

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Jim Mehling

Chris Daubert

Mary Garcia, ZBA Recording Secretary

Not Present: Marc Malocsay

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' x 40' (1,440 sq. ft.) single-story garage, where a maximum of 1,200 square feet is permitted. Continued from 2/26/24-ZBA Meeting.

Representing the Applicant: Jared Schutzman, Applicant/Homeowner

Chairman Jansen: Please identify yourself for the record.

Jared Schutzman: I'm Jared Schutzman, Homeowner.

Chairman Jansen: This was an application for an area variance permitting an existing 36x40 foot or 1440 square foot single-story garage that was built without a permit, where a maximum of 1200 square feet is permitted.

Attorney Havens: So first of all, since you weren't here last month, did you bring in your certified mail return receipts? You need to give them to the secretary for the record.

Jared Schutzman: Yes.

Attorney Havens: Thank you. For general information, there was an Orange County Planning Department GML 239 referral that was submitted because the property in question is within 500 feet of a recreation area (the AT or Appalachian Trail). We received a response on that referral on December 13th, 2023 and the recommendation from Orange County Planning was that it was local determination.

Chairman Jansen: We have some correspondence from a Kenneth Mabee 12 Rabbit Hill Road.

Chairman Jansen reads the letter:

Our home is a place of comfort or relaxation and a safe haven from protection from any interference. Truly barking dogs would add to any stress. My next door neighbor harbors dogs boarding them for others and this has been and is a big concern for myself and the other neighbors. In the past the dogs would run onto my property until I spoke to the neighbor about it, and they erected a fence. Now a pole barn type of building has been requested by them, which I believe will be used to house and board dogs and as an exercise training and a running track in the building.

Chairman Jansen: Do you want to comment on that?

Jared Schutzman: It's false.

Chairman Jansen: No dogs?

Jared Schutzman: Well my wife is a dog trainer, but we're not operating a business out of our property.

Chairman Jansen: There's some limits to how many dogs you can have.

Jared Schutzman: We do have four dogs that we own. We erected that fence for safety of our own dogs because he said he would shoot them.

Chairman Jansen: Alright, let me read you this:

Chairman Jansen reads a section of Warwick Town Code 164-46 J(16):

The accessory to a residential use, the keeping of dogs shall not exceed three dogs over six months old, or not more than one litter under six months of age on a lot of less than three acres. The keeping of dogs shall

not exceed six dogs over six months old. No more than two litters under six months of age on a lot less than six acres.

Jared Schutzman: I'd also be happy to show the property at any time you guys could come over and inspect it.

Attorney Havens: Chairman just wanted to address the neighbor's complaint as well as the applicable section of the code; that's 164-46 J(16) with respect to keeping of domestic animals on residential property. I'd like to give you an opportunity to just generally discuss what the project is and any additional information you want to provide to the Board for them to consider.

Jared Schutzman: It's solely used for garage to store equipment for my tractor and my cars, various projects that we do on the property to maintain. It's definitely not going to be used for any animals.

Chairman Jansen: So any reason why you constructed it without getting the proper permits?

Jared Schutzman: Well, I actually didn't know. I was planning to apply for the permit. The building came about two months early. I didn't want to accept it actually. And I didn't know that the square footage was over 1200 square feet.

Chairman Jansen: Any other questions at this time?

Diane Bramich: It doesn't show exactly where, how many feet from the line or anything on this.

Attorney Havens: It does show that it's within the buildable setback.

Diane Bramich: It's there, but it doesn't provide a measure.

Attorney Havens: It doesn't provide any measurements.

Jim Mehling: So your concern is what the setback is off the lot line. Is that correct?

Diane Bramich: Yes.

Jim Mehling: It needs to be a minimum of a hundred feet.

Jared Schutzman: It's definitely over a hundred feet.

Jim Mehling: Alright, well it doesn't show on the documentation that's provided.

Jared Schutzman: No, I could obviously get that.

Chairman Jansen: Alright. Any other questions?

Jim Mehling: Was the matter of the fence resolved?

Attorney Havens: Yeah, so there was previously identified an outstanding Building Department open fence permit that was denied in 2020. And we need you to identify for the Board what the issue was with that permit, has it been resolved?

Jared Schutzman: It's been resolved. We just decided not to go forward with the gate. So we closed it out.

Attorney Havens: Yes. I was advised by the Building Department that was a gate permit. You did close it out now? Is that correct?

Jared Schutzman: Correct, yes.

Attorney Havens: Okay, great.

Chairman Jansen: Anyone from the public that would like to address this? Yes sir, come on up and give us your name please.

Dr. Bruce Wittels: My name is Dr. Bruce Wittels. I have property that's across the road. I have property that is adjacent to Mr. Schutzman and Andrea Klein and also across the road from them. I disagree with

the statement that you're not running a business out of that property. There is something called "My Dogs' Hike", which Andrea Klein is the President. And right from the beginning there was dog boarding going on there when they first moved in. Dogs were getting out, Andrea was running all over the place looking for the dogs that got out without any concern for anybody else's property. And then they put up a number of fences that has controlled that. But every day during the week, there's a van that comes with dogs five days a week; they arrive about 11:30, they leave somewhere around three o'clock and they take the dogs and they hike with the dogs. And that's Monday through Friday. Two Saturdays ago, there were seven dogs on the property that were not theirs that would make a lot of noise every weekend. I don't know if they're being boarded or they're being trained or what's going on, but there's definite business that's going on there. And this building that was put up, I don't agree that it arrived too early.

Jared Schutzman: I have documentation I can show for that.

Dr. Bruce Wittels: And that's fine. But this building is going to be a kennel for dogs or for some kind of animals.

Jared Schutzman: 100% No.

Dr. Bruce Wittels: It's divided up into sections. I saw it when it came up on the tractor trailers. It's divided into sections that you could not even put a vehicle or equipment in that area.

Jared Schutzman: That is false.

Dr. Bruce Wittels: And my belief is that that building is going to be used for animals. And that building is not 150 feet from my property line. I think there's an undercurrent of trying to do things inappropriately here that's been going on since the beginning and...

Dr. Bruce Wittels: ...please let me speak. I'm allowed to finish.

Jared Schutzman: You're throwing a lot of accusations out there.

Dr. Bruce Wittels: Yes, I am. Do you deny that there's a business called 'My Dog Hikes'?

Jared Schutzman: No, my wife is an owner of a company that hikes dogs, she's a professional.

Chairman Jansen: Continue on.

Dr. Bruce Wittels: So these vans show up every day during the week. There are dogs there on the weekends that create a lot of noise that are not there at other times. So there is a definite business that's going on here. And this building is related to that or is going to be related to some sort of dog training or keeping dogs of some kind of nature. Even Kenny maybe mentioned that in his letter. So the size of the building, I don't believe it. And then what happens later if there are animals put in this building? Then what do we do? Do we now move it till it's 150 feet from the property?

Jared Schutzman: It's over a hundred feet.

Dr. Bruce Wittels: It's not a hundred feet.

Jared Schutzman: I guarantee it's 150 feet.

Dr. Bruce Wittels: It is not.

Jared Schutzman: How do you know that, did you come on my property?

Dr. Bruce Wittels: No, I didn't come on your property.

Jared Schutzman: And for one, there's not going to be any animals housed in that building. I would write a guarantee for that, that's it.

Chairman Jansen: Well I quoted the zoning ordinance to you.

Jared Schutzman: Yes, so we don't have more than that.

Chairman Jansen: If that does take place, any of those neighbors could file that complaint.

Jared Schutzman: Yes, so that's fine. We don't have that many dogs on that side. My wife is a dog trainer. We do have dogs on site that we have, hunting dogs, that we do have that are trained dogs that she does use. Her business is based in New York City and we do not, this is our residential house that we operate our family out of...and that's it.

Chairman Jansen: Anyone else from the public?

Jared Schutzman: And I'd be happy to show you around the property.

Diane Bramich: That was going to be one of my questions. I would really like to see this garage and what's inside. If we could tour it before this Board made a decision?

Jim Mehling: I would agree.

Chairman Jansen: Okay. Do we agree? Everyone agrees on that? Anything else you need before that?

Attorney Havens: So the fact that it's an accessory garage of 1,440 square feet constitutes an accessory structure under SEQR regulation 617.5c12. And therefore this project could qualify as a Type 2 action. Would someone care to make a motion typing the application as a Type 2 action?

Diane Bramich: So moved.

Chairman Jansen: Motion by Diane. Second?

Jim Mehling: Second.

Chairman Jansen: Second by Jim. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: The Board should discuss if a site plan inspection is necessary. Diane's requested one, but the Board can discuss that.

Chairman Jansen: Due to the fact of some of the issues that were raised, it's probably a good idea that we do that, so I would recommend, yes.

Jim Mehling: Agreed.

Chairman Jansen: So our next meeting is the fourth Monday of April at 7:30.

Mary Garcia: The 22nd.

Chairman Jansen: 22nd of April. So it'll be continued until April 22nd.

Attorney Havens: And if you can, there was also a question from one of the Board members as well as raised by the neighbor. Update your site plan with a specific dimension from the improved structure to the closest side property line.

Jared Schutzman: Okay. Thank you.

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. Continued from 2/26/24-ZBA Meeting

Representing the Applicant: Steve Sullivan, Mountain Green Partners and Dan Getz, Engineering & Surveying Properties.

Chairman Jansen: Please identify yourselves for the record.

Steve Sullivan: Steve Sullivan, Mountain Green Partners.

Dan Getz: Dan Getz Engineering & Surveying Properties.

Chairman Jansen: Okay. So where are we going here?

Dan Getz: Same as we had discussed last time, this is a *(placing diagram on the easel)*...

Chairman Jansen: Could you just put that sideways so that other people can see too?

Dan Getz: Okay. So this is the property; the property is technically landlocked and that's why we're here. It has easements off of Hathorn Road, which has existing driveway and off of County Route 1A. The proposal that we went to the Planning Board for is to build a a tourist lodge and some additional tourist housings on this property. And for that we're proposing to use the existing dirt road off of Hathorn and to pave the first 350 feet of that. So since that property is not owned outright, there's not actual road frontage of this property, we are here to request a 280a variance.

Attorney Havens: When we were here last month, we had not received yet a GML 239 referral mailed on February 7th. We had not yet received a response. That was in large part why it was adjourned to this month because we couldn't make a determination anyway, less than 30 days had passed since the referral was made, so the Board didn't have authorization to make a determination. As of today, there's still no response that's been received from Orange County Planning, the 30 days since the submission has passed, and so the Zoning Board now has authority to consider and make determinations if it so chooses tonight.

Chairman Jansen: Did we get the certified mailings?

Attorney Havens: I believe the certified mail was delivered last month.

Dan Getz: At the last meeting.

Attorney Havens: That correct?

Mary Garcia: Yes.

Chairman Jansen: Okay so let me open it up to the public then. Is there anyone from the public that has any questions on this application? Do any Board Members have any questions?

Jim Mehling: Not at this time.

Attorney Havens: So we're going to go on to number six.

Chairman Jansen: The Planning Board has declared Lead Agency status under coordinated review and typed the action a Type 1 action; the ZBA does not have to evaluate further.

Attorney Havens: Since the Planning Board has declared itself Lead Agency on this application, we're not required to further consider any SEQR issues related to it because they're being fully reviewed by the Planning Board.

Chairman Jansen: Okay. And part of that is the Town does not have an official town roadmap, right?

Attorney Havens: We'll get to that.

Chairman Jansen: Well unless there's anyone else that has anything to say, I'll close the public hearing.

Attorney Havens: Alright. So first of all, I stand corrected. Last month I was under the misunderstanding that the Town did have an official town roadmap whereas the town roadmap that I had requested from the Town Clerk is apparently simply something that's put together several years ago, but it hasn't been kept up to date; it's not the official town roadmap. And since the proposed access to the subject parcel is by an easement right of way shown on an approved subdivision map number 1982-6037, filed in Orange County Clerk's Office on October 1, 1982. Since we have that status requirement of the access road under Town Law 280a subsection 1b is met, and ZBA may grant the variance fixing the suitable level of improvement of the roadway to ensure public health, safety and adequate emergency vehicle access. The Planning Board is doing SEQR review in doing the vast majority of the review to make sure that public health, safety and so forth is met. And within the Planning Board engineer's comments dated January 17, 2024, comment number 52 specifically states that *"The driveway must be paved in its entirety. The plans should be updated to show this, including the paving detail."* What this Board needs to consider is when we grant the variance here, we're essentially saying we're approving the plan as presented, and we limit Planning Board's authority to impose further conditions unless we specify those conditions in the ZBA determination. And so, in order not to be in conflict with the engineer's recommendations at the Planning Board while they're handling SEQR, I would ask the Board to consider imposing conditions on approval of the 280a variance, including compliance with all conditions stated in the engineer's comments dated January 17, 2024. Access roadways be improved in its entirety in accordance with the Town Code Section 137-19 'Street Design', which is applicable to easements and right-of-way access that are not in the open development area. And those street design improvement regulations under Section 137-19 would be subject to conditions for variances from improvement requirements that may be imposed by the Planning Board in accordance with Town Code section 137-32. So essentially, we'd be setting a requirement that they comply with the engineer's recommendations and requirements and the prior comments from the Planning Board. And if we authorize the Planning Board to vary the specific road improvement requirements under 137-19, through their variance capacity under 137-32. So we'd essentially be saying yes, so long as they improve the entire roadway, we'd authorize the Planning Board to figure out the rest of the details.

Dan Getz: So that I'm understanding when you say figure out the rest of the details, one of those details would be which parts might be paved or unpaved? Or are you talking about requiring paving the entire thing? Because the current letter you referenced mentions paving the entire thing.

Attorney Havens: Correct.

Getz?: But we're in an ongoing discussion with the Planning Board about other ways of improving that roadway where the entire thing would not be paved. Only the first section...

Steven?: It's been left unanswered. The Planning Board asked us to come back with a couple of suggestions about how we might mitigate or compromise. And we haven't had that opportunity yet.

Attorney Havens: Yes, if you're in discussion with the Planning Board about alternatives to asphalt...

Steve Sullivan: Correct.

Dan Getz: Yes.

Attorney Havens: ...then the Planning Board has lots of ideas and so forth that they could implement with respect to what I'm talking about here, where they would have the ability if we grant them such power to grant variances from the specific improvement requirements.

Steve Sullivan: Okay.

Attorney Havens: So that whatever you guys mutually come to a determination in consultation with the Town Engineer as to what's going to be adequate and safe to provide reasonable access for emergency vehicles and the number of traffic that's going to be using that roadway and so forth, and minimizing impact on neighboring properties, et cetera. We would be authorizing the Planning Board to make those determinations and to grant whatever variances they deem appropriate. But it would require improvement of the entire length in some capacity as to be reasonably determined by the Planning Board. They would set whatever the condition is.

Dan Getz: The current plans include improvement as I understand it, but the <inaudible>...

Steve Sullivan: So one of the options that we will present to the Planning Board is paving a portion of that. Does that then preclude us in doing that?

Dan Getz: I would say it's still being improved even if it's not paved.

Attorney Havens: And that's what I was trying to clarify...

Steve Sullivan: From its current width, the plans show a widening, and that's an improvement.

Attorney Havens: What the Board would be essentially imposing as a condition is that you meet whatever improvement requirements are deemed necessary and reasonable to meet the health, safety and emergency vehicle access requirements that the Planning Board and the Town Engineer feel is necessary.

Dan Getz: Okay.

Chairman Jansen: So do we need a motion to that effect?

Attorney Havens: If the Board has any other questions?

Chairman Jansen: No?

Diane Bramich: No, I'm good.

Jim Mehling: I think since the Planning Board has deemed itself as lead agency in this matter, granting them the authority to act in such a capacity, provided again...

Attorney Havens: Yes...

Jim Mehling: ...they meet all necessary criteria and work together to come to some sort of a resolution on this.

Attorney Havens: Yes. With respect to the street design regulations under 137, 137-32 specifically grants the Planning Board the ability to grant variances for specific and particular improvement requirements under circumstances that warrant that.

Jim Mehling: I would still make a motion that we grant variance contingent upon the applicant's working with the Planning Board to consider a means by which the road conditions can be improved and be in compliance with Town Code.

Chairman Jansen: Can I have a Second on that?

Chris Daubert: Second.

Chairman Jansen: Seconded by Chris. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: The final item we've got to cover is the actual granting of the variance itself, and we've identified the conditions to be imposed if it were to be approved. So with respect to granting of an area variance, the Zoning Board of Appeals has to consider five different criteria. Criteria number 1, Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the variance that's requested? The applicant states no. And the reason for their answer is that the proposed facilities will be attractive. The site has very limited visibility from public roads. Does this Board agree with the applicant's determination?

Board Members: Yes.

Attorney Havens: Question number 2, Can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states no. And the reason given is that the property is landlocked. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question number 3, Is the requested variance substantial? The applicant states no. Reason for the answer is the access driveway already exists. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 4: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district? The applicant states no. And the reason provided is the applicant requires approvals from the Planning Board, New York State DEC, and the Orange County Health Department. These agencies are reviewing potential impacts and mitigation measures. Does the Board agree with the applicant's determination?

Board Members: Yes.

Attorney Havens: And last but not least, is the alleged difficulty self-created? The applicant states no. The reason given is that the property was landlocked at the time that the applicant purchased it. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: So all of that being said, would someone care to make a motion granting or denying the variance as advertised and as amended by the conditions that were stated to be imposed?

Diane Bramich: Yes, me.

Chairman Jansen: Motion by Diane. Second?

Chris Daubert: Second.

Chairman Jansen: Seconded by Mr. Daubert, any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Lynn & Louise Weller - regarding property located at 103 Little York Rd., Warwick, NY 10990, and designated on the Town tax map as Section 12, Block 4, Lot 9.21 and located in the RU district for an area variance from the front setback requirements under Town Law §164-40N Table of Bulk Requirements permitting the construction of a proposed new 22' x 8' covered porch addition to the front of the existing dwelling, which will reduce the existing front yard setback from 22.44' to 14' where 75' is required.

Representing the Applicants: Lynn & Louise Weller, Applicants/Homeowners

Chairman Jansen: Please identify yourselves for the record.

Lynn Weller: Lynn Weller.

Louise Weller: Louise Weller.

Chairman Jansen: Briefly just tell us what you want to do.

Lynn Weller: We just want to put a front porch, our house is a box. We just want a place to sit.

Attorney Havens: So a couple of additional details on this particular application. It's in the RU zone. There's no current Building Department violations. On December 4th, building permit that was requested was denied based on setback of 14 feet. It requires a variance from the ZBA and the structure is a preexisting non-conforming dwelling built in 1950. Orange County Planning Department GML 239 referral response was received on March 20th of 2024, and the Orange County's recommendation was this is a local determination with no further comment. Did you guys bring your certified mail?

Chairman Jansen: Yes, they handed it in.

Attorney Havens: Alright. I've got a couple of questions for you. So on the Environmental Assessment Form, question 12b says, "Is the project site or any portion of it, located in or adjacent to any area designated as sensitive for archeological sites on New York State Historic Preservation Office archeological site inventory?" And it states yes. Are you aware of what that is?

Louise Weller: No.

Attorney Havens: What might qualify for that?

Louise Weller: No.

Attorney Havens: So unfortunately it even states on the summary report that there's something in the neighborhood, but this is a very common issue being that the area we're in, archeological sites are actually really rather common in this area. So I wanted to find out if you knew anything more about that. Question 13a, "Does any portion of the site the proposed action or lands adjoining the proposed action contained wetlands or other water bodies regulated by the federal, state, or local agency?" And the form check box says 'yes.' And again, the Mapper Summary Report states that that's yes, but it also acknowledges that the digital mapping information on local and federal wetlands and water bodies is known to be incomplete. Are you aware of any specific wetlands or water bodies in the immediate area of where you're putting the front porch?

Applicants: No.

Attorney Havens: Okay. And question 15, "Does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal government as threatened or endangered?" The form states yes and it identifies the Indiana Bat as that endangered species. Are you familiar with that regulation?

Applicants: No.

Attorney Havens: Okay. So the Indiana Bat regulations essentially say you're not allowed to cut down large trees of 12 inches in diameter at diameter at breast height (DBH) between March 31st and October 1st. So if you would need to cut down those trees during that time period to add your porch, you'd have some problems.

Lynn Weller: There's no trees there.

Attorney Havens: Okay, no trees there.

Lynn Weller: No. We park our cars there.

Chairman Jansen: Anyone from the public that would like to address this application?

Attorney Havens: Zoning Board needs to discuss SEQR, given that it's simply an extension of a front porch on a pre-existing dwelling, it qualifies as a Type 2 action under SEQR regulation 617.5 C subsections 11, 16 and 17. Would someone care to make a motion typing the action as Type 2 with no adverse environmental impacts?

Jim Mehling: I'll make a motion.

Chairman Jansen: We have a motion, do we have a Second?

Chris Daubert: Second.

Chairman Jansen: Second by Daubert. Any discussions? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Board to determine if a site inspection is necessary?

Chairman Jansen: No, we've been...some of us have.

Chris Daubert: I went by, it fits in. They're all close to the road over in that section.

Jim Mehling: The front yard setbacks are pretty much nonconforming. So just depends.

Attorney Havens: So the ZBA has determined that no site inspection is necessary. ZBA to consider any use restrictions or other conditions to be imposed?

Chairman Jansen: The answer is no.

Attorney Havens: No. Okay. So I think we're ready to close the public hearing.

Chairman Jansen: Public hearing will be closed. At this point, do we need a motion to approve as advertised?

Attorney Havens: One second. So in granting the area variance, five criteria that have to be considered: 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 that's requested? The applicant states no. Does the...

Board Members: We agree.

Attorney Havens: Agreed?

Board Members: Agreed.

Attorney Havens: Question Number 2, Can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states no.

Board Members: Agree.

Attorney Havens: Question 3, Is the requested variance substantial? The applicant states "Yes, because its a front porch edition within the front yard setback. Does the Board agree?

Board Members: Yes.

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. Does the Board agree?

Board Members: Yes. Agreed.

Attorney Havens: And last is the alleged difficulty self-created the applicant states no.

Diane Bramich: Yes.

Chairman Jansen: Well it is, yes.

Attorney Havens: Any further questions?

Chairman Jansen: No questions.

Attorney Havens: All right. Would someone carry to make a motion granting or denying the variance as advertised?

Diane Bramich: So moved.

Chairman Jansen: Motion by Diane.

Attorney Havens: Granting or denying?

Diane Bramich: Granting.

Attorney Havens: Thank you.

Chairman Jansen: Motion by Diane.

Chris Daubert: Second.

Chairman Jansen: Second by Daubert. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Ritvars Zuks - regarding property located at 283 Nelson Rd., Monroe, NY 10950, and designated on the Town tax map as Section 58, Block 2, Lot 2 and located in the MT district for an area variance from the Town Law §164-40N Table of Bulk Requirements for side yard setback permitting a proposed addition of a 22'6"x30' two car garage with a breezeway connecting such garage to the primary residence which will reduce the existing front yard setback from 50.5' to 21' where 50' is required.

Representing the Applicant: Ritvars Zuks, Applicant/Homeowner

Chairman Jansen: Please identify yourself.

Ritvars Zuks: My name is Ritvars Zuks, I live at 283 Nelson Rd.

Attorney Havens: Alright. So the Building Department doesn't have any existing violations. Orange County Planning Department, GML 239 referral response was received on March 20th, 2024. County Planning Department's recommendation was this is a local determination with no further comment.

Chairman Jansen: Can you discuss the project? what is it you're trying to do and why?

Ritvars Zuks: First of all, due to the extension of my family, I'm marrying a woman who's two children approaching age is 16, so they will be able to drive. The other reason is its most logical place that you can put anything on the property because the property is like a slice of pizza pie. It's narrow in the front and it goes wide in the back. So that would be the most logical how we can build a garage next to the house.

Attorney Havens: So on the environmental assessment form that was submitted, a couple of items, common ones, question 12b, "Is the proposed site or any portion of it located in or adjacent to any area designated as sensitive for archeological sites on the New York State Historic Preservation Office, archeological site inventory?" The EAF form states yes. Are you familiar with what might qualify as a archeological site inventory?

Ritvars Zuks: No. So I guess that's the big question for my architect? She will work on that.

Chairman Jansen: Where he's at, it's not going to make any difference.

Attorney Havens: Alright. Second item question 13a on the EAF form, "Does any portion of the site or proposed action or lands adjoining the proposed action contain wetlands or other water bodies regulated by a federal, state, or local agency?" The form states yes. Are you familiar with any wetlands immediately adjacent to the location where you're planning to put this garage extension on the side?

Ritvars Zuks: Well there's no wetlands, but there is a fishing pond. So I assume because the creek is running through the property, that's why I said yes. So

Attorney Havens: Alright. Question number 15, "Does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal government as a threatened or endangered species?" And the form states yes, it says in the summary report bog turtle and Indiana bat.

Ritvars Zuks: I heard about Indian bat. I haven't seen a turtle, but I understand.

Attorney Havens: During any excavation, construction and so forth, it would be necessary for you to first inspect the area, make sure that there's no immediate bog turtles in the area that you're planning to work with and make sure that you're keeping an eye out for them during the construction process.

Ritvars Zuks: I would love to see turtles on my property. I have seen everything else but the turtle.

Attorney Havens: Question 16, "Is the project site located in the 100 year flood claim?" And the EAF form states yes.

Ritvars Zuks: I'm not sure why it said yes, but again, that would be a question for my architect.

Attorney Havens: So there's no immediate flooding, ponding or anything in the construction area?

Ritvars Zuks: No.

Attorney Havens: You do have a big property. It might be either that could be one of your neighbors or on the back of your property.

Ritvars Zuks: The property is basically on a hill. So if anything down below maybe, but I never seen any issues with flooding.

Chairman Jansen: Anyone in the public who would like to address this application? Yes sir. Do you mind opening and identify yourself for the record.

Luke Gordon: My name's Luke Gordon, I live at 309 Nelson Road. I live right next door to Mr. Zuks. We were here two and a half years ago when he came to get a variance on building an accessory building on his property that was twice the permissible size and that variance was granted. Looking up today, I wanted to see what the actual decision was. And for whatever reason, the minutes from May 25th, 2021 have not been posted on the internet on the town's website so they're not available for inspection. Mr. Zuks fashions himself as a collector of classic cars and I'm not a collector of classic cars, so I can't determine whether they're classic or not. But he does bring in a lot of vehicles. He has a car storage trailer that he parks on the side. We have this great white whale, which is the auxiliary building. And my deck overlooks all this. Whenever there's any sort of work, there's another building behind the main residence that was turned into a workshop, I believe, under a previous residence. And so there's work that goes on in there. We live in a passive solar house that doesn't really have much in the way of air conditioning. It was designed to have clear story windows so we could cool that way. Unfortunately, our clear story windows face directly down onto Mr. Zuks' property. So you could have a very intense personal conversation at low voice and we hear everything. So I'm concerned about what comes next. He already has the auxiliary building, he has the white whale that he put up two years ago. And will there be even more buildings coming? A great number of trees have been taken down on the property over the past couple of years that he's owned it. He brings in shipper crews that just dump the chips where they lay. And so I'm very concerned about what this bedrock of mulch has built up around the area. And so I just wanted to air some of my concerns. I've never seen a bog turtle in the area either, I'd love to, I think it'd be great.

Ritvars Zuks: It would be beautiful, right?

Luke Gordon: Yeah, yeah, thank you.

Ritvars Zuks: We can change the color of the building if you need.

Luke Gordon: If you could paint it darker, I'd appreciate.

Ritvars Zuks: Sure.

Luke Gordon: Absolutely.

Chairman Jansen: Yes sir.

Alfonso Polanco: My name is Alfonso Polanco, my wife Theodora <inaudible> Polanco.

Mary Garcia: I'm sorry, what is her name?

Alfonso Polanco: Right. We live at 115 Alexander Road. Imagine We live on the other side and he lives on a hill. So we see what the gentleman was referring to where I would say at least 20 trees have been knocked down—big trees. They come with their chippers as the gentleman says, and these trees are gone. My question is, are they going to be replaced? Is there going to be erosion? Who's in charge? How many trees are you going to let him cut down? I would suggest, as you suggested before to go visit the site because I have seen videos of land erosions and a capsized hill. He's on a hill. And eventually the water

and the rain will eventually erode it such that it may collapse. Trees are important in our environment, aren't they?

Ritvars Zuks: Well if they're alive.

Alfonso Polanco: Excuse me, I'm talking. I apologize. We are kind of a little upset because it basically affects our property because we're on the other side and we see all off this. Before there were all these trees and now it's all gone and you have this big basically field where all the trees that were there are gone and the chipper goes on all day. They be knocking down the trees all day. I think it's important for the government—which you guys are—you guys should be the responsible party to this endeavor because we're just private citizens. We love our land and we need someone to go there to determine what exactly is going on. To the extent that trees are being knocked down every day. I don't want to repeat myself. And not only that, we also have a well; what is the effect of all these trees being knocked down? Because we live on the other side of this field going upstream. What is the effect on our well, which is 200 yards down?

Theodora Polanco: I'm sorry, can I say something? Between our properties, there is this little creek and our well is all the way down to the private road. It's right there. So we have these concerns and hearing that there is all these cars and the pollution and the oil of the cars going into the river definitely is going to affect our well

Ritvars Zuks: Absolutely, as long as there is oil going on. But I can assure you, you are more than welcome to visit my property.

Alfonso Polanco: No.

Ritvars Zuks: I mean everyone can visit, you're more than welcome. And also just to confirm about the trees, I haven't cut a single live tree single. All those trees were dead and they were killed by the ash trees. Every single, sorry, just let me explain to everyone. If you don't clean your property, the live trees will simply die. So that's why taking down the dead trees is basically you preserving the live trees. And you can, if you come to the property...

Argument ensues between Alfonso Polanco and Ritvars Zuks

Alfonso Polanco: My concern is that yes, you had these bad trees, but to the extent it usually becomes like a baseball field where there are no trees, then that's a problem. Yes, I can understand. Yeah, one tree does go bad, but there the trees next to it might not be as bad or the tree a little further down. I mean you have somebody discuss, maybe an arborist can go there and say, you know what, what are the trees that are here? <inaudible> These trees are huge trees. We're not just talking about little tiny trees that are being knocked down. We have a responsibility to protect our environment. And sometimes the Board at times have allowed variances without looking at the consequences. You guys have approved...I can go on and on about your tasks. I was done with the Board when I was living in another area. But you guys have a tremendous task in front of you. And you have to sometimes, like the lady said previously, sometimes you have to visit the site because visiting the site, you'll get a better perspective. Like the gentleman said, you have to see it.

Chairman Jansen: Some of us have...

Alfonso Polanco: It's not easy to just approve a variance and say, okay, let this guy build whatever he wants to build. He's built already one item, one structure. Let him build another structure.

Arguing between Alfonso Polanco and Ritvars Zuks

Alfonso Polanco: In this country, we have a government. They have their right to perform their duties and they have an obligation to perform it well.

Chairman Jansen: Some of us have visited the site.

Alfonso Polanco: That has nothing to do with us. That has to do with their position that they were elected, or appointed or nominated.

Chairman Jansen: Some of us have visited the site.

Alfonso Polanco: I worked for the government for 30 years. So I know the responsibility.

Ritvars Zuks: I wish I could speak too.

Chairman Jansen: Some of us had visited that site during the last time that he had asked for a variance.

Alfonso Polanco: And what did you see?

Chairman Jansen: Oh, it was fine at that time.

Alfonso Polanco: Well recently more trees have been cut down. I think you should go back.

Chairman Jansen: If there was a lot of ash trees there, it's perfectly obvious that there's going to be a lot of knockdowns. But,

Ritvars Zuks: And just pointed out, you are more than welcome, anyone come to my property more than welcome, including you sir. If you look at the left side of property, if you're pulling in, there was a royal mess six years ago when I moved in. What I did, I cleaned everything out. So those trees who survived, they're still alive because they managed to breathe, all the bugs been killed, and those trees are living. Same thing they're doing in the back of my property. Whatever the live tree is, it's going to be preserved. What's the point of keeping the dead trees?

Attorney Havens: Excuse me, excuse me, sir. Sir, this isn't a back and forth commentary. You were given an opportunity. He's trying to explain his position. Sir, can you please hold on and let him finish the statement please.

Ritvars Zuks: So basically what I do, step by step by cleaning all the properties. So if I leave those dead trees, they're going to destroy everything. And that is going to become a field yet because they can all be fallen. You can see all the neighbors who are not cleaning. There is a bunch of neighbors on the street who finally realize you have to do that in order to preserve whatever is alive. Another 10 years all trees will be dead. Then what? Then I have a question of what's happening next.

Diane Bramich: I think James and I should go see it too.

Chairman Jansen: So do we have to continue this application

Ritvars Zuks: I'm not sure how the trees have to do with the addition they're putting to extend my family

Jim Mehling: I would like to come out and see for myself. I've lived in this area my entire life, I've been born and raised. I've been here 61 years. I can ascribe to the insidious plague that has befallen the ash tree species in this area in the last seven years on my own property up on Cascade Road. I've lost a lot of trees. Not by choice, this was out of my hands.

Alfonso Polanco: Well we also...

Jim Mehling: But either I take them down, which is the responsible thing to do as a steward of the environment we have and a responsibility to act in a manner which benefits the long-term effect...

Ritvars Zuks: Thank you.

Jim Mehling: Hold on. I share with you concern about taking trees down, I do. I also like having my lights on all the time. So I encourage, the town does have a plan by which tree removal is mitigated. Okay, thank you. You have the assurance of that. We don't sit up here idly and just rubber stamp everything. We put a lot of time and thought into doing something that we receive very little compensation for because we believe very strongly in what we do...

Alfonso Polanco: Thank you.

Jim Mehling: That is why we're here.

Jim Mehling: We respect your right.

Alfonso Polanco: Thank you for your service.

Jim Mehling: We respect your right to state your purpose and your view. We also respect the homeowner's right to improve their properties, provided it does not infringe or unnecessarily impose on others. It is sometimes a very thin line. And we have to make a judgment based on what we feel is in the best interest of everyone involved. We will do our due diligence, you do have my word on that.

Alfonso Polanco: You're welcome to come to our land also.

Jim Mehling: Okay. We will do our due diligence, you have my word on that.

Alfonso Polanco: Thank you very much sir.

Jim Mehling: You're welcome.

Ritvars Zuks: Also there is every single <inaudible> on the property. So it's easy to check those trees over there. And please let me know. You can show up however it's easy.

Jim Mehling: Alright.

Chairman Jansen: I do have one letter of someone that says,

To whom it may concern, I hope this letter finds you well. I am willing to provide my acceptance of the for the request of changes to the properties at 283 Nelson Road as presented by Ritvars Zuks. I understand that the proposed alterations involve having a structure closer to my property, than the building code allows. After careful consideration, I would like to convey my approval for these changes. I believe that Ritvars Zuks' proposal is reasonable and will not adversely affect my and surrounding properties. I appreciate the effort made to ensure that the modifications align with the spirit of our community while meeting the individual needs of the property owner. If the Zoning Board of Appeals requires any additional information or if there are opportunities for community input, please feel free to contact me. I trust the Board will make a decision that serves the best interest of the neighbor. Thank you for your consideration.
—Durwood Cox

Ritvars Zuks: Actually, he's the nexdoort neighbor who actually gets impacted by this. And he didn't have any issue whatsoever and most of the neighbors don't. They enjoy what's done on the property.

Chairman Jansen: I believe the Board would like to visit the site.

Attorney Havens: So this this particular application, because it consists of an extension of preexisting dwelling to add an attached garage to it qualifies as a Type 2 action under SEQR section 617.5c, sub paragraphs 11, 16 and 17. Would someone care to make a motion typing the application as Type 2?

Jim Mehling: I'll make a motion that we type it as a Type 2.

Chairman Jansen: Motioned by Jim. Second?

Diane Bramich: Second.

Chairman Jansen: Second by Diane, any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Diane Bramich: Alright. So I would like to make a motion to keep the public hearing open and that we get the chance to go and visit the site and have the gentleman come back in April.

Chairman Jansen: Second?

Jim Mehling: Second.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Ritvars Zuks: Do I have to come back?

Attorney Havens: Yes. Next month.

Ritvars Zuks: Next month, right? For the additional.

Attorney Havens: Right.

Ritvars Zuks: So if you are willing, if you want to see what's going on in the garage, just give me a call back because they lost. So you're more than welcome. I can meet you in the property, show you around.

Diane Bramich: Do you have a phone number?

Ritvars Zuks: Yes.

Chris Daubert: No, we went, me and you went the last time.

Ritvars Zuks: Again, this is back to the situation where some people want to clean their property and some don't want, which is perfectly fine. I don't expect to see dead trees on my property and it's not going to happen and <inaudible>. I want to clean up so it's beautiful.

Jim Mehling: But we need to also see it from your vantage point and also the vantage point of anyone who comes before this Board as is their right to speak.

Ritvars Zuks: I understood.

Jim Mehling: So we want to give everybody equal <inaudible>.

Ritvars Zuks: Absolutely, that's understandable. More than welcome. Alright, thank you so much.

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 from the Town Law §164-41(A)(1)(a) for the construction of a new detached two-story garage creating a singular accessory building comprising 4,500 square feet, where a maximum of 1,200 square feet is permitted; and having a greatest median dimension of 88' where no more than 48' is permitted.

Representing the Applicant: David Niemoth, David Niemoth Architects

Chairman Jansen: Please identify yourself for record.

David Niemoth: Good evening everyone. David Niemoth, Niemoth Architects, we're the design firm representing the project.

Chairman Jansen: So you've made changes.

David Niemoth: Yes. I can give a summary, appreciate the direction from the Zoning Board. We had that site visit where recommendations were made. As a result of that, the accessory garage has been moved to the westerly portion of the property. We kept—even though the zoning code is a 10 foot offset—we located the garage 26 feet from the western property line. In addition to that, the project has gone under a third party review as a design professional, Martin Rogers was hired by the Town. He's a professional engineer and also a New York state certified codes official. So he was authorized and has the qualifications to review the site plans and the architectural plans. After revisions and review with him, his final determination was that it is a one-story building without question and that allows us to be before you for an area variance of the size. Subsequent to that incident, we had a presentation last month before you, which appeared to have gone well. We made some additional modifications in light of the Zoning Board's recommendations. Some of those were a vegetative buffer along the southern portion of the property with actually very large trees that it should...it's more than vegetated. It's a landscaping job/project in itself to buffer that portion of the property from the road. And in addition to that, we've introduced the same trees in the eastern part of the property to buffer any visual impact of the accessory garage from the neighbor on that side. As a result, I believe we complied with the recommendations of the Board. We definitely have subjected the plans to the third party reviewer who independently reviewed the plans and rendered his decisions accordingly. As a result, we're here before you for the public hearing and to further along the project.

Chairman Jansen: Thank you.

Attorney Havens: Alright, so as everybody here is aware and for the members of the public that are not, this is a modification, significant modification from prior applications denied for a multitude of various reasons. New application proposes a new location as articulated by the applicant and a somewhat different design. There's no current building code violations that are outstanding. Orange County Planning Department GML 239 referral response was received on February 28th, 2024. And while the Orange County Planning Department did state that it's a local determination, they added a comment that this Board should consider the district purposes and character of the neighborhood impacts that may be associated with the project. So the same thing applies from the last application. Any approval if this Board were to grant it would not necessarily be subject to final Planning Board site plan approval. So the ZBA needs to consider and impose site plan approval conditions or refer this application to the Planning Board for establishment of any site plan conditions. Do want to note that filed map number 4520 limits and

prohibits any accessory buildings within 50 feet of the gas line. As noted on your site plan, the accessory structure is in excess of 50 feet from that gas line. That's correct?

David Niemojko: Correct.

Attorney Havens: Also noting for the general public as well as reminding the Board, this parcel is within the Ridgeline Overlay District and in accordance with the applicable code section 164-47.1 the height of the building would be limited to 25 feet measured from the mean elevation of the average natural grade level adjoining the building. In order for this proposal to be considered for approval, the applicant would need to provide elevation measurements from average natural grade to the highest peak of the roof line. The site plan must be updated to reflect the required ridgeline overlay notes. Those were previously provided at the time of the last application. If you need them again, I can resend them by email to Sabastion.

David Niemojko: Ok.

Attorney Havens: Ridgeline overlay notes? I didn't see that on the site plan.

Board Members review the plans.

David Niemojko: Actually, I stand corrected. They're not on the front of it.

Attorney Havens: Yeah, you guys had put them on the last set, but they weren't on this set.

David Niemojko: That's not a problem. We could do that.

Attorney Havens: Site plan needs to be updated to reflect the surface profile and site line analysis, including tree tops and ridge lines of hills pursuant to code section 164-47.1 F(6)(e). You guys had on your prior application had provided that profile...

David Niemojko: A section profile through the site. Is that correct?

Attorney Havens: Yes. This is the one I'm talking about. Site plan has to be updated to reflect limitation on tree clearing imposed by known proximity to Indiana bat hibernacula from March 31st to October 1st. The site plan must be updated to reflect standard lighting notes. I know that you guys provided a supplement with lighting, but it has to be on the site plan. There are standard town lighting notes that need to be on that site plan. When we did a workshop there was a presentation of specific light fixtures, but the actual lighting notes that specify the town regulations with respect to outdoor lighting needs to be added to the site plan.

David Niemojko: So it was town lighting notes and what was the one previously?

Attorney Havens: Town lighting notes, Indiana bat protections.

David Niemojko: There was another town.

Attorney Havens: I can give you a copy of all of these comments. You don't have to take notes on every one of them.

David Niemojko: I'd appreciate it, thank you.

Attorney Havens: And the site plan would have to be updated to reflect the signature block for site plan approval by the Chairman of the Zoning Board of Appeals before it could be signed. Final site plan would have to be signed, sealed by an architect prior to approval by the ZBA Chairman. We're up to opening public hearing.

Chairman Jansen: Let's do it. Anyone from the public that would like to address the application?

Lynn Huchital: 29 Distillery Road.

Attorney Havens: You can proceed with your comments.

Lynn Huchital: My concern is this...it's a private residence, am I correct, with this property that's putting up this large fixture, a building?

Chairman Jansen: Yes.

Lynn Huchital: It's not my business what you want to do with your building. I've been there for 30 years on this site and for a building of that size to be put in the residential area is questionable. I hope you're going to...you need something to store in there. I don't know what the purpose is and I know it's not my business as long as it's not going to impact the surrounding environment with the animals. We have koi back there that I've seen and <inaudible> there's wild animals. And the deer—there's an abundance amount of deer back there and how many more can I feed in my gardens if you chase them away and chase them towards us? It's just a large structure, that's all I'm saying, in this part of the woods and I'm just concerned. And if any water is going to be needed in there and just the whole dynamics of changing the, which I know that you have that all under your concerns as well.

Chairman Jansen: Anyone else?

Shannon Folino: Good evening.

Tyler Folino: Tyler Folino.

Shannon Folino: And we're at 15 Distillery Road. It's really unfortunate to hear that there was a third party reviewer that reviewed these plans because the plans that we received on Wednesday of last week still had many discrepancies across the drawings. This is beyond just the applicant's architect, this is also now a Town issue as well. That's concerning as a professional in the industry to hear that now there's another person coming to the picture who's not picking up on things that impact the variances that are being requested. The cover sheet of the application state that the structure is 4,500 square feet. But if you look at the floor plan, it says gross floor area 4557 square feet. In addition to the fact the floor plan is not consistent with the elevations, which have three bump-outs on the front facade at that main level that are clearly the finished floor elevation with the floor structure beneath. So if those were actually reflected on the floor plan area, that would be additional area on top of the already above the 4,500 square foot that we're talking about. Then we look at the building height; it was touched upon and the ridgeline overlay's measured to the peak of the roof line. The plans that we received still only show it to the mid of the roof line, and at the middle roof line, it's just under 25 feet, which is the maximum restriction ridgeline overlay. When you're measuring it to the peak, it's obviously going to be in excess of 25 feet. The grading plan that was submitted, I don't know if it was the grading plan or the lighting plan, but there was a plan that should propose contours that essentially identify and help depict how the average grade plan was calculated. They're showing that the elevation at the front facade if you will, and then the facade that faced the West, that the elevation outside the building is elevation 656. But if you look at those proposed contours, they do not tie into the existing grade elevations without having to impact the neighbor's property on the other side of them. Looking at it, they realized they would have to lower that to actually be 654 in order to reach existing grade. And if they did that, that would then lower the average grade plan around the building, therefore further increasing the building height as it's measured. Those are just a couple discrepancies that we had noticed when looking at the plans. These are critical things of what they are here before this Board asking for. So if the building inspector's not picking up on it, the architect happens to make a mistake and they don't pick up on it, and now a third party reviewer's not picking up on it, who am I supposed to rely on? That is concerning, and I understand, it sounds like there was conversations and you're allowed to have those conversations, but for this Board to recommend that he move it to the other side of the driveway and it's simply not impactful to the neighbors.

Tyler Folino: Now there's an additional 600 square feet in size.

Shannon Folino: He increased the size of it. The prior application was, I think you determined either 3,700 or 3,900 square feet. It's now above 4,500 square feet. Now also the greatest dimension is 88 feet, where it was previously 82 feet. This all increases the mass of this structure. And something else I wanted to put clear on the record that was relative to the prior application, but came up after the public hearing had closed. One of the Board members had brought up that there's a building across the street that's taller and bigger than this building. The building directly across the street from this applicant's property is a cinder block. It once was a septic person, where they set their equipment, it was a auto shop. Now it's just like a cleaned up garage. Just clean cut two car, I think cinder block garage. The structure that I think the Board member was trying to refer to was the guesthouse for 41 Silo Lane. I want to make it very clear for other members of the public, for the record, for this Board, the guest house for 41 Silo Lane is on its own subdivided six acres. It is consistent with the Town's requirements for a guesthouse, and the footprint of that building is roughly 2,900 square feet. So it's actually a smaller footprint than this building that's being proposed. The overall area of that guesthouse is I think 5,400 square feet, but that's because of the cast for the two stories, the lower level garage and the upper level that can be finished to be lived in. So the comparison of the 41 Silo Lane guesthouse, that can quite frankly be a single family home if that person so chooses to sell off that property as a separate property, that's not a comparison here. That structure is further off of County Route 1 than this project is. It's closer to the principal structure in which it's accessory to. This structure that's proposed, is so closer to our house than it is the house that it is an accessory to. You're saying that you're parking cars, personal vehicles in this structure in addition to equipment. The first application that was here tonight was for someone that has roughly 47 acres of property and they wanted a 1400 square foot garage to store their tractor and equipment to maintain the property. That is so much more land than this applicant and so much less area that's being requested. I understand that you have the right to make interpretations. I disagree that the lower level garage is discounted. That's almost 1,000 square feet that we're just pretending doesn't exist when that is the accessory use in which this accessory structure is permitted. I apologize that I don't have more things collected for you in a more organized manner. We got notified earlier in less than a week from today, and we get the plans until Wednesday to look at. So I just want to look here. I'm not going to add anything while I'm looking through.

Tyler Folino: I think we need to take it up with the Town as well, but we submitted multiple FOIL requests and after we just received documents this past week, we learned documents were submitted back in December and we submitted a FOIL request in January and February and didn't receive any documents. So to us that's a big issue with the Town. If documents are submitted, it is our liberty to receive them. So I don't know if that's taken up with you guys, but we can also contact the Town Supervisor to discuss that.

Shannon Folino: Other issues that we flagged on the plans, the spacing of light poles is not compliant with the town's lighting standards. The maximum to average light level ratio is not compliant with the town standards. That applicant's application on their EAF form stated that there was no threatened and endangered species. As you've identified here tonight, there is threatened endangered species. These are things that were also talked about in the last meeting and there's not even regard for them in this application. At what point am I supposed to take this application at face value, if there's discrepancies across these plans that show two different things? There's two different places that the applicant can point to when he's building it and the building inspector is going, 'oh, well this doesn't really look like what you put in your application.' He goes, 'yes, it is, on this side'. Those <inaudible>. 'Oh yeah, sorry, they weren't on the floor plan.' These are critical discrepancies that have importance and it's just really confusing to be in this position yet again. The off street parking requirements for the town, both the actual off street parking requirements and the ridgeline overlay district highlight that off street parking should be situated to the side and the rear of principal buildings on that lot. I don't understand the logic behind having a building so far away from your house if it's going to be used to store personal vehicles, on top of the equipment. I mean, similar to the other applicant <inaudible>, there's work's happening on this

property every single day. When I tell you that there is trucks and machinery up and down this driveway every single day through the winter. I'm not lying. Since this application, the prior application was denied in November, all through December, all through January, all through February...work happening constantly. I can't see how this Board—and I don't mean this in an offensive way—I just hope that you can understand my perspective when this applicant is talking about using this to store equipment and vehicles that they're going to be using to maintain their property. They're maintaining their property up by their house. Why are you putting a building down by your neighbor so they have to hear the machines every single time they come out of the garage just to go up to your house? The critical views that we're talking about in the original overlay district for this property are mostly relative to the county road. You're going to see this from the county road, not only from his driveway. You're going to see it as you continue down up the pipeline easement. You're going to see it from there. You can see it from Silo Lane when you're on Silo Lane. You can see it from our driveway when you're on Distillery Road looking down our driveway, you can't see our house but you'll see this applicant's garage that is significantly taller than our house.

Tyler Folino: And the definition of the accessory use is that it's subordinate to the principal building on the property and having this building in its location does not feel like a subordinate building to the main residence. This is going to be the building everyone sees from Pine Island Turnpike and from our road.

Shannon Folino: I apologize, I'm just looking through my notes, one last time.

Attorney Havens: Take your time.

Shannon Folino: Yes, I think that's it.

Attorney Havens: Anything else?

Shannon Folino: Yes, just one last thing. I mean this with the utmost respect and not with any ill will, but I do have a very difficult time walking away from this podium and not getting this on the record for this application, similar to how I did for the first application. Mr. Daubert is the landscaper of this property. The applicant himself said that they're planting trees—a landscaping project in and of itself, if you will, how Mr. Daubert can sit up there and make a determination on something that with the mere state general municipal law seems like a very clear conflict of interest because there is a contract there in which he will receive financial benefit potentially as a result of this project as he's there every single day through the winter. And he was the one to mention Silo Lane at the last application. I have concerns and I apologize if you find that offensive, not attacking his character, but it is really troubling to me that that is somehow not a conflict of interest.

Chairman Jansen: That is not up for us to determine. We'll find out.

Shannon Folino: Okay. Thank you for your time.

Cindy Porter: I've been coming to these meetings several times now. And all I really want to say is as we're going on the record and you can go and look back up on your records from prior, she said—the person that was here prior, she said that she had no issue if you moved the building. Just look back on your records and now there's more issues. I don't think it's going to ever end. She just doesn't want it built. And that's really all I want to bring up. Look back at those notes. She said it was okay then you do what she said and then she still has a problem.

Shannon Folino: No, I would like to just defend myself there. I'm a licensed civil engineer. I have been in Mr. Niemotko's position times before where I've had to deal with neighbors and members of the public who do not agree with the project at hand. I also worked hand in hand with these neighbors to address their concerns, listening to them, hear what it is that would make them feel better. That does not happen with this applicant or his architect. And that's not Mr. Niemotko's place. He is working for the applicant. It's not his position to come to me and ask me what I feel good with. I don't care if he puts this building in. I will say on record—I don't care if he puts this building up by his house. I really don't. I promise you I

will sign a legal agreement that says that. The reality is that shifting it to the other side of the driveway does not alleviate. Is it a better alternative than what was previously before this Board? Absolutely. I can stand here and say that it is not as impactful as it once may have been. Does that mean that it is not impactful? No, it doesn't.

Chairman Jansen: What about the people on the other side? If you are going behind the house, what about the people that are surrounded at that?

Shannon Folino: If he puts it in the same general side of his property behind his house, it is not going to be nearly as close to the other residential homes on the other properties on Distillery Road, Evelyn's property, Lynn's, I promise you it won't, I will measure it for you. It will not be as close to their house as it is to our house. That is the reality of the way that this site is situated. Our home is far back from the property as is Evelyn's. But there's mature tree buffer between their property and the applicant's property and his home is also between where the structure would potentially be. It is a completely different sighting situation when you're looking up at his house and signing it up there that it is down by our house. I'm not here just to make an issue. I don't want to be here. We have gone back and forth about having to come back here for this exact reason. And I'm sorry that the wife of the builder of this application has that to say, who's known me since I was a child.

Jim Mehling: Try not to make it personal.

Shannon Folino: I understand.

Jim Mehling: I know it's personal to you, but let's keep it germane without getting into character assassination and tit for tat; that serves none of us.

Shannon Folino: Absolutely. But saying that I'm someone who will always be against this time and time again. We didn't tell him where to put it on his property because we thought that he could listen to what we had said and make an informed decision to put it where it makes sense, given the town's feedback at the last application that off street parking should be cited to the side and rear of the principal building structures. There was nothing else that I felt fit to say for the prior application that would make this any different. I'm not here to just make an issue out of making an issue. I promise you I truly would have, like, they don't have to refile for all I care. If they moved it as part of this actual application, I wouldn't have an issue with it. I don't want to drag this out. This is unnecessary stress. This has made me and my husband not want to live here, in the town that we have grew up in. I don't want to live here because of the way that this person and the constant <inaudible> property has made me feel. Okay. I'm not here to just make an issue to make an issue. I promise you that.

Chairman Jansen: Alright? Sir?

Man from the general public: Let it go.

Chairman Jansen: Let it go? Anyone else?

Katlyn Kattowski: My name is Katlyn Kattowski. I saw some of the documentation that they have for the drawings with the lighting that they have for outside the light poles. I am a technical support specialist and lighting controls professional locally and in New York City for commissioning. I just kind of feel that 3,000 to 5,000 lumens for a light level is very bright for residential. It is relatively kind of close and in the middle of everything kind of facing the neighbor's property as well. I don't know if they have any sensors or schedules or anything that they're programming wise. I don't know if they are doing any data line stuff where there's a connection there. So I don't know if they'll make sure to have these lights off at certain hours of the night or if they'll go in very, very late depending on what kind of things they have going on the property that they're doing at night. I just want to make sure that is considered.

Chairman Jansen: Thank you. Anyone else?

Attorney Havens: So the Zoning Board needs to discuss SEQR. If the floor area is under 4,000 square feet, it would be a Type 2 action under SEQR section 617.5(C)(9). If the floor area is above 4,000 square feet, then type action is unlisted under section 617. So Board needs to discuss and come to their best interpretation as to how many square footage are we talking about here so that we can type the procedure purposes before we move forward.

Chairman Jansen: The architect says 4500.

Diane Bramich: It says 4500

Jim Mehling: It's in excess of 4,000, therefore it's an Unlisted Action.

David Niemotko: Ok.

Jim Mehling: I'll make the motion for the Unlisted Action.

Diane Bramich: Second.

Chairman Jansen: We have a motion and a second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

David Niemotko: So can we talk about a few other points in public?

Attorney Havens: Public hearing is still open.

David Niemotko: Yes. So the ridgeline district paragraph B, reads, "The purpose of the ridgeline overlay district is to establish clear guidelines for future development and protection of the town's ridgelines, which are found largely at higher elevations in which comprise most scenic environmentally sensitive areas of the town." So this would somewhat be a parameter to preclude putting the accessory garage higher up in the elevation. Putting it near the existing house would actually contradict the requirement for the request of your zoning code. In addition to that, you did have the last public hearing two members show up that said it would not be visible from the road from their perspective. And so I'd like to remind the Board of that. When we did a cross section through the site, which will be quite similar to the one we provided already because the cross section longitudinally is still in the same location even though we've moved the building latitudinally, we'll demonstrate that it's hidden from the existing hidden from site by the existing trees and by the new landscaping that is proposed and that we'll put into place. So we are mitigating all sensitive areas associated with the project and quite frankly, whether the public likes it or not, we went through a third party review. You have to respect the man's education, his licensing and his credentials. We didn't select them, the Town did. And we abided by everything that he requested. Whatever information he asked for, we provided, we amended the plans accordingly and we did so. So, at what point does the review process end? It's not autonomy. It was subjected already to review and he is a professional engineer. He's New York state certified building code official. So he can officially comment on the building, the elevations, the floor plans. He's determined that the basement is not a story. He's determined that the attic is not accessible and not a story which is consistent with the building code without question. So what we present before you is reviewed as it would be an accountant statement, as it would be something else. So please respect that process.

Attorney Havens: Before you start, I did have one additional point in detail that I didn't have in my comments and notes that I had on my site plan here. I did specifically include and I will forward a copy of all of these notes and the requirements to Sabastion via email so that you guys have that for reference. One of those requirements is to articulate in your elevations what the height is from average natural grade, not finished grade. And that's pursuant to the definitions under the town code. This ZBA doesn't care what the state building code says about, you know, what, what a height is. This is regulated by a special section of town code 1 64 dash 47.1 specifically with respect to ridge line overlay. And therefore

the height must be articulated. Your elevations must be articulated from average natural grade to the highest peak of the roof line, which isn't on the plans. Please update it accordingly. I did want to note, however, for the benefit of all parties that in reviewing your site plan, it does identify that the proposed height of the garage on site plan C2 is 32.75 feet. And from my quick rough calculations, that's probably from average natural grade from what I could determine without spending too much time on it. So it just needs to be reflected in the actual elevation drawings because it's already reflected on your site plan.

Tyler Folino: Just to carry on his first point about the ridgeline overlay district, the subsection on visibility of buildings, all structures shall be sited to avoid to the greatest extent practical occupying or obstructing public views of land within the RLO district. Public views shall be considered to be from any location listed on the SEQR Visual Environmental Assessment form pursuant to 6 NYCRR. These locations are frequented by the public and often are constructive views of the town's bridge land landscapes. Visibility shall be measured using in condition of no leaves on trees. Currently, one of the requirements of the SEQR would be the public road, which is County Road 1. As the site stands right now, you can see the pad for the previous location of the project and the new location, they're trying to put it in. So the guidelines of the ridgeline overlay district are requiring that the visibility from this location is minimized. Putting it by his house is no impact to anyone because that's not seen from the...

Shannon Folino: Public view. Additionally, section 164-47.1, ridgeline overlay district requirements, section 6, the design principles to meet the purposes of the ridgeline overlay district, the following design principles shall apply. (A) talks about parking and there's a whole long part about parking lot multifamily and everything. But at the bottom of that paragraph it says parking for single family dwellings shall also be provided at the side and or rear of the principal structure. Provided such an arrangement does not create a significant visual effect. Once again, to reiterate: the visual that we're concerned about in the ridgeline overlay per the requirements in the town code is the visibility from the EAF form, which is the county road. You will see this if you drive by today, there's a bright yellow dumpster, you can see that when you drive by. That's where this building's going to be. You will see that building if you put in trees. Okay, maybe it'll help. You will still see it from the pipeline straight shot down. If you drive along Pine Island Turnpike coming from Edenville towards the Village of Warwick, you will see that structure unless they were to plant trees within the gas pipeline easement, which I'm not entirely sure that they can so necessarily do. And I just want to further reiterate this plan. And again, I don't think that we received all the plans that were submitted as part of the application. I don't have a site plan. So if that was submitted, I'm concerned that we don't have all the documents. But on sheet A202 prepared by the architect, below the A202 proposed floor plan, it says gross floor area 4,557 square feet.

Tyler Folino: Then on page T1011 of the same set of plans, scope of work construction of new 4,500 foot garage.

Shannon Folino: I can respect someone being licensed and also disagree that they didn't miss something as well. And that's where my concern was coming earlier. If the building inspector's missing it, if the person who submitted the plans is missing it, if a third party reviewer is missing it, is the third party reviewer doing a thorough job? Or is this just checking a box to shut us up? That's kind of what it feels like at this point. To throw it in our face and say that there was a licensed person that reviewed it and you have to trust that they did their job.

David Niemojko: Yet you depend on your own license to critique us.

Shannon Folino: Sure.

David Niemojko: So you can't disqualify another person from doing so.

Shannon Folino: And I'm not disqualifying him. I'm just saying...

David Niemojko: Well, you are.

Shannon Folino: I can identify...

David Niemotko: You're asking...

Inaudible — arguing ensues between Shannon Folino and David Niemotko

David Niemotko: We hired a consultant to do that.

Shannon Folino: And I'm allowed to say that I'm concerned about the consultant with no disrespect to the Consultant.

Tyler Folino: So then you as the professional, what's the square footage?

David Niemotko: 4,500.

Tyler Folino: So then the 4577, which the dimensions add up to is incorrect. So then the plans are incorrect.

David Niemotko: No, the dimensions add up to 4,500.

Shannon Folino: When you do the math of the dimensions, it equals 4557.

David Niemotko: It's 4,500 square.

Tyler Folino: See that's the discrepancies.

David Niemotko: We're asking you to vote on 4,500 square feet.

Shannon Folino: But you're voting on the plans that are before you. And he says it's 4,500 and it's built differently. Who's confirming that it's not?

Attorney Havens: We have asked you to provide additional details here to your site plan...

David Niemotko: Sure.

Attorney Havens: ...so you can just double check that and make whatever adjustments are necessary so that it's uniform throughout.

David Niemotko: Sure. Not a problem.

Chairman Jansen: Any other questions or comments? I need a motion to keep the public hearing open until we look at the revised plans next month.

Diane Bramich: So moved.

Jim Mehling: Second.

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

Board Members: Aye.

Chairman Jansen: Any opposed? Thank you.

CORRESPONDENCES:

1. ZBA to discuss earning (5)-Hour Minimum of Credits for Year 2024-2025.

OTHER CONSIDERATIONS:

1. ZBA Minutes of February 26, 2024.

Chairman Jansen: The ZBA accepts the minutes. Meeting adjourned.