

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

*\* Chris Daubert recused himself from the Public Hearing regarding 138 Pine Island Turnpike LLC.*

**PUBLIC HEARING OF Ruby Randig & Mateo Prendergast** - regarding property located at 103 Iron Mt. Rd., Warwick, New York 10990, and designated on the Town tax map as Section 63, Block 1, Lot 13.2 and located in the MT district for an area variance permitting the construction of a new detached two-story garage with office & storage space with a footprint of 36'9"x22'11" creating a singular accessory building comprising of 1,463 sq ft of Floor Area, where a maximum of 1,200 square feet is permitted.

*Representing the Applicant: Brian Friedler, Friedler Engineering*

Chairman Jansen: Please identify yourself for the record.

Brian Friedler: I'm Brian Friedler, Friedler Engineering.

Chairman Jansen: So briefly just give us an overview of what you'd like to see us do.

Brian Friedler: Like you said, we're looking for a variance for the overall size of the accessory structure. They're proposing to take down...they have a carport where it's going to be located. They're proposing take down that carport and build this new accessory building. We're in front of the Planning Board right now because part of the accessory building is going to be used as a Class 2 home occupation; that put us in front of you guys.

Chairman Jansen: Ok. So are they going to act on that before we do?

Brian Friedler: No.

Chairman Jansen: Alright. Jeremy, you want to take it from here?

Attorney Havens: So just as a point of clarification Brian, when you had initially submitted your application, you had submitted it requesting 1,683 square feet of space. In reviewing the site plans we had identified an area in the second floor that is below the 6'8" threshold that qualifies as square footage, but we miscalculated that number so the amount that was stated in the public notice of 1463 was inadvertently transposed. It's supposed to be 1683 was the original amount that you were requesting in the application. And it was only 147 square feet of floor area that wouldn't qualify as floor area. So if you subtract that, 1683 minus 147 is 1536, is the actual occupied gross floor area that you would be seeking a variance for. So I just wanted to first make that clarification. Again, part of that was my fault in our conversation. I got some numbers transposed and we went up breaking down the wrong number. There's no Building Department violations of record here. GML 239 referral was made because it's within 500 feet of a municipal boundary. A response from Orange County Department of Planning was received on February 26, 2024 and the comments to that was that the proposed subsurface sewage disposal system for the proposed accessory structure shall not be constructed without approval from the Orange County Department of Health. And otherwise, with respect to the variance itself that a local determination is appropriate for the town ZBA to handle the rest of it. Did you submit your certified mailing receipt?

Chairman Jansen: No. He's going to bring them in tomorrow morning.

Attorney Havens: Ok. And did you have anything else you wanted to add as far as additional details about the project? I'm not saying you have to, I'm just asking.

Brian Friedler: Yes. It's going to be used for personal use. They have very limited storage in their existing house. So one of the main things, is that the second floor is going to be used for personal storage. So that's a big thing. The downstairs has a two car garage with a approximately 325 square-foot office space that they're going to use for their Class 2 home occupation.

Attorney Havens: I did want to also acknowledge that this particular project is within ridgeline overlay and the applicant already submitted a revised site plan that reflects the ridgeline overlay regulations and

clarifies that the height of the new accessory structure shall not exceed 25 feet 0 inches from average natural grade to the peak of the roof. That's already been updated onto the site plan. And so I guess we're ready to open this to the public hearing.

Chairman Jansen: Is there anyone from the public that would like to address this application?

John Jordan: My name's John Jordan. Cassie and I have lived at 101 Iron Mountain Road for 35 years. And I guess it's no secret we're the ones that are going to be most affected by the project. I just want to start off by being clear. We're not opposed to the construction of a simple garage and we're not opposed to these two part-time businesses that have existed there for several years. In fact, Cassie mostly, and I patronize these businesses, but the concern that we do have is the sheer size of this building and the volume of the building. It is rather close to the property line, 20 feet. And some of the things we have concerns about is this in keeping with the definition of mountain district zoning? Beyond that we all have concerns about runoff; there's water from Wawayanda, the 36 1/2 foot roof, I believe, roofline. So there'll be a lot of water from that that's going to need to be addressed. There's concern if there is a fire, the radiant heat that could be thrown off a structure that big. And finally, and I know this isn't your jurisdiction, it's more the Planning Board, but a lot of folks have called me about this, a lot of folks are concerned about the increased traffic over the past year or two. So I just want to make that clear.

Chairman Jansen: Now traffic, you think that's related to what they're trying to do or just traffic in general?

John Jordan: Well, maybe toward the business. Again, I haven't been trying to put a coalition together on this or anything, but things travel on the mountain. People started calling me and saying, we've noticed there's been a lot of traffic on the road, additional traffic. So that's somewhat of a concern as far as the road goes, it's a mountain road and there are on either side could be deep culverts, especially up top. So there is a concern as to the safety of the road. But again, I believe that's the jurisdiction of the Planning Board and I know people had concern for that this evening.

Chairman Jansen: Ok, Thank you.

Jim Mehling: Just as a point of clarification to follow up on. Obviously, there's an increase in traffic. I've lived on Cascade Road for 32 years. I can tell you the amount of traffic on that road has exponentially gone through the roof. Just more people in the area. Do you directly attribute this increase in traffic to that business at that residence? And do you, in your opinion, having lived there for as long as you do, see this as perhaps increasing that or adding to it or...? Is this like a line of cars in and out?

John Jordan: I'm sure it has to an extent. I do have to say we have considered putting up a fence because there is traffic up and down the driveway. Just throw a little more barrier.

Jim Mehling: Fair enough.

John Jordan: But that's about it. I couldn't find any email addresses for you folks. So what I'm going to do is just give you a copy of this letter. I did send something a little more detailed to the Planning Board.

*John Jordan turns in his letter.*

John Jordan: But that's from there. So do you have any other questions?

Attorney Havens: It's just that the Board doesn't have the benefit of being able to consider this because they haven't had an opportunity...

John Jordan: Well, I just received the letter on Saturday, so that's the other problem. It doesn't seem to be an issue anyway, so...

Chairman Jansen: That's all the questions I have.

Jim Mehling: Marc, do you have anything?

Marc Malocsay: No, we're good.

Chairman Jansen: Anyone else?

Attorney Havens: Mr. Friedler, as a point of clarification, with respect to what the gentleman was just discussing, can you articulate what the approximate square footage of the footprint of the building is?

Brian Friedler: The square foot of the building?

Attorney Havens: The footprint.

Brian Friedler: Yes. So it's 36' 9"x 22' 11".

Attorney Havens: It's approximately 841.5 square feet, if I'm correct?

Brian Friedler: Yes, 842 square feet.

Attorney Havens: So while the public hearing is open, the Zoning Board has to consider SEQR. However in this particular case, the Planning Board has already determined that this is a Type 2 action under SEQR §617.5(c)(9) and (11). And therefore no further review by this Board is necessary unless this Board determines that there's something of significance in the application that they want to consider for SEQR purposes.

Diane Bramich: Can I ask a question? Why did the Planning Board send it to us?

Attorney Havens: Because of the square footage requirement. It has nothing to do with the side yard. They're actually within, they don't need a variance for that side yard. It's an accessory structure, it's far enough from the sideline. The only reason it's before us is because it's more than 1200 square feet in size as an accessory structure. That's the only variance they need. And it's confirmed that it's below the 25 foot height. So does the ZBA feel that a site inspection is necessary for this application?

Chairman Jansen: I was there yesterday.

Jim Mehling: No, I'm good.

Marc Malocsay: I don't think so.

Attorney Havens: Alright. So the ZBA should also consider whether any use restrictions or any other conditions need to be imposed. One condition would be specified to express condition from Orange County Department of Planning that the proposed subsurface sewage disposal system for the proposed accessory structure shall not be constructed without approval from the Orange County Department of Health. So that's a requirement for the Orange County Planning Department.

Brian Friedler: So that is actually a mess-up because we are meeting all the required separation distances. So the Building Department, they don't need to refer to the County Health Department for a review. I spoke to James at the County Health Department and he says we wouldn't review it because it's meeting all of your separations. We wouldn't be able to design it or install it if it didn't meet those separations. So he says that for whatever reason the County Planning put that on there. But he's been in contact I believe with Laura and they spoke about it and they both agreed that the County Health Department would not review it, it would be a Building Department review because we're meeting all those separations.

Attorney Havens: What's the chances that you'd be able to get a letter from them stating that?

Brian Friedler: I can get it. I'm thinking that he gave one to Laura already because we've already submitted the plans to be reviewed by the Building Department.

Attorney Havens: Gotcha.

Brian Friedler: They're kind of on hold right now while we go through the Planning Board process. But I'm almost sure Laura spoke to James at the Health Department also and he said we wouldn't review it just because you're meeting all the requirements, so there's no need for it.

Attorney Havens: Okay. So if we change it to...

Brian Friedler: I can get a letter from him.

Attorney Havens: ...approval or waiver of approval, how's that?

Brian Friedler: Yeah.

Attorney Havens: One or the other. Is that adequate?

Brian Friedler: Yes.

Attorney Havens: Because at least that way we know we're not doing something contrary to what Orange County Planning specifically dictated.

Brian Friedler: Okay.

Attorney Havens: Anybody else have any specific conditions or use restrictions that they think is appropriate?

Chairman Jansen: No.

Jim Mehling: No, I'm good.

Attorney Havens: Make a recommendation of? Marc?

Marc Malocsay: I'm good.

Attorney Havens: Then unless there's any other comments, we can close the public hearing.

Chairman Jansen: So unless there are any other comments, I'm going to close the public hearing. The public hearing is closed. And you're going to bring the mail tomorrow?

Brian Friedler: Yes.

Attorney Havens: That would definitely be a condition. So ZBA have Board Members have any other concerns or considerations they want to address?

Board Members: No.

Attorney Havens: Alright. Then subject to the two conditions that the applicant either obtain an approval or a waiver of such approval from the Department of Health regarding the sewage disposal system as recommended by the Orange County Department of Planning and that the applicant deliver to the Town Hall offices here their certified mailings for proof of mailing of the notice of hearing. Then would someone care to make a motion granting or denying the variance as amended?

Diane Bramich: I move the motion to grant the application as amended.

Chairman Jansen: Motion by Diane. Any second?

Chris Daubert: Second.

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

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: So for the record, we just voted to approve an application for Randig and Prendergast for an area variance for an accessory building garage at 103 Iron Mountain Road in Warwick, New York, 10990. Section 63, Block 1, Lot 13.2. Inadvertently, the Board failed to consider the five statutory criteria for granting of an area of variance. And so the Board is now going to consider that. The first question with respect to this application, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby property be created by the granting of the variance that is being requested? The applicant states no. The reason for the answer is that the proposed accessory structure will be constructed

in a manner consistent with the neighboring properties. The proposed two-story structure will be 186 feet from the front property line and 19.75 feet off the side property line. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 2, can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states yes. And the reason is the applicants could propose a smaller structure, but they would like to have a two car garage and office space for their Class 2 home occupation. Since the existing dwelling does not have a basement or attic space for storage, the second level of the accessory structure will be used for storage. Does the Board agree that the benefit that the applicants seek can be achieved by some feasible method other than the variance?

Chairman Jansen: No.

Diane Bramich: Yes.

Chairman Jansen: No.

Marc Malocsay: No.

Diane Bramich: Why?

Chairman Jansen: Where are they going to put it?

Marc Malocsay: I'm agreeing with Jan.

Chairman Jansen: That's why the storage is there.

Diane Bramich: Read it again, please.

Attorney Havens: The applicant states that the benefit that the applicant seeks can be achieved by some feasible method other than the variance because the applicants could propose a smaller structure; they would like to have a two-car garage and office space for their Class 2 home occupation. And since the existing dwelling does not have a basement or attic space for storage, the second level of the accessory structure will be used for storage. So the applicant is admitting that they could seek a smaller variance. But they're requesting a variance of...

Chairman Jansen: The reduction in the size of the variance is so small that it's not going to make a meaningful...

Attorney Havens: Yes. It's a variance of 336 square feet is what they're asking for in order to accommodate additional storage space. So does the Board agree with the applicant that the benefit that they seek could be achieved by some feasible method other than the variance?

Diane Bramich: Yes.

Jim Mehling: Yes.

Marc Malocsay: Yes.

Attorney Havens: Is the requested variance substantial? The applicant states no. And the reason given is that the proposed accessory structure will be approximately 1680 square feet where 1200 square feet is allowed. And that's actually perimeter. And as we stated earlier, when you subtract the 147 square feet of non-usable space on the second floor, it doesn't count towards the gross floor area, then they're really only asking for 1536 square feet, which is a 336 square foot variance. So, is the requested variance substantial? The applicant states no. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: And number 4, 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. The reason

given: The accessory structure will be consistent with the neighboring properties. The overall disturbance area is approximately 9,000 square feet, which includes the area of disturbance necessary for the construction of the sewage disposal area. Does the Board agree with the applicant, proposed variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district?

Chairman Jansen: Yes.

Jim Mehling: Yes.

Marc Malocsay: Discussion on that? Just briefly. I didn't see it in the plans and it's going to go before the Planning Board. Will there be more of a water runoff plan for that? It was brought up by one of the neighbors.

Brian Friedler: Yes, one of the comments with the Planning Board is to address stormwater. So we'll be addressing stormwater.

Marc Malocsay: Okay. And as long as it's done by the Planning Board, again, that's their area of expertise, but I didn't see it on the plan. So I could say either way on this application, but knowing that it's going to be handled with the Planning Board, then I agree with what they said.

Attorney Havens: Okay. And finally, is the alleged difficulty self-created? The applicant states yes. And the reason given: The property owners are proposing the construction of the accessory structure for personal use and property improvement. Does the Board agree with the applicant that the alleged difficulty is self-created?

Board Members: Yes.

Attorney Havens: Okay. So with those determinations made, would someone care to make a replacement motion granting or denying the variance with the two prior specified conditions as amended?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motioned by Diane, seconded by Marc. Any discussion? 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. Continued from ZBA Meeting of 3/25/24.

*Representing the Applicant: Anete Kalmena, Associate of Ritvars Zuks*

Anete Kalmena: Hello. My name is Anete Kalmena, I'm the associate for Ritvars Zuks. He couldn't make it today, he had a family emergency.

Chairman Jansen: You here for Ritvars Zuks?

Anete Kalmena: Yes.

Attorney Havens: All right. So this is a continuation of the prior public hearing from last month. And one of the reasons for holding it over was to conduct a site inspection. Was the site inspection conducted?

Diane Bramich: I was there.

Marc Malocsay: Yes.

Chairman Jansen: I was there.

Jim Mehling: I was there.

Attorney Havens: So did the members of the Board that did a site inspection identify any potential significant concern they wanted to discuss or address?

Chairman Jansen: No, actually I thought the place looked exceptional compared to what we looked at several years ago. Diane, you were there and you had some concerns. Do you still have those?

Diane Bramich: I do not see a problem with it. The property has been improved dramatically over the last couple of years. I don't see that it would be a detriment to the area or change anything within the area.

Chairman Jansen: Anyone else want to comment?

Board Members: No.

Chairman Jansen: Public hearing is now open. Is there anyone from the public that would like to address this application? Okay.

Attorney Havens: Alright, so we've already typed this action as a Type 2 action at the last meeting. Zoning Board conducted their site inspection and the ZBA needs to consider whether any use restrictions or other conditions need to be imposed for this particular project.

Chairman Jansen: Any comments?

Marc Malocsay: No. We had a letter from the neighbor which would be most affected by the addition on the house, who didn't have a problem with it. I think most of the concerns were the neighbors on the other side which it doesn't really affect them at all, the encroachment wasn't onto their property at all.

Jim Mehling: I think it was more a concern about the number of trees that had been removed. But as we had discussed at the prior meeting, the influx of the ash borer beetle, which has decimated the ash tree population in this area, I think the property owner did the prudent thing and removed the diseased trees to prevent further spread.



Attorney Havens: Any other questions or comments?

Board Members: No.

Chairman Jansen: If there's no one else from the public that would like to address this application, I'll close the public hearing.

Attorney Havens: Alright, so with respect to the five criteria that has to be considered with granting of an area variance, the first question is will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance requested? The applicant states no. And the reason given is that the proposed variance will be consistent with the character of existing neighbors and houses. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Second requirement, 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 it's the most logical place to extend the garage next to the existing driveway, minimizing the amount of impervious surfaces. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 3, is the requested variance substantial? The applicant states no and did not provide a reason for their answer. Does the Board agree with the applicant?

Marc Malocsay: Not really.

Jim Mehling: No.

Diane Bramich: No.

Attorney Havens: Okay. Question 4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states no, and did not provide an explanation for their answer.

Marc Malocsay: I would agree.

Attorney Havens: Does the Board agree with the applicant?

Chairman Jansen: We agree.

Jim Mehling: Yes.

Attorney Havens: Last, number 5: Is the alleged difficulty self-created? The applicant states no, but did not provide a reason for their answer. Does the Board agree with the applicant?

Board Members: No.

Attorney Havens: Okay. So all of that being said, would someone care to make a motion granting or denying the variance as advertised?

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

Marc Malocsay: Second that motion.

Chairman Jansen: Motion and a Second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

**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. Continued from ZBA Meeting of 3/25/24.

*Representing the Applicant: David Niemotko, David Niemotko Architects*

\*Chris Daubert: Mr. Chairman, I am going to recuse myself from this application.

Chairman Jansen: Thank you, Mr. Daubert.

Attorney Havens: We have a couple of updates on this application. It was previously before the Board at the March meeting. This is a continuation of the public hearing. The applicant was requested to make several revisions to the application, many of which were in fact made including reflecting the ridgeline overlay notes, surface profile, and site line analysis, including treetops and ridgelines of hills pursuant to 164-47.1F. And the application was updated to reflect and incorporate standard lighting notes on the site plan. And the site plan was updated to reflect signature block for site plan approval by the chairman of the ZBA. We previously made a determination under SEQR that the floor area is above 4,000 square feet as stated by the applicant in the application. And the application was typed as an unlisted action under SEQR Section 617 on March 25th, 2024. And the applicant submitted a revised EAF. So if the applicant would like to address the concerns and issues in the EAF?

David Niemotko: I believe the conditions with the EAF had to do with tree removal, things of that nature. So we included the note on the plans to not allow tree removal from March to approximately November because of endangered species.

Attorney Havens: Unfortunately, the comment that you added to the site plan, says exactly opposite of what you just said. It's unfortunately reversed. It actually says the tree removal can only happen from March to October, when it needs to be from October through March. So that is a potentially critical issue that needs to be addressed. There's a couple of other issues on the site plan that also needed to be addressed. I wanted to give you, however, since you did submit a revised EAF, an opportunity to address for the benefit of the public while we have the public hearing open, the identified concerns specifically EAF Number 6, 'Is the proposed action consistent with the predominant character of the existing build for natural landscape?' The applicant states yes. If you can elaborate for the benefit of the public?

David Niemotko: It's consistent with the ridgeline overlay district. It definitely sits lower than the existing house, lower in elevation. In addition to the natural buffers that are there, we're proposing more vegetated buffer area to surround that garage area and we believe it's consistent with the area.

Attorney Havens: Ok. Question 13a on the EAF, does any portion of the site of the proposed action or lands joining the proposed action contain wetlands or other water bodies regulated by a federal, state, or local agency? You had stated, 'yes'. So if you could just simply address that for the benefit of the Board and the public?

David Niemotko: I believe it's near one of the water bodies.

Attorney Havens: So there's no known wetlands or other water bodies regulated by the federal, state, or local agency that you're aware of on the property?

David Niemotko: Correct.

Attorney Havens: EAF 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 endangered or threatened? The applicant said yes and identified the Indiana bat has shown also in the automatic answers in EAF mapper. We just discussed that; a note in your site plan needs to state that it precludes—not authorizes—the cutting of trees over five inches in diameter at breast height between April 1 and September 30th, however you word it, precludes it between April 1 and September 30th or authorizes it from October 1 to March 31st. Number 17a, Will the proposed action create stormwater discharge, either from point or non-point sources? The applicant states yes. And specifically 17a, Will stormwater discharge flow to adjacent properties? The EAF form says no. Can you address that for the benefit of the Board and the public?

David Niemoitko: It would grade against such that it would remain within the property.

Attorney Havens: And how would you go about doing that?

David Niemoitko: With <inaudible> along the property line to create a square down <inaudible>.

Attorney Havens: And 17b, “Will stormwater discharges be directed to established conveyance systems (runoff or storm drains)?” The application says yes and it states storm water to flow to proposed dry well and existing swale, which we just addressed. So after reviewing the new submission, we also came to realize that it was generally raised at the last meeting by members of the public, but I came to realize in reviewing this preparation for our meeting tonight, the general notes on the sheet T1.01 that were last revised on April 1st, 2024 include numerous references under the general notes and I have to assume/presume that this is kind of like boilerplate language that was inserted because on this main sheet, T1.01 under ‘Scope of Work’ and dead center, it states ‘construction of new 4,500 square foot garage with storage accessories structure. New garage shall be an unconditioned structure, no heating or cooling proposed.’ And in the floor plans and the site plan, there’s no reference to anything but storage or garage space. But the general notes include references to, which must be removed, the site plan must be updated to remove references in the general notes to sleeping rooms in Note 1, bathrooms and lavatories in General Note 3, fireplaces in General Note 4, septic systems in General Note 6, wood decks in General Note 7, kitchens in General Note 10, residence and habitable spaces in General Note 10, site address meaning a 9-1-1 address for the residence or dwelling in General Note 12. And any other references to design standards that would apply to an air or heated air conditioning or heated conditioned or habitable space throughout the plans. If you’re presenting to this Board that it’s going to be an unheated storage space for vehicles and equipment and so forth then all of those would be inapplicable and leaving them on here leaves this Board open to approving an application that would permit the builder, the owner, to put all of this in because it’s in the general notes in the site plan that was approved. Additionally on the same sheet, T1.01 you guys went to great lengths to add a whole lot of detail in this site plan that weren’t in the prior site plans. But unfortunately some of it is probably just generic provisions as opposed to those that are specifically applicable to this unique project. And my question would be why would you put R30 floor insulation in an unconditioned space with R49 pad insulation and R20 in the walls? Is that normal in an unconditioned space?

David Niemoitko: To answer your question it does not, but it doesn’t have to be precluded; it can be done.

Attorney Havens: Ok. And with respect to the same set of drawings, the applicant did provide and specifically articulated in response notes...in my comments from last month, I specifically requested that the height be limited to 25 feet measured from, well the ridgeline overlay district, I’m sorry, 164-47.1F(2) limits the height of an accessory structure such as this to 25 feet measured from the <inaudible> elevation of the average natural grade, and I’ve asked for this to be updated. That’s a request that I’ve made probably 4 separate times in the multiple applications that have been submitted. And while you did articulate A202 calculation of average building height and A301, you included some height elevations to the top of the ridgeline in certain respects. When you look at the calculations that were made, the other

set on C2.1, you put together the surface profile and you did grade plane calculations to the *finished* grade, not the average *natural* grade. And given the fact that on the south side of the structure you have to build up the property significantly, your grade plane calculations still are not calculated to average natural grade as I requested on multiple occasions of this application. And it's still not shown in your elevations either. What you calculated and shown is height of the building to finished grade, but not to average natural grade, which is what's required under the ridgeline overlay regulations. So once again, I'm going to request that the site plan, prior to this Board proving it, be updated to actually reflect the height to the highest roof line from average natural grade. Meaning, for purposes of clarity, from the original contours on the survey. Base it off of that. The calculation and method that you use is a respectable professional calculation, but it's from finished grade, not average natural grade. So just please update those figures, put them in there so the Zoning Board knows what they're approving because what's reflected there isn't what's required to be presented to this Board and put on the plans with respect to a building that on multiple occasions has been calculated to countless different types and we need to know what we're approving. If you review the minutes from the March 25th meeting that we were just at last month, I specifically addressed this point with respect to the average natural grade, and asked that you not only update it to reflect that but that there be uniformity throughout your documents with respect to what the actual height is because there was significant discrepancies between the measured heights on the elevations and what was presented on the face sheet of your site plan application which I believe is C1. Since this is an unlisted action, the Board needs to consider and evaluate whether or not first we're going to need to do a visual EAF to consider the ridgeline overlays visibility requirements under section 164-47.1F(3)(a). Alternatively, if this Board so chooses, since we've already done the analysis, if the Board finds that the location is not significantly different from the visual locations, then we could just make the same find. We could adopt the same findings that the Board already considered instead of going through two pages of details about where it's going to be seen from. If the Board were to make a finding that the change in location is not significant to change visibility of the structure. If the Board feels that a change in location *would* change the visibility of the structure, then we would have to re-review the Visual EAF. Additionally the Board needs to determine since it is an unlisted structure, an unlisted action under SEQ, whether or not a long form EAF is required. Does the Board wish to address that issue now so that the applicant can come prepared if in fact the Board were to determine whether or not one is necessary?

Marc Malocsay: So I was going to ask the question, if the plans come before us and they are below or allowed with the height restriction and they're not needing a variance for that height, is that still needed?

Attorney Havens: Technically, yes. We have to at least consider it. Any improvement within the ridgeline overlay, this Board is required to at least consider it. If they make a determination that since it meets the code and you know from a visual inspection there's not any significant visual impact anticipated, then we don't have to necessarily go through the full detailed criteria in each instance. But the Board still needs to consider the visual EAF for a constructed improvement within the ridgeline overlay.

Marc Malocsay: Should we then first see what that height is going to be before we make that decision?

Attorney Havens: Yes.

Marc Malocsay: Ok.

Attorney Havens: And therefore, it also kind of begs the question, but I'm trying to facilitate the applicant's ability to prepare one final application for this Board to consider so that we're not coming back here repeatedly over and over again. Whether or not a long form EAF is required, I don't want them to come back the next meeting and then get told that a long form EAF is now required, if we can consider that today.

Marc Malocsay: I understand.

Jim Mehling: I think we should consider it. I'm sorry, do you need a motion?

Attorney Havens: Deliberation and then a motion.

Jim Mehling: Ok.

Attorney Havens: So we've reviewed, they did amend the short form EAF; we've reviewed all of the amended changes to that. It's now reflective of what is shown in the EAF mapper database. And so the question for the Board is, does this application raise sufficient environmental concerns that this Board in an unlisted action requires a long form EAF as opposed to a short form?

Marc Malocsay: I can't see us needing the long form, that's my opinion. The short form for sure.

Chairman Jansen: What's your feeling, Diane?

Diane Bramich: I agree.

Chairman Jansen: Okay.

Jim Mehling: I agree.

Chairman Jansen: Ok. Short form.

Jim Mehling: Short form.

Attorney Havens: Ok. So can I get a motion to reject the necessity of a long form EAF?

Jim Mehling: I'll make said motion.

Marc Malocsay: I'll 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.

Attorney Havens: Ok. So, we can rely on the short form EAF and no long form EAF will be necessary. Does any member of the Zoning Board have any other concerns, criteria or conditions that they wish to express for the applicant so that we can hopefully get this resolved the next time they're before us?

Marc Malocsay: That issue with the Indiana bat that was brought up because it's definitely an issue. The size of the work, the scope of that job that you're doing isn't that large. You can have the DEC come out, take a look and see if that's something that can be waived. You should simply mark the trees that are going to be removed and make sure you get them all. They'll come out, take a look, they'll look at the species of tree, they'll look for signs of the Indiana bat. And because of the scope, the size of that clearing, I wouldn't think that you would have any problem unless it's <inaudible> and then it's going to be a different story. Because otherwise it doesn't look like you're breaking ground until I still want to say it's November 1st. But like I said, DEC happy to come out.

David Niemotko: We've gone through their process on other projects. I appreciate your thought but we're familiar with it, that'd be great.

Marc Malocsay: And that's something that you can have an answer by the next meeting too, possibly.

Jim Mehling: The State moves fast.

Marc Malocsay: Yes.

Attorney Havens: So unless there's any other questions, any other questions from the public because we are still in a public hearing?

Shannon and Tyler Folino makes their presentation to the ZBA.

Shannon Folino: And we're the neighbors at 15 Distillery, which is right next to the project. So one thing that wasn't brought up tonight, but in reviewing the documents that were submitted to the Zoning Board as part of the resubmission was the highlighting of minutes from July in which we had said an alternative location could be on the other side of the driveway. I just wanted to provide some clarity for the Board in regards to that statement because it really was taken out of context. When that application was submitted to the Board, when the public notice was sent, it was advertised as an area variance for the construction of three additions to an existing barn each of which measures...respectively creating a singular accessory building comprising of 3900 square feet, where a maximum 1200 square feet is permitted and goes on. The site plan when we went to the Zoning Board office, the only documents that were submitted to the ZBA at that time were a survey and a site plan. We knew that the building that was previously there had been taken down and we have photos of it because I don't know if any members of the Board have seen what that building actually looks like, but if someone's telling me that there's three additions going on to an existing structure of that size, one would reason that it's going to be of similar scale and similar structure. We have no reason to believe that what was going to be proposed was going to be this extravagant multiple story. Whether it's defined as multiple stories or not by zoning, human perception is us as the neighbors and members of the public driving by, it is multiple stories. There's multiple stories of the area being used, whether that counts for the variance or not. There was no way for us to know that. And so at that time, being reasonable neighbors, we're like, okay, it's a really big footprint, but if it's, you know, an expansion of what was there previously like and you can give it to them, you know, if it's expansion of what was their previous, that wouldn't be impact, like it's far enough away, it's not going to be impactful. It was like a very, very small building compared to what's currently being proposed. And so I just wanted to provide that clarity because it's, you know, the application was misrepresented in the initial upfront. It was the first actually many misrepresentations of what's being proposed before the Board has created such an unclear record that it's hard to even know what's actually being proposed. And so to kind of throw it back in our face that we had suggested a location on the other side of the driveway when the application was completely misrepresented, if you read that in those minutes, or if you recall from July, the very first meeting, we were all finding out in live time seeing them flip through the plans of what the building looked like. You know, there's comments were like, 'oh there's a bathroom. Oh there's, it's multiple floors'. Like we didn't know what it was when we first made that. We went off of the information that we had. Like that would be like me asking like if you're really hungry and you're like, I'm like, oh, do you want a sandwich? And you're like, yeah, I'd love a sandwich because I'm, I'm hungry and then I give you a moldy stale sandwich and I still expect you to eat that sandwich. You didn't have all the information. You probably would've told me no in the beginning if I said I have a moldy stale sandwich for you to eat. So I just wanted to put that clear. I didn't want the public hearing to close but without us addressing that because that was something that was submitted to all of you as part of his resubmission. And bear with us because some of our concerns were addressed by the attorney on the Board. So I don't want to be redundant in some of the things. But the, you know, the plans that were submitted to the Building Department and the ZBA for this latest resubmission in early April, there's still significant inconsistencies throughout the drawings. While the applicant did revise the plans from March to have a footprint of 4,500 square feet instead of the 4557 that they previously had, they still neglect to show the bump-outs that are shown on the elevation. So the east elevation 'A' on A301 and south elevation 'A' on A302 show bump-outs at that main level. And those are not shown on the floor plan. And while it is a minor amount of square footage, it's again another inconsistency that we, we can't tell what they're actually going to build if they have these inconsistencies on their plans. The building height, in addition to what the attorney said, it's actually not taken to the tallest peak. It's taken to a lower peak out of all the peaks on the roof of the building. If you look at sheet I don't have the sheet, but if you look at the sheets that you mentioned earlier that have the building height measurements, you'll notice that it's not taken

to the highest peak, which is the big peak that is has the windows facing our property. Like that would be the height that it would have to be measured to.

Attorney Havens: That's accurate. And there is actually one measurement in their new drawings that does show it to that, but it's only, I believe from the north elevation, not from any other elevation.

Shannon Folino: Yeah. But I also think that it was not taken from, I think like you said, this is not taken from the correct reference point, which should be the average natural grade.

Attorney Havens: Correct.

Shannon Folino: We had roughly calculated what the average natural grade would be and based on our calculations, the tallest portion of the building would be 27 foot 8 inches tall. We'll see what the calculations <inaudible> out as. But that was a concern of ours because it still did not seem to be in compliance with the code. You had mentioned a bunch of the general notes that didn't make any sense. There was the HVAC load calculations on sheet T101 that were on there that don't make sense. The <inaudible> design criteria that's specific to designing and the size of equipment that you're going to be putting in for the HVAC system...so why that would be on the front page is not entirely clear. Pages A201 and A202 have partition note two in like the legend on the bottom and it says wall partitions in relation to separation of garage from living space. And so again, we were under the impression that based on the scope of work that this is not going to be any living space. So why there's notes regarding the design of the separation between one of the garage areas and another garage area doesn't really make very much sense. On page A203, the unfinished attic is only shown in the <inaudible> portion of the building, but there will be the same height and width the space available on this other portion of the building. And since the space is considered unfinished, it's confusing to why they're only representing a certain area on the floor plan for that attic space. And similarly, they show that there's no proposed attic but then they show the ceiling height of the attic on that side of the building. So just a little unclear what the intention is there. There was one sheet that was not resubmitted as part of the April submission, sheet A404, but we're assuming that it is still part of the plans because it's on the drawing index on sheet T101.

Tyler Folino: Yeah, A401.

Shannon Folino: Yeah, page A401, it was already submitted and it has a note stating that the mechanical, electrical and plumbing designs by others and that item shown the drawing of the diagram purposes only shall be coordinated with the actual field conditions and the owner. But again, there was no heating or cooling proposed per the scope of work on sheet T101. On page C2.1 the proposed finished grade elevations still do not tie into existing grade of the southwest corner/west side of the building along the property line. If you look at the proposed contours, they're not tying into the existing contours. So the representation that a swale was graded in to direct runoff from that side around to the front of the building is inaccurate because it doesn't even tie into existing grade. And then based on the information provided by the applicant, a story above grade plane is any story having its finished floor surface entirely above grade plane or in which the finished surface of the floor <inaudible> any of the following, where one of those items is more than 6 feet above grade plane. And then the grade plane is a reference plane representing the average of the finished ground level adjoining the building and all exterior walls where the finished ground level slopes away from the exterior walls. The reference plane shall be established by the lowest points within the area between the structure and a 0.6 feet away from the building. The applicant calculated each 0.6 feet away from the structure, but based on the definitions they provided, it should be at the lowest point within that 6 foot area from the building at each point. The finished ground level does not slope away from all exterior walls. In some areas the ground level of the building interface is the lowest elevation and based on the above definition of the calculations, should account as such. We ran through a whole array of looking at what that could actually look like if we were to apply that definition as it's defined from the state building code. And based on the calculations that we have, we looked at the

numbers if they were to be updated to accurately reflect tying into existing grade along the west property line and adding in the additional points along the inner building corners of both the upper garage and lower garage. Because on sheet C-2.1 there's no points at the inner corners of the upper garage area and the lower garage area and those would affect the calculations of the average grade plane. But if it was to be updated to accurately affect all those things, it appears the distance between the grade plane and the finished floor at the next door above would be slightly above 6 feet. That would mean that this lower level garage actually would count as a story and that's roughly another 1,000 square foot building area that needs to be counted towards the variance. I don't say it because it's not that the applicant can manipulate the grade and I'm sure they'll find a way to make it work, but I say it because it's yet again another inconsistency that no one has brought to the attention of the Board and just makes it very unclear what's actually being proposed and if it's fitting into these categories. Page C-3, the lighting plan provided is still not in compliance with the Town of Warwick code. The maps to average foot candle exceeds the town maximum per section 164-43.4G. It should be within a ratio of 6:1, whereas the applicant has approximately a 22:1 ratio. It's uncertain if the uniformity ratio is actually being met. Additionally, the applicant does not show the existing tree locations on their survey. So we're wondering where the tree locations, the types, the heights and quantities come from that are shown in the surface profile on sheet C2.1. Were these trees actually surveyed or is this just an assumption based on what they saw when they were out there? Without any clarification on where the tree heights and locations and types have come from, it's just hard to believe that the information being shown is actually accurate information. There are two viewsheds of the accessory structure. It's current proposed location that will always be impactful from the county road. And regardless of if additional plans are added, given the structure of placement along the ridgeline, the view-shed from the county road looking up through the gas pipeline easement is one of those views. And the view-shed looking from the county road looking up along the new proposed driveway is another view-shed that this building will always be visible. You will not be able to plant any vegetation within the gas easement or on the driveway to help screen the structure in this location so there will be multiple street shot views of the project while traveling down the county road, which is a protected view per the RLO district. And then there are a couple other sections of the code that have not been raised by either the applicant or the building inspector, whoever's reviewing the plans. I'm not going to read them fully at length, but I will kind of paraphrase the main key points of the sections that we think are applicable and that this project is not in compliance with and we think should be considered as part of the application. So the first is section 164-74.1; it's a section on waivers and it identifies where the Board finds in compliance that the site design standards or guidelines will cause unusual hardship or extraordinary difficulties due to exceptional conditions provided that the public interest is protected, the site plan is in keeping with general spirit and intent of these regulations and full compliance with the SEQR is provided. So it's basically saying that the Board could waive requirements if it fits in with all the other requirements if there's not an exceptional hardship. No such waiver or modification may be granted if it would have the effect of nullifying the intent and purpose of this Chapter, the comprehensive plan, or these regulations—that's in part B. And then part C talks about the Board may in granting waivers or modifications to the site design standards or guidance hearing incorporates such reasonable conditions as will in its judgment substantially secure the objectives of the requirements so made. And lastly, which this is the critical one, which is why we're bringing up all these points, is no waiver or modification may be deemed approved or granted by implication. All waivers and modifications must be expressly set forth in the minutes of the Board. So the sections that we're going to go through we think are likely waivers that would apply to this application that have not yet been addressed by the applicant or the Building Department. I guess they're the ones who are reviewing this application in addition to your response. Section 164-11 talks about the purposes of the zoning regulations. It says that this chapter is enacted to promote and protect the public health, safety, convenience, aesthetics, natural agricultural and cultural resources, amenities and general welfare of the people. This chapter is intended to be consistent with the



town of Warwick, agricultural and open space preservation and acquisition law, and to implement the town's planning goals and objectives as expressed in the Town of Warwick's comprehensive plan as follows. And the couple of points that were in that section that we thought were relevant is protect and enhance the rural character and quality of life in the town. Concentrate sensor residential development around the villages and hamlets and maintain rural densities in the remainder of the town. Protect the natural scenic quality of the town and environmentally sensitive areas, which the ridgeline overlay district is identified as the most environmentally and sensitive areas within the town. Protect surface and groundwaters from point and non-point source pollution, protect habitats for the diversity of existing flora and fauna in Warwick and protect wetlands as important environmental resources. There are wetlands on both our property and our neighbor's property, which are environmentally important to the areas that we live. They attract a diversity of wildlife and plant species and it feels a little bit irresponsible to be pushing this proposed structure down and the associated driveway in large parking areas also associated with this project down right near this area of the subject property. And it undoubtedly impacts the diversity of existing flora and fauna in the area. Another item is 164-21 Road Usage. To be clear, the word *shall* is always mandatory and not merely a directive. And we say that because there's multiple sections of the code. There's 164-43.2 about off-street parking load requirements, where it talks about making sure that off-street parking, that such uses are treated as accessory uses and that they do not predominate the site and are placed to the side and rear of principal buildings to minimize their visibility. It continues on to say that off-street parking areas should complement the buildings on a site, improve the appearance of the Town of Warwick, and protect the character of residential areas, conserving the value of land and buildings on surrounding properties. Which I guess to be clear we all think is the case here. Section 164-46 talks about in section H1 it says, to the maximum extent practicable development shall be located to preserve the natural features of the site to avoid wetland areas, steep slopes, significant wildlife habitats, and other areas of environmental sensitivity. H1b says all buildings in the plan shall be integrated with each other and with adjacent buildings and shall have convenient access to and from adjacent uses. H1c parking areas should be placed at the rear end or side of principal building so that they are not visible from public roads. H3a individual buildings shall relate to each other and to traditional structures in the surrounding area and lot placement scale, height and connections to harmonize visually and physically with the traditional character of the area. This building's footprint is 4,500 square feet. That is much larger than the vast majority of the other buildings within that area. First of all, we obviously live there, so we drive there sensibly because we live there, but also in doing our due diligence for this had driven all over our immediate surrounding area, but also just throughout other areas within the Town of Warwick. And this footprint is so significant and does not fit in with the character of the neighborhood and the scale of the other houses in the neighborhood. In section H8, it also says that for landscape and screening the use of native species is highly encouraged. H8j says use existing woodlands if located on the site by preserving as much as possible along the perimeter of the lot to screen such parking areas or just screen the proposed development in general. Section 164-43.4, the lighting. The purpose is to maintain and protect the scenic and aesthetic character of the town and to ensure that development fits into its natural and rural surroundings and to avoid impacts on nearby residential properties and to enhance the town's nighttime character. The lighting that is proposed as part of this application is not that which is typical for residential development. We're talking about 15 foot tall light poles. And what I can understand that they are within the maximum permitted light pole height. I also talked about how the max to average foot candles were not compliant with the code. And so it just seems like in an area of the town where it is significantly dark in the nighttime hours, this will produce significant light pollution in the area. Chapter 164-44 talks about the tree top removal, grading and excavations. <Inaudible> removal of trees and top soil grading, excavation, mining, exploratory, and <inaudible> drilling shall be regulated in accordance of Chapter 150. And Chapter 150 goes on to say that it is the established policy of the Town of Warwick and this section for the purpose of promoting this policy that the natural topography of the land of the town is a public

asset which should be preserved and safeguarded. It's hereby declared that the various features of such topography, including the topsoil and other natural materials that constitutes the land, the shape or contour of the land, the plant life and wildlife that is fostered, the land and the water or the flow they're out of upon the land are a prime concern to the welfare of people of the town of Warwick. And no changes shall be permitted in such topography except those which are absolutely necessary in order to permit the proper and appropriate use of the land. Chapter 154A also identifies what classifies a major improvement of a property. And it talks about for the improvement of property where the tree removal of top soil removal, regrading or excavation of top soil or other natural materials exceeds an area more than three times that the foundation of the building structure or other improvement which the building permit has been issued. That would be the case for this application. The overall limit of disturbance in the top soil removal and removal of trees would exceed that restriction. And honestly, it appears that that would've also been the case for that structure that was removed along with all the other trees and top soil that was disturbed. And that wasn't anything that was upheld by the town, but I understand it's not your issue, it's a Building Department issue. But such regrading excavation tree or top soil removal may be permitted by the building criteria in accordance with the requirements set by the Planning Board and based on the following standards. And it talks about all cases where tree removal is required, the applicant shall file with the Planning Board and verify the application in triplicate for such permit and that a complete set of plans for proposed operation, which shall follow them which shall show the follow will be required. 150-5A(1)(f) a specific location of all live trees in proposed grading area and along 25 foot wide work area border with the diameter of 8 inches or larger require to regrading with a note for each tree indicating removal or not, the same to be reviewed by the Town Shade Tree Commission before approval is granted. And in all cases where a tree removal permit is required, the Planning Board shall notify in writing, the Chairman of the Shade Tree Commission of each application for such a permit. I understand that the project is not in construction right now, but a lot of these things are being brought up are referring to Planning Board. It's referring to trees being identified, which have not been done thus far. Section 146A, it says the purpose is upside and approval and the intent is to ensure that 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. Such regulations are designed to protect a community from inappropriate design, ensure that the proposed use will be in harmony with the appropriate and orderly development of the district in which it is proposed that its impacts could be mitigated by compliance with reasonable conditions. And the regulations are also designed to ensure that new development informs of the task planning goals and objectives of assessment contract plan.

Attorney Havens: Ms. Folino?

Shannon Folino: Yes?

Attorney Havens: If I may interrupt you?

Shannon Folino: Sure.

Attorney Havens: I don't want to deprive you of your opportunity to put into the record all of your expressed concerns. I'm sure Mary has and I have been trying to diligently take notes. I can't promise exactly when we're going to get the minutes from this meeting. Sometimes it takes longer, sometimes it's quicker. If I may respectfully request, if you would like all of those details to be incorporated into the official records, submit a copy of that to my office and I will circulate it to every member of the ZBA so that they can read it at their leisure and actually absorb what you're saying because you're saying it so fast. Even when I'm paying attention, I'm missing pieces. And it may be more helpful for them to actually see what you're saying in writing since you've taken the time to write it out anyway, instead of reading all of that to us. If you submit it, we'll make it part of the record. And I think it may be more effective than you telling us stuff and we're catching bits and pieces of it and maybe not getting full notes.

Shannon Folino: Absolutely. Would it be ok if I just bring up two points just for the applicant's sake that they have this information? And I promise I will step down and give this to you in time, I suppose. The applicant mentioned the fact that the ridgeline overlay district talks about citing structures at the lowest possible elevation to not impact the view. So to be clear, it talks about how the ridgeline areas are the higher elevation portions of the town. So the visibility section talks about how all structures shall be cited to avoid to the greatest extent practical occupying or obstructing public views of land within the RLO district. And public views shall be considered to be from any location listed on the SEQR Visual EAF. Existing vegetation within ridgeline areas shall be preserved the maximum extent practical. Every attempt shall be made to limit cutting necessary for either construction or the opening views from the subjects site so as to maintain needed vegetation as a screen for structures as seen from public roads or parks or other public views. While I understand the strict interpretation of citing at the lowest possible elevation, the unfortunate thing is that for this subject property, the lower elevations on this property are actually those which are most impactful to the protected views within the ridgeline overlay district. If the applicant was to put the structure up to the side or the rear of the principal building—which is another requirement of both the off-street parking requirements and the ridgeline overlay district design principles, there would be significant existing mature native vegetation that would screen this building. It would not be visible from public views of the county roads, local roads. And quite frankly, it would not be viewed visible from neighbors. Moving it actually to the side of the building, it's still closest to our house than any of the other neighbors. It would be closer to his house, obviously. I know that the Chairman had expressed at the last meeting, 'well what about the other neighbors?' And so if it's the side of the building, same general location, the site just shifted up to the side of this principal building. It would still be a closer distance between our house and accessory structure, than the distance to any of the other neighbors in the property. And we did prepare a quick markup of the GIS showing as such. Is it easier if I email it to you? Or I can give this to you now.

Attorney Havens: I much prefer it in a digital format.

Shannon Folino: Yeah, absolutely.

Attorney Havens: ...for saving and distribution purposes, it would make it a whole lot easier.

Shannon Folino: I wanted to be respectful of the Board's time. Because I know that you are primarily volunteers doing this, so you all have lives outside of these couple hours here. So I figured that this is the time that you would want to hear all of the concerns versus trying to read through it at another time, but...thank you.

Attorney Havens: Thank you.

Jim Mehling: Thank you.

Jacinda Porter: I talked last time, so what she referred to, I missed.

Mary Garcia: I'm sorry, can you give me your name?

Jacinda Porter: So I missed the first part. I don't know how many weeks from July. I just started in January. So I was just going to say that if you want to go back to the minutes, it would be around January. That's when I heard her say that as long as it's moved across the driveway would be okay. And that was in January, it wasn't in July what she said. So I just figured if you go back and look at it and just see the top rather, because I don't want you pick a fight. I just heard it. So thank you.

Chairman Jansen: Okay. Anyone else?

*Inaudible - Shannon Folino, Tyler Folino, and Jacinda Porter speaking at same time in disagreement*

Attorney Havens: I'm going to ask that the commentary from the seats come to an end please.

Mary Garcia: You have somebody else that wants to come up.

Attorney Havens: There's somebody else that wants to speak.

Lynn Huchital: I just want to address you guys.

Mary Garcia: I'm sorry, your name?

Attorney Havens: Would you identify who you are?

Lynn Huchital: I live at 29 Distillery. I'm going to speak in common language because I don't know any of these codes. Alright? I'm a homeowner and last time I was here I was concerned about the environment. I'm still concerned about the environment. Now I'm concerned about the groundwater but...do they say how deep their well has to be? Mine's over 350 feet. We're on <inaudible>, okay?

Attorney Havens: I don't believe there's any proposed well for this.

David Niemotko: I think you're confusing it with the dry well they're proposing for the runoff from the roof.

Lynn Huchital: So how are they going to get their water?

Jim Mehling: There's no water going to the structure—not proposed.

Lynn Huchital: Ok. But there are people going to be living there that, well, see, this is...

Jim Mehling: No...

Lynn Huchital: ...hold on, can I just clarify something?

Jim Mehling: Sure, go ahead.

Lynn Huchital: Initially it was stated as a 4,500 square feet garage. Now from what I'm hearing and your diligence with respect to all your findings with the inconsistencies of the plans that have changed, some have been stated, some have not been stated, it's unclear what this building is going to have. It was not going to have a heating system, now it does have a heating system.

David Niemotko: No.

Attorney Havens: No.

Lynn Huchital: Not at all?

Attorney Havens: That was the point that I was trying to clarify earlier is that the plans and the applicant has stated all along that it's not going to be habitable space...

Lynn Huchital: Okay.

Attorney Havens: ...and there are references on the plans that specifically state that it's not habitable or conditioned space. But there's also general notes that reference habitable areas and...

Lynn Huchital: Correct.

Attorney Havens: ...elements that would be applicable...

Lynn Huchital: Inconsistencies, okay?

Attorney Havens: ...and therefore, I specifically requested that all of those inappropriate references be removed in order for us to...

Lynn Huchital: Okay, that's fine.

Attorney Havens: ...reconsider...

Lynn Huchital: That's fine.

Attorney Havens: ...the application.

Lynn Huchital: And I'm thankful that you're bringing that to the forefront because it needs to be clarified. And here's my concern: my well, like a lot of other people in the area, their wells could be compromised if you have existing structures of this size housing other people.

Chairman Jansen: And they're not.

Lynn Huchital: Just let me speak for a minute. I understand there's nobody living anywhere right now because nothing is built, but we don't know what the true intentions are, it's not clear. So once it gets clarified, then we can see that it's just going to be a standalone building. Correct, okay? And I bring this up because there are other instances on Distillery Road that are documented in *The Advertiser* that somebody misled and it was like an Airbnb, whatever, but the whole idea, that's their business. But they're putting a strain on the water systems here and how deep can we go? You follow what I'm saying? There's only so much underground that we're tapping into. And if you start tapping into it and changing it, we're going to have problems. Not just me, the whole surrounding area.

Chairman Jansen: As far as we know there is a well with the house. That's it.

Lynn Huchital: Ok. That's all, I'm just asking. I didn't look at the blueprints or anything like that. These are my concerns as a homeowner, as somebody that's living there because if I don't have adequate water, I'm in trouble. It's a valid thing. Now this is just another statement that I really need to ask or just propose out there. Twelve hundred square feet you don't need a variance...to build. Forty-five hundred square feet...why are we trying to change the laws indirectly?

Chairman Jansen: We're not.

Lynn Huchital: If he...please don't shake your head.

Chairman Jansen: We're not saying...

Lynn Huchital: Can I just speak for one minute and then I'll sit. I'm not trying to be impolite. I'm just proposing something. If we say, 'okay you can do 4,500 square feet.' We're setting a precedent. Someone else is going to do it. Now we're changing the landscape of Warwick. It's not attractive when you start building like that. You see it in other places and this is how it happens. When somebody sets a precedent and then they say, 'well they did it, so why can't I do it?' Okay? These were the guidelines, we did that. So why can't I? I just want to share that, that's all. And I thank you for doing your job, what you were doing there was very honorable and I appreciate it that you're bringing it all to the forefront. And that other gentleman that stepped down, that's what we need. And that's it. I thank you.

Chairman Jansen: Ok, Go ahead.

Lugene Maher: Some of what I wanted to say has actually already been said, but I think some of the considerations are really valid on the part of the public. And first I'd like to bring up the significance of the difference of the variance that's being requested here. Back to the law of 1200 square feet to nearly four times that size in request. It is not consistent with the rural area of this part of Warwick or the town of Warwick in general. It will be an eyesore, the lighting alone...think about that...if you were the neighbors. And I think that's what we would ask the Board to do. You are one of the neighbors of this structure that is planned for building, which has been proposed as a unfinished garage with a second floor. But yet to the council's credit, you have picked up on a number of discrepancies. I would say to the Board, I would ask you to please pay very close attention to those. I have a hard time believing those were an oversight. So I think it's incumbent upon the Board to ensure that that is all cleaned up before you render a decision. But I personally would ask the Board that you should seriously consider not approving this just based on the size alone and on the precedent it will set for the Town of Warwick. Thank you.

Chairman Jansen: Anyone else?

Jeff Filipowski: Yes, I'd like to say something. Jeff Filipowski, I live across the street from Tony. I understand what you're saying as far as 1200 square foot per building, so he could put up basically 4 buildings at 1200 square feet. Is that correct?

Marc Malocsay: No.

Chairman Jansen: It would still have to...

Jeff Filipowski: How many?

Marc Malocsay: You're supposed to have 1200 in aggregate...

Jim Mehling: No, how many structures total?

Marc Malocsay: You can have many structures, but they can't total more than 1200 square feet.

Jeff Filipowski: That's what I'm saying. So he could put up (4) 1200 square foot...

Marc Malocsay: No, many structures *total* of a 1200 square feet between all of them.

Jeff Filipowski: Ok. Well, I live across the street. Where it's going to be located, from what I'm concerned, he has moved everything. He moved it from the one side of the driveway to the other side of the driveway. It's not going to affect the water, it's not going to affect my water. As far as the lighting and all of that, lights aren't on all night. And as far as what he's going to do in that, to me, it's no concern of mine. And it shouldn't be any concern if he's going to keep cars or do woodworking or what have you. That's up to him. Just what I do in my home, that's up to me. That's not up to neighbors. When some people come home their headlights turn in my windows and stuff like that, I can't do anything about it. Illumination is not an issue. So I don't know, I respect him; he's going to increase the value of his property, which is going to increase the value of other properties around. That's my feeling. So I am not against this, and that's all I have to say.

Chairman Jansen: Thank you. Anyone else?

Marc Malocsay: Jan?

Chairman Jansen: Yes.

Marc Malocsay: Just a few comments because some things have come up and I'll read through what you're going to submit because you raised some points. Some of them you have to look at a little bit more carefully. I'm very familiar with our comprehensive plan, I pretty much wrote it a long time ago. And all our zoning laws are based on that, especially ridgeline overlay; it wasn't there before. Chapter 150 is really talking about timber harvesting and mining. Although it references all those things, you can do it unfortunately in ridgeline overlay, but there's just more restrictions when you do it there. I wanted to propose this to you just to think going forward. At one of our first meetings or second meetings, we talked about the size of the building and the variance that was sought. An accessory structure can be 5 feet from a property line provided it's within that 1200 square feet. And I had said a couple of times about moving the building to a different location, although it didn't have anything to do with the application because the building was already further than 5 feet from the property line. But we figured that we would move it further away and we gave them a couple of locations and I can understand why they would not choose to have the one that's way up in the back. And just one thing on ridgeline overlay that a lot of people don't realize, ridgeline overlay was designed so when you're having ice cream at Mount Peter at Bellvale Farms Greenery and you're looking at the scenery that you don't see these houses, you don't see the lights. By putting the house in ridgeline overlay provided that it has enough of the trees around it because usually your natural screen, I am not in any way saying anything against that height restriction. That is important. However, because with the Zoning Board of Appeals, then we can give variances if there's a number of houses that exceed that in that same area. It's a character of the neighborhood and it's something that

we consider. The applicant can put two dwellings on this property with our current code. They have to show that the property can be subdivided. Pretty sure I'm accurate on this...

Tyler Folino and Shannon Folino: It cannot.

Shannon Folino: If what you're saying is accurate in that they could propose I think you're more so alluding to the guest house requirement. But yes, if they subdivide the property...

Marc Malocsay: If they don't, if they can show that the property can be subdivided, they don't have to subdivide.

Tyler Folino: It cannot.

Shannon Folino: Which it cannot be because the minimum width of the lot would not be met. It would have to essentially be shown to have a flag lock. And quite honestly, you'd have to involve the County and that's a pretty bad bend, both from horizontal curve and vertical curve visibility.

Marc Malocsay: That's true. Most of the stuff is handled by the Planning Board. But in that case, a driveway that is shared or a right-of-way to the back lot is something that can happen. The Planning Board has given those subdivisions before, but just let me finish, because the potential is there for that to happen to show that it could be subdivided and they can build two dwellings. The problem is it doesn't help the applicant because he's not proposing a dwelling. He's proposing a garage. A garage cannot sit on a separate lot as an accessory to the principal use of the property, in this case, the dwelling. So I would venture a guess that they could show that this property could be subdivided and put the two of them on there. Again, deeded rights-of-way. And as long as they're not adding another driveway, then they're not going to have a problem with the road entrance permit. So these are options to them. The point that I'm trying to make is if this accessory structured garage was going to be a house, so many of the things that you were talking about are relevant at this point, they're going to meet this side yard setbacks, they're going to meet the front yard setbacks. So the only thing that I would be concerned with, and everybody here on the Board, is that height restriction for ridgeline overlay. So when we go through our criteria, we're answering questions about the detriment to nearby property owners. If it's a house they're building and just say they can subdivide, we probably wouldn't be here right now. So it's just all of the things that you're talking about are usually handled with the Planning Board on the subdivision, which would handle the lighting and all their area of expertise that we hardly ever see. So I just wanted to make sure that what they're asking for now is a house. They're asking for us to go from the 1,500 square feet to the 4,500 square feet. Huge variance. We've probably given a half dozen of them and in almost every one but one, it was because it didn't affect the neighbors. It was far enough away that it would've been if it were house that really couldn't be seen from any other place. And many of them can meet up with that. So again, I look forward to reading through your things and then I'll take out a few quick notes. The one that caught my eye right away, I looked on the maps, I didn't see anything on wetlands. If you can provide that? And if you have any questions, just like the DEC's going to come and see him, the DEC can come over and take a look. DEC regulations 12 and a half acres where they consider it to be wetlands. Army Corps of Engineers I think is down to a third of an acre. So either way, they can come out, they have their experts and they can say yeah, this is wetlands or isn't.

Shannon Folino: No, of course. And to clarify just for everyone, I am in agreement that it's not federally or state regulated wetlands that are in the area, but it's wetlands. And as members of the community, we kind of have a responsibility to protect those areas. In addition to the fact that you really couldn't construct anything in those areas, but there's a string that runs through, there's wetland areas and living there, you would see the diversity that exists in that area. That's where that comment was coming from. But I'm in agreement. There's no mapped wetlands <inaudible>.

Chairman Jansen: Unless there's anything else?

Diane Bramich: No, I want to read everything.

Attorney Havens: Any other comments from the public? If not then we'll need a motion to adjourn the public hearing to the next ZBA meeting.

Chairman Jansen: Ok. So unless there's anyone else that would like to speak at this point, I'll ask for a motion.

Jim Mehling: I make a motion to adjourn the public hearing to the May 28, 2024 ZBA Meeting.

Chairman Jansen: We have a motion to adjourn by Jim.

Diane Bramich: Second.

Chairman Jansen: Second by Diane. All in favor?

Board Members: Aye.

**Mr. Mehling makes a motion to adjourn the ZBA Meeting of April 22, 2024.**

Seconded by Ms. Bramich. Motion carried.