Yes.

Sabastion Carlton: No one can see it because of those trees. I think you guys were out there.

Marc Malocsay: Yes.

Sabastion Carlton: And that's the same species he's going to plant. Because it so happens on the new location, there are several trees that are dead that he needs to replace. So it's going to be replaced with the same intensity of growth.

Marc Malocsay: I'm speaking for the board, I believe everybody is on board with what I'm saying, but Diane, with you on the square footage, if it's 4,000 square feet or 5,000 square feet, or 3,000 square feet, is that relevant in this application?

Diane Bramich: Definitely.

Marc Malocsay: Ok.

Diane Bramich: It's 45.

Marc Malocsay: 45, Okay.

Sabastion Carlton: It's 4500. So actually we reduced it.

Marc Malocsay: Yes, but again, 1200 square feet is what's allowed, so it's a huge variance...

Diane Bramich: It's significant.

Marc Malocsay: ...but we've given them before and virtually every one of the ones that we've given before, was that you really can't even see it. You're too far away from...

Diane Bramich: It's a big difference from where it was originally going to be placed.

Marc Malocsay: Right.

Diane Bramich: And the height is different.

Chairman Jansen: And the thing is he can still put up four different buildings.

Marc Malocsay: Yes but we have to talk about that because of what the code says.

Diane Bramich: But there still has to be a public hearing on it.

Marc Malocsay: Yes.

Chairman Jansen: Oh yes. It will be just like tonight, the other one.

Diane Bramich: Okay.

Marc Malocsay: We had said at the meetings that we had that we feel that the board wouldn't have a problem with it if it could be moved to another location, even though it's the same criteria because its an accessory structure, it's allowed to be 5 feet from the property line is I think is what our code says on an accessory structure. But because it was so large, we wanted it as far away as possible. We still have to go through all of that other stuff and then we're giving a huge variance.

Attorney Havens: Do me a favor, update your site plan so that the stated distance on page C2, 1 of 1, between the back of the garage and the property line in the drawing shows 26, and on your accessory use regulations table it says 20.

Sabastion Carlton: Yes. We actually...yes, I'll update that.

Attorney Havens: Make those so that they match. So that nobody has any complaint that your figures don't match one from the next and we don't know what we're granting.

Chairman Jansen: So what you're saying is that we should schedule it for next month in front of us again?

Marc Malocsay: Yes. And again, nobody else has said anything but me as far as being on board, I think we're on board?

Chairman Jansen individually asks Board Members if they are in agreement; everyone has agreed.

Sabastion Carlton: <Inaudible> for him as he can't do anything else until the variance is granted because he has <inaudible> and we have responded to all of those comments.

Chairman Jansen: So you're good with that?

Sabastion Carlton: Yes, I think Tony will be happy to <inaudible> this thing to bed, so to speak.

Chairman Jansen: Our next meeting is the 25th of March. You have to get your application in...

Diane Bramich: It's got to be re-noticed.

Attorney Havens: Yes. It has to be re-noticed and...

Chris Daubert: This is a brand new thing.

Attorney Havens: So I don't know what you presented tonight, much more detailed. What I got from the planning department was literally your Sheet 1.

Sabastion Carlton: She was under the impression since it's a new app, new submission, that all you guys need was this based on I guess what usually is required <inaudible>.

Chairman Jansen: Can I have a motion to adjourn?

Diane Bramich: So moved.

Chris Daubert: Second.