

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Jim Mehling

Marc Malocsay

Chris Daubert

Glenn Ehlers, Alternate Member

Mary Garcia, ZBA Recording Secretary

**PUBLIC HEARING OF 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 ZBA Meeting of 4/22/2024.**

*Representing the Applicant: Jared Schutzman, Applicant*

Chairman Jansen: The first item on the agenda is Jared Schutzman and Andrea Klein. Are you here?

Jared Schutzman: Yes.

Chairman Jansen: Come on up. Just explain to the Board, you gave the mailings, right?

Jared Schutzman: I'm sorry?

Chairman Jansen: You handed in the mailings?

Jared Schutzman: No, they didn't tell me this time to do any of the mailings.

Chairman Jansen: Just explain what your plans are.

Jared Schutzman: Trying to get the garage approved on my property <inaudible>.

Diane Bramich: Could you speak up please?

Jared Schutzman: I'm trying to get my garage approved at 1,440 square feet, which I believe is 240 square feet above what the code allows for. And then the last time you asked me to get a survey done to see how far the property was or the garage was from the property line. So I have two copies of what the survey map shows. If you see it's the building that's on the far bottom of the...

Attorney Havens: Yes

Jared Schutzman: Which you kind of see a wood fence and then the property line.

Attorney Havens: So it appears the closest corner of the garage building is 87.3 feet from the property line according to this.

Jared Schutzman: Correct.

Attorney Havens: So the other point that was raised the last time you were here was there was some complaints that were filed by neighbors about running a dog business. And you had said that, my recollection—please correct me if I'm wrong—that your wife does care for some dogs. The question that the Board needs to know and understand is whether the care of whatever dogs are there, first of all, are your own private animals or is it being run as a business? And secondly, how many dogs and what type? Because all of that's regulated by the code and so we need to know that.

Jared Schutzman: They're all our dogs. My wife is a dog trainer in the city. So all the dogs on our side are our dogs. We have two Rottweilers, we have one black lab, one Italian Spinone, and then one mixed mutt.

Mary Garcia: When you say on your side, is that the entire property or what do you mean by 'on your side'? You said all the dogs on our side?

Jared Schutzman: I didn't say our side, like our property.

Mary Garcia: Okay.

Jared Schutzman: We've also had the building inspector come by a couple times. He's checked out the property and confirmed, if you've seen his latest notes.

Attorney Havens: Alright, well for benefit of of the public there was a complaint made that it was the harboring of excessive dogs on the property and the applicable regulations under Town Code Section 164-46 J(16). It states that as an "Accessory to a residential use, the keeping of dogs shall not exceed three dogs over six months old, nor 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 nor more than two litters under six months of age on a lot of less than six acres." Can you please remind the Board and the public what the size of your property is?

Jared Schutzman: I have two lots. I have one lot that's 4.7 acres and I have another lot that's about 51. So in total it's about 56 acres.

Attorney Havens: So if you're testifying to this Board that you and your wife are the owner of five dogs that you keep on the property and you have an excess of 40 acres of property, then I don't see a violation of this section of the code unless it's being used for a business which stated that it's not.

Jared Schutzman: No, my wife is a trainer. We do have friends on the weekends come over with their dogs of course, but they're not staying at the house—just to make that clear.

Attorney Havens: Okay.

Jared Schutzman: But I don't think that's...

Attorney Havens: Absolutely.

Diane Bramich: It was brought up once before that there are people coming in and out with animals at the last meeting also that she was training dogs, your wife?

Jared Schutzman: No, there's no customers. My wife has a work van that comes and goes, but my wife goes into the city. She's a New York City trainer.

Diane Bramich: She trains in the city, not at your house.

Jared Schutzman: No.

Chairman Jansen: There was also an open fence permit that was denied in 2020?

Jared Schutzman: Yeah that was the last time, remember? I got that cleared up the prior meeting.

Chairman Jansen: Okay.

Attorney Havens: Alright. So I guess we can move on to the Environmental Assessment Form.

Chairman Jansen: Let me open this to the public. Is there anyone from the public that would like to address this application? No. Okay, continue.

Attorney Havens: So with respect to the short form EAF, Environmental Assessment Form that was submitted with the application, just need some clarification on a couple of items. Question number 10 on the form, "Will the proposed action connect to an existing public or private water supply?" You stated no. And I presume on a property like yours you must have a private well, is that correct?

Jared Schutzman: Correct.

Attorney Havens: And question 12b, Does the project site or any portion of it located in or adjacent to the area designated as sensitive for archeological sites on New York State Historic Preservation Office, archeological site inventory? And there was two marks there, both a yes and a no and the yes was struck out. Can you clarify that?

Jared Schutzman: To the best of my knowledge. I don't know from where you would confirm that information.

Diane Bramich: I've got more questions.

Attorney Havens: Sure.

Diane Bramich: I'm looking at this map. This is lot one, this is lot two?

Attorney Havens: Correct.

Diane Bramich: This is the proposed dwelling?

Attorney Havens: No, this is the dwelling and that's the proposed, that's the bottom right here.

Diane Bramich: Okay. This is the dwelling. So it's on the big lot.

Attorney Havens: Correct.

Diane Bramich: Thank you.

Attorney Havens: 13a, "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 or local agency?" Again, yes and no were both checked and then one struck out. Can you please clarify?

Jared Schutzman: Was this from the older application? Because I did submit a new application, I believe when, and some of these answers don't they get pre-populated when you give based on your lot...

Attorney Havens: Right...

Jared Schutzman: I submitted it.

Attorney Havens: Okay. My apologies, I never got an updated EAF from you. You used the pre-populated answers and resubmitted one?

Jared Schutzman: The last time I was here when I submitted before the meeting occurred, I submitted the new EAF form that had the pre-populated information based on all the lot information. So I believe those would be correct.

Attorney Havens: That would've already been corrected them. Alright. I just wanted clarification because apparently for whatever reason I didn't get a copy of the updated EAF for my file. And you confirmed that the site of the proposed action does contain a species of animal or associated habitat listed by the state or federal government as threatened or endangered species and Bog turtle and Indiana bat are identified. Your building's already there, and now that I'm reading this, I seem to remember actually discussing this previously, but I believe you're already aware of the regulations associated with those two endangered animals.

Jared Schutzman: If you could maybe reread it.

Attorney Havens: Yeah. So with the Bog turtle, if you have any wetlands areas on your property where they might have a habitat, then before doing any kind of construction, clearing, excavation, whatever, you'd have to have DEC come out and check the property and make sure that you're not going to be endangering their habitat or destroying them. And similarly with the Indiana bat, there's a prohibition under US Fish and Wildlife Regulations and DEC follows the same rules of US Fish and Wildlife regulations that prohibits clearing of significant trees between the summer months from March 31st until mid-fall. We were actually just discussing the two different dates either are October 1 or November 15th, depending on where you're located. And I just recently did some research and confirmed it's November 15th here. So between March 31st and November 15, you wouldn't be able to clear any trees. But since you're not doing any additional new construction, it's basically a non-issue.

Jared Schutzman: Actually also I chose the site to minimize the obvious clearing of land <inaudible> and it sits on top of a high hill.

Attorney Havens: Any other questions from the Board?

Board Members: No.

Attorney Havens: We're going to type this under SEQR. And based on the nature of the action, it's a permitted accessory garage, for approval of construction of a garage on a residence that's 4,000 square feet, clearly. So it qualifies as a Type 2 action under SEQR section 617.5(c)(12). Would someone care to type the motion on this application as a Type 2 action with no adverse environmental impact?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Now that we have that part done we have to consider the five statutory criteria considering an area variance and pursuant to the application submitted by the applicant, question number 1, "Will an undesirable change be produced in character of the neighborhood or a detriment to nearby properties be created by granting the area variance requested?" The applicant states no. And the explanation from the applicant is, "I live on 55 acres of private land that no one except neighbors will be able to see. It's also a low profile barn. It fits right into the surrounding area." 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 no. And the reason given "My house was not built with a garage to build two structures would be too costly and I believe two structures would cause more of an undesirable change. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 3, is a request of variance substantial? The applicant states no. And the reason given "the town code allows for a 1200 square foot barn or garage in this case. The variance I'm requesting is for a 1,440 square foot garage." Does the Board agree with the applicant that the variance is not substantial?

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 district?" The applicant states no. And reason given, "no, the garage is only slightly larger and will not have an environmental impact to the neighborhood or district."

Attorney Havens: Does the Board agree that the variance would not create an adverse impact on the physical or environmental conditions of the neighborhood or district?

Board Members: Yes.

Attorney Havens: Question 5, "Is the alleged difficulty self-created?" The applicant states no. And the reason given, "As previously stated, I live on 55 acres and my house was not built with a garage. To be able to maintain the land and keep care of my equipment, I needed to build a garage large enough to accommodate." Does the Board agree with the applicant that the difficulty was not self-created?

Board Members: No.

Attorney Havens: Having gone through the statutory criteria, would someone care to make a motion granting or denying the variance as advertised?

Chairman Jansen: Before you do that...the public hearing is closed.

Attorney Havens: Would someone care to make a motion granting or denying the variance as advertised?

Marc Malocsay: So moved.

Chris Daubert: Second.

Attorney Havens: Hold on...

Marc Malocsay: Oh, excuse me. I didn't catch that last part. As advertised, yes.

Attorney Havens: Granting or denying?

Marc Malocsay: Granting.

Chairman Jansen: Second?

Chris Daubert: Second.

Chairman Jansen: 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 for the construction of a new detached two-story garage creating a singular accessory building comprising 5,549 square feet, where a maximum of 1,200 square feet is permitted; and having a greatest median dimension of 80'6" where no more than 48' is permitted. **Continued from the 4/22/24 ZBA Meeting.**

*Representing the Applicant: David Niemotko, David Niemotko Architects and Sabastion Carlton, David Niemotko Architects*

Attorney Havens: So we've had several continued public hearings. The applicant has submitted additional modified drawings that actually reflect the move. It actually reflects the calculations of average building height based on average natural grade, and those are reflected on sheets A03 and A04. One point that I need to address, and I think the applicant's going to need to address is the fact that the same elevation...so on A03 it shows all the way on the left hand side of the drawings calculation of building height from the highest peak of the roof to average natural grade to be 30' 7". It unfortunately it doesn't show that on page C2 where it's one of the main cover pages that identifies the bulk table requirements accessory use regulations. And it still states that the proposed garage is 4,500 square feet and 25 feet tall. But the calculations based on average natural grade show it to be 30' 7" based on the updated drawings and the drawing submissions dated May 6th, 2024. Additionally, A3 and A4 were just recently submitted with the May 6th submission. A1 and A2 were previously submitted with the earlier submissions, but apparently updated with the most recent submission in May. And the building height shown on A2 shows 11' 5 1/2" on the north wall. The ceiling of the three-car section it's all a garage, but a three-car garage door bay shows a ceiling height of 11' 5 1/2". And then an attic ceiling height above that of 6' 7 1/2". But on A03 ceiling height is 10' 3" on the main floor and 7' 10 1/2" in the attic. Can you address that?

David Niemotko: Well first of all, as we went over this in your office, A3 and A4 were solely for the purpose of showing actual grade; how the building sits on the site at its grade, at its current time. A1 and A2 were the finished grade design elements. So we distinguished the two, we reviewed it with Mitch Havens and this was how we were directed. So again, A1 and A2 along with the C plans show the finished grade elevations of the building along with the site. The last page on I think it's C5, coupled with A3 and A4 show the natural grade elevations. Let's go with the overall heights you mentioned; you said 30' 7". We agreed. Absolutely that is the highest point on the natural grade elevation. Yet when it's finished, the finished grade elevations are going to show something different because the finished grade elevations will have an average between 21' 2" to 24' 6", while the average natural grade elevations will range from 25' 6" to 30' 7". That's the explanation.

Attorney Havens: But both of these sheets, A3 and A2 with the different heights between the attic and the main floor on the north three-car bay or three-door bay, whatever it is. They both are measured from a grade of this one's 661.0, this one's 661.3.

David Niemotko: Right. So we have two roof slopes on the project. An 8 on 12 and 6 on 12, each would create different attic heights.

Sabastion Carlton: Can I have <inaudible>? You have both the building set that was submitted to the Building Department for review. That was reviewed by the plan reviewer. He completed his review and said he cannot do any more reviews until the size variance was granted. During the several meetings, we came to the conclusion that you didn't want it based on the Building Code, you wanted it based on the Zoning Code. That's why those two sheets are specifically for the purpose of the ZBA. The other sheet is

not going to be changed until we resubmit back to them based on what was granted today or tomorrow. And then we can bubble it and say this is what was granted, this is the height that is agreed on, here's the resubmission. If we do that, then it just confuses the process with the Building Department, which is not doing any more revisions until this process is concluded.

Attorney Havens: I think I figured out the answer to my own question. And that's because on sheet A03 the measurement is from grade to the ceiling of the first floor at 10' 3". And on sheet A02 the measurement is from grade to the floor of the attic, which is another 1 foot odd inches up, which makes it 11' 5 1/2". That's why there's a difference. because it's to a different line. The Board received several comments from neighbors. I wanted to address some of those and put in the record that the ZBA is in receipt of a letter from Evelyn Schroeder, neighbor at 25 Distillery Road, received May 23rd, 2024.

*Chairman Jansen reads letter:*

*To the Zoning Board of Appeals, I have attended almost every meeting regarding the 138 Pine Island Turnpike LLC application before the Board last year. And this year I have not spoken because I don't really have enough knowledge of all the technicalities and the regulations. But I do understand this; the application is for a structure four times the allowable size. I'm not even sure why the Board would even consider this application since it's so out of character with the area and the size allowed. I don't see any reason why this would be approved, especially when so many people are against it. I hope you will consider our neighborhood and the location of the structure which will be very visible from the road. Interestingly, the applicant's own home garages are not visible at all from the road. This structure would be right at the crest of the hill sticking out like a sore thumb for everyone to see.*

*Sincerely,*

*Evelyn Schroder*

Attorney Havens: And there was an additional letter received on Friday, May 10th.

David Niemothko: Mr. Chairman, could we address that?

Chairman Jansen: Sure.

David Niemothko: We've taken drone shots of pictures, which are current actually as of Friday, which shows the relationship between Distillery Road and the project to share with the Board. I think it would be very difficult. It's impossible to see the project from Distillery Road. Those are drone shots and not Google Maps; they are actual visual aids to show the distance and the amount of vegetative buffer between Distillery Road and the project site.

Jim Mehling: But with all due respect, an overhead shot isn't true representation of street level view. Because of the vegetation, all the branches are 8 feet off the road, you've got a clear line.

David Niemothko: Well still, look at the density of the vegetation.

Jim Mehling: No, I got that. I'm just saying trees don't all have natural, you don't have leaf down to the ground. There's trunk space before you get to the canopy.

Sabastion Carlton: I think this actually creates a better...there's another shot so you can kind of see it. And in retrospect, like some parts looking downhill, like you're looking uphill and where the site sits, it actually sits on that plateau tucked in behind all the newly planted evergreens that have been planted.

Chairman Jansen: So we have another letter from Brian Bontemps Friday, May 10th to the Zoning Board.



*Chairman Jansen reads aloud:*

*My family and I reside at 11 Distillery Road in the town of Warwick. It has come to our attention that there's an application for a variance to place an accessory structure at 138 Pine Island Turnpike. After reviewing their application and plan, I would like to express my opposition to granting this variance. My family, kids 13 and 10 moved from Monroe to Warwick 6 years ago, namely for the lack of ability for the Planning Board to control zoning, specifically when it came to accessory structures. The abuse of variances and the ability inability to control the road leads us to seek a more rural lifestyle in a community that values thoughtful planning, which is what brought us to Warwick. We chose our home specifically for the unobstructed view for our back deck of the ridgeline where the property in question is located. Locating a building on that part of the property will be in direct sideline from my house. I believe that this will devalue our property that was purchased specifically for this view. From what I can tell, this is the only spot that a structure on that property will be visible from my property. A worry of ours is that this structure will not be used as described in the application and will be used as a short term rental property, which seems to be the case at 121 Distillery Road. I am supportive of any homeowner in the town to do whatever they would like with their property as long as it falls under the current zoning, which this does not. I don't see any benefit for anyone other than the homeowner. And I believe that approving this variance will devalue our home, will set a terrible precedent in the town that will lead to many issues in the future. Please let me know if you have any questions or would like more information from us.*

*Thank you for your consideration,*

*Brian Bontemps*

Attorney Havens: We're not going to read into the record simply because of the length of the comments made but we will submit as part of the formal record comments from the neighbors that have been submitted, dated May 28th, 2024 and April 2024. The comments are significant and extensive. It includes reference and citation to various provisions of the town code. It identifies discrepancies and issues on plans that are submitted regarding building area, building height issues with respect to notes and continued inclusion of details in what were discussed at the last meeting and the meeting before that as general probably boilerplate notes that were inserted into the site plans but would be inapplicable for a proposed garage that is not intended to be heated nor habitable space. And with specific pointed reference general note number three on T101 makes reference to the placement of smoke detectors inside and outside the three bedrooms, one outside the master bedroom, and one in the basement. I don't disagree that a garage should have smoke detectors, but reference to the bedrooms would absolutely need to be removed because it has been discussed over and over that this is not designed or intended to be a residence. And reference to smoke detectors outside the bedrooms is inappropriate on the site. So those would have to be removed. There were also additional photographs that were submitted. Did the Board Members get a chance to review the additional comments submitted by residents at 15 Distillery?

Board Members: Yes.

Attorney Havens: As well as the photographs that were attached?

Board Members: Yes.

Attorney Havens: Okay. Just wanted to make sure that we confirmed for the record the Board did have a chance to review those.

Diane Bramich: Which ones?

Attorney Havens: These were the ones that were...

Diane Bramich: The previous ones?

Attorney Havens: Yes, the ones that were submitted with the April 22. That one was like 31 pages long with all the photographs.

Diane Bramich: Yes.

Attorney Havens: So you didn't get a chance to review...

Diane Bramich: I got it.

Attorney Havens: Okay, great. Any further comments, questions?

Chairman Jansen: I don't have any now.

Lynn Huchital: Can I just interject with this gentleman the way that with the drone taking the pictures.

Attorney Havens: You can address the Board, but...

Lynn Huchital: I'm sorry, the Board, yeah.

Mary Garcia: I need your name please.

Lynn Huchital: I'm sorry...

Attorney Havens: Identify who you are.

Lynn Huchital: Pardon me, my name is Lynn Huchital. I'm at 29 Distillery Road. And just like with Google Maps, depending upon the time of the year that you're taking the picture is really relevant to this situation. So the trees that have all the foliage on it, it's not going to be there in winter. Just want to put that on the record. Okay? Those pictures. Thank you.

Chairman Jansen: Thank you. Anyone else?

David Guthaim: Is this public comment?

Attorney Havens: Yes. Please step up, identify yourself.

David Guthaim: David Guthaim, 17 Distillery Road.

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

David Guthaim: Sure. G-U-T-H-A-I-M, 17 Distillery. I was here September's meeting. I have a direct line of sight through 138 Turnpike to down the pipeline. And so whatever's going to be built, whether it's close to the property line, we're now in the new proposed zone going to be directly visible. So I don't know what drone shots you have, but my property is 7 acres long and it goes directly towards Mr. Napolitano's property. So for the town Board to consider anything that's four times the size of the residential structure to be an accessory structure to the primary, that's four times bigger than the primary residence. The primary residence is smaller than the accessory structure. The accessory structure is in front of the primary structure. The new proposed lot for the accessory structure is in a direct line of sight. I have a photo I can show you from my point of view. The reason I bought the house is for the perfect westerly view of the sunset and everything else. And I understand that Anthony wants to put up these trees to try to do his best to protect us from the view and all that. I'm more concerned with potential of setting precedents for accessory structures to be larger than their primary residence. And I have faith in you guys to do the right thing, but I really think it goes down a dangerous slope if you don't change the zoning first to allow such structures as accessory. But thank you for also saying you need to strike the note on bedroom piece of that because I think that's clearly in violation of what accessory means. I have no qualms other than that. The sheer size of the building and the direct line of sight from my property, which I guarantee is on that drone shot; I can probably point it out to you or I can show you the picture that I have. I don't know what's best for your process, but it's important. It really is. I don't want to see this town turn into Monroe. We know all the headaches that happened up there with zoning and the changes on variances up that way.

I'm sure the building you want to build, sir is going to be beautiful. I saw design, it's gorgeous but it just has no place being directly in our line of sight when there's a lot of other acres that you do have that you can put behind your home...

Attorney Havens: I'm sorry, sir. I'm going to ask you to please address the Board and not keep...

David Guthaim: My apologies. The applicant has a lot of acres behind his house, let's put it that way. And I don't know what it would cost to do that or not, but I think that would be a much more appropriate place to try to seek a variance for an accessory structure that is larger than his primary residence. That's all I have to say about that. Thank you.

Chairman Jansen: Thank you. Anyone else?

Gary Goldstein: Good evening, Gary....

Attorney Havens: Sorry, Gary?

Gary Goldstein: Yes. Gary Goldstein.

Attorney Havens: I was actually going to address what he was specifically discussing. For the benefit of the Board and the public: along with the 31 pages of comments and photographs that were submitted on April 22nd in opposition to this application, the neighbors created some Google Earth imagery with some measurements between the various neighboring properties and took some measurements between the current proposed location of the garage being 275 feet back off of Pine Island Turnpike where it's currently proposed versus the alternative location which would be immediately to the side and ever so slightly behind the primary residence, which would be approximately 710 feet back from Pine Island Turnpike and identified the distances as well between those two locations and its proximity to each of the four primary residences on the most closely adjacent lots. And identified that in its current location the proposed structure would be 194 feet from the nearest resident at 15 Distillery Road and it would be 980 feet from the farthest of the four residences. Whereas if the building were moved behind and to the west of the primary residence immediately to the side and slightly behind the primary residence, then the shortest distance between any primary residence and the new proposed garage would be 485 feet estimated, and the longest distance 690 feet. And the people that submitted this would still have the closest residence to the structure. But it would be significantly farther from two of the four residences. So I just wanted to address that in response to your particular point of siting it behind or next to the primary residence. My apologies.

Gary Goldstein: Good evening, I'm Gary Goldstein. I just wanted to address the public hearing in one of the letters that was addressed to the Board. I live about a half mile away from this property, I drive past it every day. To the extent that this structure would be visible, its going to be minimally visible. There are a substantial number of trees that are in front of it so it would be minimally visible from the road. To me it's an aesthetically pleasing building. I think it's a lot better than what's right across the street. Right across the street we have an abandoned garage that for 20 plus years was used as an auto body shop with broken down cars in the parking lot. Contrary to what was said by one of the neighbors in the letter, I don't think it's going to decrease the value. I think it's going to increase the value of the properties in this entire area. If this person's willing to put that much money into this accessory building, it's going to increase the value of his property and hence I would think it would increase the value of the surrounding properties. And lastly, he addressed an issue and it's just speculation as to what the structure's going to be used for. Whatever the application is for, I believe it's for a garage. If he uses it for another use, you have the Town Code and the Code Officer to enforce that code to make sure that he would be in compliance with the use of what the variance would be granted for. And if the variance is granted, as I'm hoping it is, it's going to go back to the Planning Board and the Planning Board's going to review the plans and make sure that it's constructed...

Attorney Havens: It wouldn't in this case.

Gary Goldstein: It's not in this case.

Attorney Havens: No.

Gary Goldstein: Ok. So there still would be a Code Enforcement Officer. We have a Town Attorney that would be enforcing the code and I'm sure that the neighbors are going to be checking to make sure that it is being used as a proposed use which is a garage. Alright, thank you.

Chairman Jansen: Anyone else? Yes, come on up.

21 Distillery Rd Homeowner: Good evening, Members of the Board. I'd like to have a few words about...

Mary Garcia: I'm sorry, your name please.

21 Distillery Rd Homeowner: My name is Elliot <inaudible>, I'm the owner of 21 Distillery Road. Earlier this evening was brought to our attention about some type of permitting of having the rental use and I find that for my own personal value a little distracting because my family does come up to this town quite frequently. I love this town. I love being part of this town. And as far as having a neighbor, which I'm one of the most neighborly people you would like to meet, I made my announcement to my neighbor to ask him what he was going to do with this property. And as he mentioned to me, he invited me onto his property and I did that today. I don't come here quite often, but my wife and daughter do come up quite often because we have horses in the neighborhood. And when I asked to take me to this location that you'd like to build and analyze what it's like to be in this position, viewing the property lines, viewing the neighbors that buffer his property line, understanding the blueprints that you had suggested, the heights, the roof lines, the pitches, the terrain, understanding when I drive by this property daily on my weekends, I do look to the right and I do look to the left as I go each way of the double yellow line to say, I don't think he's far off from having a beautiful location. It's very well tucked in. It's higher than street elevation. He had planted 100 evergreen green giant trees, which they're all going to grow and sprout. It'll be very secluded. You will not see it during the winter time at all. Zero. So as we walked today, and I understand showing the topography of this, then as I walk through his property line, we see over a hundred feet of buffer. There's a large pipeline that runs through my property and through his property. And there is a neighbor to my left, which is 17 Distillery Road. I can acknowledge his roof lines from my top site and it doesn't bother me. But we all still get a serene view of this incredible valley. And it does not distract from what Mr. Tony Napolitano would like to build. It will be tucked in to the left side of his property. It'll be at a higher elevation. You will not be able to see it from the drive-bys. And I warrant that you can go and take a look at this. And I do think it's a good thing for him to have it because at the end of the day, if he wants an auxiliary use structure to put all his equipment into this environment and your neighbors aren't going to see it by having the foliage around it, then I think it's quite all right and it should happen. And those are my words. Thank you.

Chairman Jansen: Thank you. Alright, anyone else?

Lynn Huchital: One more comment and I promise I won't say anymore. Something that I feel that we are not addressing, okay? Is the view when the foliage is different and there's a sound barrier, all the trees that you planted, it's not preventing the sound. We attest to that on Sunday, we heard the sound. And I don't care how many trees you're planting, it's not working. So that needs to be addressed. That's it. Thank you. So it's not just sight, it's sound also.

Robin: What sound does a building make?

Mary Garcia: I'm sorry. What is your name?

Robin: My name is Robin <inaudible>. I'm just questioning what sound does a building make? I don't understand that. And evergreens do stay full-ish throughout the winter, so...

Chairman Jansen: Okay.

Anthony Napolitano: My name's Dr. Anthony Napolitano, I live at 138 Pine Island Turnpike. For the record, we planted 216 evergreen trees.

Chairman Jansen: Thank you. Yes ma'am. Short and sweet because we've gotten so much stuff from you.

Shannon Folino: No, I understand. And I want to address, I know that I have...Shannon Folino, 15 Distillery. I know that I've given you extensive information. I know that you probably lament about having to look at the 30 pages that I sent you and then some. But this isn't a popularity contest. If I wanted to go out and recruit everyone that I know in the Town of Warwick to come out and speak on this, I could. But I don't because what I focus on is the facts that you have before you; the code is clear that it doesn't encourage more than one house on a property. You can call this a garage and we can view the use as a garage. But when you're granting these variances, I feel like it's important to consider the fact that the use can be changed. And unfortunately in this town people make those changes without getting permits. People build things without getting permits. And then the burden lies on the neighbor. Gary talks about how the neighbor will be calling, they'll have them check...no, I don't want to call the Building Department. I don't want to call the police and waste our police resources on the weekend to look at a party that's happening in this building; that's so wasteful. I don't think that most people understand what the size of this building is. 4,500 square feet as a footprint is bigger than most of the houses in this area—and the houses are multiple floors. And then you have all the other usable area in this building that's not even counted because of the semantics of building up grade around the lower level. And the reality is that no matter how you define the height, the view of it is going to be greater than that 30 feet that you're reporting. People won't look at it and go, "oh, well it's to the peak and it's to the average natural grade." They look at it relative to what it looks like. And that's on all sides of the building. I hear that you planted <inaudible> and that's great. You have every right to do that. But the way that some of these trees are planted, I highly doubt that they're going to reach the full mature heights of their reporting. At the end of the day, whether or not you have the screen in there, this does set a terrible precedent. These variances are created for people that have hardships, that can't comply with the codes that are set in place. There's no reason that this building can't be located to the side or the rear. If my neighbor wants a building that's 4,500 square feet, sure, put it in a place that's not going to impact your neighbors and isn't going to set an incredibly bad precedent for the community. That's all I'm asking, is it should be cited appropriately so it's not going to impact the neighbors. And I can tell you right now, it's going to impact my husband's and I's quality of life. It already has with the retaliation that we've seen from having to speak out against this. And on top of the fact that it's going to impact our property value. A two bedroom, two bath house isn't comparable to a three bath house that's 3,500 square feet; those aren't comparable properties. His property value's not going to impact my property value. We all bought on these large lots because of the space that we have between them. And we all knew that they already had houses on them. The reality of my neighbor tearing down his house to build a house next to us is highly unlikely because of the fact that they have the views up there, these are the things that go through your mind when you're looking at properties. And this is why this is so important to us because this building is, again, I've said it before and other people said it too, and everyone we talked to, it's just how you could even consider such an excessively large building in such an impactful location is upsetting and disappointing. And I understand that people have a right to ask for it, but then to be berated about it, it wears on you. So I appreciate your time. I'm sorry that I've sent you an abundance of information but it's because I value what the code says. Thanks.

Chairman Jansen: Thank you.

Marc Malocsay: Wait, I have a question. Just a couple.

Shannon Folino: Sure.

Marc Malocsay: You referenced sheet A.03. Do you concur with that height of 30 feet, 7 inches?

Shannon Folino: Honestly, I can't agree with anything because the information that's shown on the plans conflicts each other on different sheets. I can't follow what the true intent of the size of the building is. So I can't tell you. I mean 30' 7", best guess, maybe? But the different sheets show different things. They show different roof slopes for the same roofs. So I can't tell you exactly what the height is.

Marc Malocsay: Okay. You referenced a couple of things and on that Chapter 150, there aren't any violations that I know of on any tree removal or soil removal on the site. And I referenced that Chapter 150 was more for mining and logging purposes. Because if you think about it, it's a quarter acre. I'm looking at the lawns that are in that area are more than a quarter of an acre. According to the zoning, you can't have a lawn that's more than a quarter of an acre unless you've cleared some trees or unless it is existing fields. So the views that we talk that people have, the whole idea in ridgeline overlay in a house that sits on a hill doesn't have a view. The intent is that you can't see it from any place else. Never mind the person that owns the piece of property. On Distillery, because you questioned before what you can and can't do on a subdivision of a piece of property, so we see them often, the Planning Board sees them more. And I forgot how many acres this person has. I want to say it's 16. Does that sound about right?

Shannon Folino: That's correct.

Jim Mehling: It's 16.

Marc Malocsay: So when somebody comes to us and they have 16 acres and it goes before the Planning Board, the Planning Board says, "yeah, you can subdivide it but you're going to need these variances." It's a recommendation for them to make it work. If zoning's four acres and they only want (2) eight acre lots, that's fine. You showed us that this couldn't be subdivided and it can't probably without some variances or...

Shannon Folino: That was what I said, to be correct, I said it could be subdivided as of right. I didn't say it couldn't be subdivided. I just want to acknowledge that we're on the same page here.

Marc Malocsay: So on Distillery, there was a few years ago we had an application that was before us. And it was an acre lot that was behind another acre lot. And the Planning Board gave them a right of way to go through that one piece of property because they owned both of them in order to build on the other piece of property. So it happens, and it happens often. Something that you brought up, because I said it at the very first meeting was before the Board is an application for a large accessory structure. And it's come about again that if this went someplace else, it seems that people wouldn't have a problem with it. I see the arguments that you're making would be exactly the same if it went someplace else because the applicant did move it. I would've liked it moved behind the house, but they did move it. And it's further away from everybody's property and there is screening. And when you consider screening, if somebody has a two-acre or three-acre lot and they have two acres of lawn, well their own property doesn't have screening. So why do you make an applicant put in a bunch of screening that's not existing already naturally there? So if the neighbors said that if it went someplace else in the back and everybody agreed, then I'd like to present that to the applicant and it would make things easier in either giving a variance or not giving a variance. One of the things that everybody has to understand before us is we have certain criteria that we go through. First one's probably the most important: detriment to nearby property owners. If I were answering that question, I would say no. Why? Because if it was a house that was built several hundred feet from a nearby house or 150 feet from a lot line, houses only need 75 feet to be away from another property. So is it going to be a detriment to nearby property owners? No. But if you go through the list, the only thing that we're looking at really is that this thing is, we're just going to say four times the size of what's allowed—for argument's sake. Because I don't know that we actually have a number yet and on a height restriction on ridgeline overlay. So the question should really be pertaining to the size of the building.

Shannon Folino: Absolutely. But to be clear, there is a requirement in the code that garages/off-street parking shall be located to the side and rear of the principal building. Shall is mandatory in the code. So where I'm coming from, it's just yet another item that this applicant is looking to seek relief from and all of the relief that's being sought is simply a disagreement that the code should apply to his property and him as a person. I hear what you're saying about you are 'not seeing the detriment to our quality of life.' But again, people buy properties based off of the understanding of what's around them. And that's not saying that things can't be redeveloped, but it is highly unlikely that a residential property is going to be redeveloped in a manner where a single family home is going to be taken down and put down next to our house. If you want to go down the subdivision route, the added level of complication here is that this is a County road. So it goes beyond just what this Board would have to grant from variances. The County would have to look at it. I don't know if anyone here can say what the County's thoughts would be. This property is along a bend, there's been rumors that the other properties next to his property wouldn't even be able to be subdivided because of the location along the County road relative to other driveways. Again, the code is so clear that there's no intent to allow for more than one single-family home. And I get that this—we're calling this not a 'single-family home', we're calling this a 'garage' —looks like a single-family home. There's an abundance of space that's being used. If my neighbor was asking for 1400 square feet, even upwards of 1800 square feet, like the variances that you do see come before you most frequently, we wouldn't have a problem because there's not that much space there to be used. This is 4,500 square feet that's being asked. There's over a thousand square feet on that lower garage that's going to be used. There's the attic space that I'm not even convinced is going to have a pull-down stair. I think it's going to have a full staircase and be used in that way because the notes on the plans reference a main staircase and a basement staircase. There are things here that were significant concerns for me and my husband. I don't want to live in my house and have to constantly be expected by the Town essentially, that I'm going to have to call the Building Department. I'm going to have to call the police to report when these things are not being used the way that they're claiming that they're going to be used.

Marc Malocsay: Alright. Let me ask the one question again. So if they put it behind their house, you wouldn't have a problem with the application?

Shannon Folino: And I'll elaborate on why that is. Where this building is located, it's going to be in front of...there's a cattle guard, like a gate for where the house is. This is going to be located in front of that gate. Whether it's this applicant or a future owner of the property, they go into that looking at like, 'look at this building that I have that I can make into a separate rental unit that I can make into a short term rental.' There are a lot of possibilities that this building can be used for whether it's happening right now or not. If this building was located to the side or the rear of the property, there's a lot less likelihood for that to happen because it's so much closer to your house. I said it before, this building is closer to our home than it is to the applicant's home. I can't understand why you would want a building for the storage of your vehicles and your personal storage so far away from your house. Most people want their garage and where they're storing stuff to be pretty close to their house, they're not lugging all this stuff up a hill.

Marc Malocsay: Okay. So you did raise though a very important question though on the 'shall' part and if another variance is needed. So I'm just going to consult...

Shannon Folino: Sure.

Marc Malocsay: ...and we'll see what he has to say. But thank you.

Shannon Folino: Thanks.

Marc Malocsay: We've had them before the Board. Usually our interpretation is that the accessory structures meet the front yard setbacks. But in this particular case she brings up a very interesting point that it says 'shall' and even though this house sits further off the road, do we need another variance?

Attorney Havens: It is a valid point and it would be something that we should consider and include in the determinations. Just like when people come to us and say, 'I want to put my swimming pool in the front yard,' and the code says, 'no'. They have to come to us to get a variance for putting that swimming pool in the front yard even though it's a perfectly permissible use.

Marc Malocsay: Which brings us to—because we didn't have this before—because it does make the application very different in that we asked if it can go someplace else and they moved it and we thought that everything was fine. But now we see that it's in the front of the building, the main structure, the principal use of the property. So it's just an added complex in making a decision. When you start adding variances on variances, it's the other part with the neighbors not having a problem or a neighbor not having a problem if it was behind the house is...but we're still giving a variance for something that's four times the size.

Diane Bramich: Marc. When this application first came in, one of the first things we said, why can this not be behind the house? We asked that immediately. And we didn't get an answer except that there is an extensive plan for the backyard that we saw in the original plan.

Marc Malocsay: I remember.

Diane Bramich: So there is room for that garage behind or aside to move it there. But also, and I think it was on the record that a lady that was up here speaking at one time said, well if they move it on the other side...

Marc Malocsay: And I remember...

Diane Bramich: ...I'd be fine.

Marc Malocsay: And I remember making the comment that as I just did, we still have to give a variance for something that's four times the size.

Diane Bramich: Definitely. I agree.

Marc Malocsay: So...

Attorney Havens: On your point though, she did submit further clarification and written commentary that was shared with the ZBA and she addressed this at a prior meeting stating that when that statement was made, we were working off of a single site plan with no other details, no floor plans, no elevations, no anything. And she did not realize that she was looking at a structure in excess of 30 feet tall when the preexisting building was a very small short structure.

Diane Bramich: If you look at the lot, there is room behind the house to put this garage.

Marc Malocsay: So I realize that you're probably going to say something to the effect of that that is a much better location for the size of the building because of the topography and your design and your plans are all based on that. And so looking at the topo of the property behind the property, I will say that there are errors that are similar. So with that said, what were you going to say?

Sabastion Carlton: Well a couple things. I think it's not accurate that the building was smaller. The neighbor actually <inaudible>, I'm sure you guys have it on file...

Marc Malocsay: I'm not there, I don't...

Sabastion Carlton: No, I'm saying it had to be on file, but there was actually a drawing that was taken of what was proposed, which actually was a larger building at the time. And it was demonstrated where it could go in an alternate location that she generated and it was across the street and at the back. That was...so it wasn't a smaller footprint.

Marc Malocsay: Yes. What I'm saying is that with the size of the building that you designed, for the topo that's there, there are other places on the property that it's not any steeper than where it is over there.



And the size of your building is large which requires a fairly more level pad, even though it's steps and works with the grade. So I'm going to ask Tony...Can you entertain this going? Because it appears now that we have to give another variance for this because it's in the front yard. And unfortunately, I've always felt that if it's beyond the 75 feet that's considered a front yard, that accessory structures can go there. But it does appear that we do need another accessory structure. And it does appear though, and I think this Board, after hearing it again, if this went even with behind the house, it sounds like the neighbors don't seem to have as many concerns. And the reason I say this is I don't know how the rest of the Board feels, but it's a substantial variance. But it does seem that if it were moved, I would think more than likely with five of us, I would think that it would be more likely granted. And I'm not saying that it's not, I'm just saying that's some really good reasons why it couldn't go in the back.

Anthony Napolitano: May I?

Marc Malocsay: Yes.

Anthony Napolitano: The reason I would take issue with that, it initially was suggested by my neighbor that it was moved to the other side of my driveway, they would not take issue with it, which I did. It was also suggested that the building in my original submission was larger than it is, so I reduced the square footage of it. It was suggested that it would be clearly visible; I planted 215 trees. It was also since the elevation behind my home's significantly higher than the street, throws that building into the ridgeline overlay district, as is my understanding. You were at the property, you saw the property with me. The driveway goes like this, the house is here. It goes further off in the back making it clearly visible from Pine Island Turnpike, where now it'll be tucked behind screenage in a further away location from the residents original dwelling. I feel like I've been more than accommodating to my neighbor's suggestions. I feel that I have gone...within the confines of the Board, this could be drawn long out and ugly or I could be accommodating and decent. I feel like I have been to this point in time. Clearly I defer to your better judgment. Last I checked the Board granted three variances that I can think of off the top of my head. One was a 7,000 square foot gymnasium on a private property. There was another 4,800 square foot structure on Spanktown, that was two years ago. And the third property, my architect in <inaudible> address. So this isn't precedent setting. There are several buildings significantly larger than mine. Some of my neighbors are referring to four times the size, and I think they might have been spoken of my home. I'm not building 12,000 square foot garage. This garages approximately 4,000 to 4,500 square feet is the footprint plus people keep saying four times the size of this is very much not four times the size of the square footage of my home. I'm going to defer to my architect, David if you wanted to mention the other property variances where you've been in excess of that size, I'd depreciate it.

David Niemotko: The other one was on Glenwood Road. So that project, I believe was a 5,000 square foot barn that was approved. But yet I'd like to discuss the Ridgeline District.

*Inaudible - someone from the public speaking out.*

Chairman Jansen: Just a minute, you'll get your turn.

David Niemotko: Why locate the garage where it is? Well, it's situated well within the ridgeline overlay district. Moving it further up the mountain actually impacts or contradicts or goes against the ridgeline overlay district and its requirements for its purpose. In addition to that, the zoning code is very clear on single-family homes or one structure on a property. That's not necessarily true. For site plans, Special Permits, Section 164.46(11) says one accessory residence may be located on a lot as a guest home not to exceed the size of the principal residential structure and not to be <inaudible> within the front side or rear yards of the principal building together such and such and such...

Marc Malocsay: And I brought that up...

David Niemotko: You did. And that was an excellent point because I just want to make this other, the designs or alternates that were proposed were flag pole lots, which actually never even came up in our discussions. But yet in doing the research, the Planning Board has approved shared driveway for lack of a better word, subdivisions or allowing multiple homes on a site. And they were off county roads, off 17A. So the private road can come in off a public road, it can access landlocked sites, it could access multiple structures on a site. And it has been approved without question. Actually there were two; Castle Ridge Drive and Clearview Lane came almost immediately. And we're talking about parking in the garage and the importance of the code. It was brought out that off-street parking regulations 164-43.2, and it talks about how it should be located this side of rear and everything. But that was just picked out of the zoning code. The rest of the zoning code in that section would allow us 164-43.2 under gross floor area would allow us to subtract vehicular parking and loading areas that are within the structure from the gross floor area. So if you're going to use that section of the code, let's use all of it. If that would be the case, then actually this building would net out at 1800 square feet. So let's be consistent with the code.

Marc Malocsay: Do you remember what I said though when I brought that up? That the applicant can build a second dwelling on the property showing that it could be subdivided, which...

David Niemotko: Correct.

Marc Malocsay: ...could probably happen. The issue is it's a garage.

David Niemotko: Correct.

Marc Malocsay: And then that would not meet that criteria to be as a second home...

David Niemotko: Correct.

Marc Malocsay: ...because then you would have two principal uses. But again, he doesn't want to go that route. He wants it as a garage. So...

David Niemotko: Correct. We did the visual cross section through the site to satisfy the height requirement of 25 feet. We definitely showed without question that you could waive that. Without question, we showed the buffer of the tree lines in that visual cross section hiding—it definitely hides the garage. And if that's the case, and we keep referring to the 25 feet to be constructed, but it does say, 'unless the visual cross sections or other appropriate methods demonstrate that the subject structure could be constructed with a building height greater than 25 feet.' So an actual grade elevation study that we did showed 30 feet plus—at the worst case scenario. But yet the finished grade is below the 25 feet. It's not a semantics, it's not a play on words. That is the design. And that's what the building code allows; if you remember my discussion with the Board back then, we satisfied not only the zoning code, but the building code. We've had third party review by Mark Rogers, who's an engineer and a New York State certified code official. He rendered the building as a single-story building, period. You don't want to ignore the codes, don't ignore them. That's his rendered decision. And so that's what we have before you, a one-story building. Yes, 4,500 square feet. It's situated to not impact the ridgeline overlay district even more to put it behind the house. It's situated below and it is not visible from the road. And it definitely satisfies a lot of the requirements of the code. And we ask that you just consider this. The project...

Jim Mehling: Excuse me, can I ask you a question? The other properties that you cited where we granted variances excessive of 1200 square feet, were any or all of those in the ridgeline overlay district?

David Niemotko: I don't know, I'm not sure.

Jim Mehling: Okay. Because I'll be honest, if I can say one thing, I'm sorry to interrupt you. I'm afraid of the genie effect. When you let them out of the bottle, you don't get them back in. I've lived in this area my whole life. I'm not against progress, I'm not against development of property, I'm a big proponent.

When you brought that gentleman, the attorney in from the city some months back, the one who wanted to try to lecture me on the constitution and the meaning of the flag, I took personal umbrage to that, I did. And I'm not blaming you. I hold him accountable, he was standing right here before this Board. Because we do our very best up here. We come from varied backgrounds, various levels of education. We all came up here and we get together once a month to listen patiently to everyone and hear what they have to say. My concern is there is no concurrent agreement. Everyone can come in here, we can sit in here for the next six months and people are going to go back and forth and back and forth on the dimensions, on the height, on the square footage, on the grade. At the end of the day, it's too tall. My personal opinion is it's too high. It affects the ridgeline overlay district. And once we grant your variance, we have to then by your own admission of, 'well, everyone else has done it, why can't we,' we would have to do that for everyone that comes forward. And where is the end point? That's my concern. Where is the end point? There is none.

David Niemoetko: The end point is where each project is assessed on its own values.

Jim Mehling: Correct. Not compared to others and saying, 'well, they're doing it so why can't we?'

David Niemoetko: But I have to refute the point that these things have never been granted.

Jim Mehling: Oh, I'm not...my short time on the Board.

David Niemoetko: That was it. And also consider the size of the lot, please. The size of the lot is 15.98 acres. That's 696,089 square feet. When you combine the garage and the house, it equals 1.2% of the lot. The footprint of the house and the proposed footprint of the garage equals 1.2% of the lot coverage. It's minimal at most. And that should be a consideration to the Board.

Jim Mehling: But the code doesn't stipulate the size of the building relative to the lot. The code stipulates the size of the building.

David Niemoetko: Absolutely. I'm placing it relative to the size because if this was a one acre lot or two acre lot, that would have a huge impact on the decision.

Marc Malocsay: We do have a restriction on 30 or 35% for build out of a lot.

Jim Mehling: Right. On non-permeable surfaces.

Marc Malocsay: But I agree with him. It's not even close to being before us on the amount of area that the buildings do take up. But the point that 16 acres in your favor is that the property could be subdivided. And it would need—I don't want to say waivers from the Planning Board, because even though they're very close to us, we're the only ones that have the ability to give variances and interpretations.

Chairman Jansen: One more time.

Shannon Folino: I'll keep it brief. I just want to address, because it keeps being thrown back in my face. The very first meeting, it was advertised as three additions to an existing structure. We went to the Planning and Zoning Department, we saw a site plan. I know that Mr. Havens, you tried to explain this, but that was where we were coming from when we had provided—before the meeting, mind you, we provided a letter and exhibits prior to the meeting showing potential alternate locations. And the 45, or at that time it was roughly 3,900 square feet that was being proposed as three additions to the existing structure. And that was why we had said the other side of the driveway, because as you mentioned, we're viewing it as the same scale of what that prior building was. We provided photos of what that looked like. As soon as we came to this meeting and the plans were being flipped through like we were experiencing in real time, seeing what it looked like. And that's when our perspective changed. I don't think that anyone can fault us for having that change in perspective when we actually got to see the full scale, what that plan was. This isn't a typical accessory structure application. What they're proposing would never be the first thing to come into my mind, what this building was. The other thing that was mentioned is that the

ridgeline overlay specifically references protected views or critical view sheds that are mentioned in the visual EAF. One of those items in the visual EAF is the view from the county road. If this building is located to the side or the rear of the principal building, there's that much greater of a distance and additional existing mature vegetated buffer that is going to screen this building beyond the three foot tall arbor <inaudible> that were planted at a frequency that is going to stunt their growth. Quite frankly, I think any of you could go out there and probably deduce that they're planted in a way that's going to form a hedge, not a full grown tree based on the spacing. The prior applications that you've approved, the applicant brought up Spanktown Road. You guys did not approve that. You actually asked them to withdraw the application because it was I believe a Class 2 home occupation and it never came back before the Board. So there was never anything built for that large square footage that was referenced. Glenwood Road, they were proposing an accessory structure when they didn't have a principal building on the property. That attorney said, 'You can't build an accessory structure without a house. Get your house in the ground and then come back before us and we can talk.' It never came back before you. That just under 5,000 square feet was never approved by this Board. From what we can tell from the past 6 years that are available online, there's been 18 applications that were approved, 17 of which were under 3000 square feet, 13 of which were 2400 square feet or less. When we're talking about the size, the in excess percent, and I can give this to the Board, we prepared...

Attorney Havens: That was in the notes that you previously sent in.

Shannon Folino: Okay. Yeah. What they're referencing was never granted.

Marc Malocsay: So one thing...

Shannon Folino: Oh...

Marc Malocsay: Go ahead.

Shannon Folino: I just have one last thing. The flag lot thing, even if you didn't make it a flag lot and you had a lot in the front, a lot in the back, the lot in the front would be 3 1/2 acres and a lot in the back would be the remaining of the 16. Again, I get that you've granted these sort of variances before, but using variance conditions as a precedent for this application that also has a wide array of variances, it just doesn't seem like straight logic. You're assuming that the Planning Board is going to grant it. You're assuming that the County's going to have no issue with it, and then I know that you would be the Board that would grant the variances, but there's just a lot of steps that would have to happen for that to actually be the case.

Marc Malocsay: Sure. And the reality is, on 16 acres with already an existing driveway, the County wouldn't have a problem with a driveway that's shared with the other driveway. And again, it would all come from recommendations from the Planning Board. When...

Shannon Folino: Can I just say one more thing about the subdivision? In the subdivision section of the code it also talks about the Town doesn't want to encourage the subdividing of properties if both lots aren't going to be able to be compliant. It talks about not wanting to create excessively deep lots. There's all these things that are added layers of additional kind of waivers and considerations that would have to take place in considering that. And I'm sure you guys know that, but I just wanted to make it clear for the record that there are a lot of different design criteria for subdivisions that this would ultimately not comply with, that is different from other subdivision applications that may have been granted in the past.

Attorney Havens: Diane makes a valid point is the applicant's not submitting an application for a subdivision. I know there's been several discussions about what could potentially happen in the future, but that's not technically before us and we have enough detail that we need to focus on that we should probably just table the whole issue of whether or not it could be subdivided, what would happen to have done, et cetera, et cetera.

Marc Malocsay: The one thing that I wanted to bring to your attention on the variances for these accessory structures because I do remember the ones that came before us and we needed more information and didn't happen. Hamiltonian was another one that was probably beyond the six years that you have on the records of somebody for an art studio. And he ended up building a building, met all the other requirements. It was just that size. How many did we actually deny on applications that came before them? Because I can't think of too many that we actually denied. Sometimes we've had them make them a little bit smaller, sometimes they were shifted a little bit, but an accessory structure can be five feet from the property line. And most of the cases where we had the larger ones, they were considerably further away, including that one on Hamiltonian that was a art studio. The painter just made murals, so he needed a lot of space. And I don't remember the size of that one, but it was huge.

Shannon Folino: But how many garages do you have in the Town of Warwick that do comply with the size?

Marc Malocsay: So an accessory structure and in most cases they are labeled as garages. There's another one. East Ridge Road was the same thing on a guy that collected motorcycles. So again, as an accessory structure to the main—because if it's not, it's a lot harder to get a variance because then they have to go to the Planning Board, special use permits, et cetera, so most of them we've approved, most of them were further away from property lines. I can hardly think of any that we've denied before.

Shannon Folino: Sure. And that's what I'm saying is I hear you, but also you have to take consideration all of the garages that you don't even see that get built in the town that are of a compliance size. And I don't agree with a building this size at all, but I can be a reasonable neighbor and admit that if it's somewhere that's not going to impact me, then do whatever you want on your property. That's I just want to clarify, that's my perspective of where I'm coming from. Because it's been said that nobody would care. And I'll say it for the record, if you put it to the side, there's an existing cleared area to the side of this principal building that would fit this structure if it went there, yeah, I wouldn't come back before you, I wouldn't.

Glenn Ehlers: Mr. Havens.

Attorney Havens: Yes.

Glenn Ehlers: How can we possibly act on an area variance when we have a setback issue first? It would be my opinion that they should come back with a new application and we have to act on the setback variance first before we even think about acting on area variance. We can't give an area variance for a building that can't be where it is. I've been before these Boards many times in many different municipalities, and this is just completely backwards right now.

Attorney Havens: So it's a valid point that was just brought to our attention with respect to the fact that the public notice makes no mention of the variance with respect to siting on the property...

Glenn Ehlers: Yeah but...

Attorney Havens: ...it's not technically a setback issue; it's a siting issue, right? So...

Glenn Ehlers: So your front and side yard...

Attorney Havens: Right. Front versus side or rear yard. And on that point since it's being discussed in detail, I did want to provide one little bit of clarification. It's been mentioned by several different parties and on several different occasions over time, with respect to the location of the garage within ridgeline overlay district 164-47.1 subsection F(1) states that '*whenever practical*, structures shall be sited at the lowest elevation possible to be as visually inconspicuous as possible when seen from a distance and from lower elevations.' And it says 'from a distance and from lower elevation.' But more importantly, it says *whenever practical*, that's preparatory language from a legal perspective, meaning it's an expressed preference. Whereas the other provisions, and we have them throughout the code, they're pretty uniform: pools, hot tubs, garages, any of those accessory items are to be located to the side or rear of the primary residence

when it's a residential accessory structure. And when that's not the case, then they need to seek a variance on that issue. And the provisions that state that the accessory structure must be sited to the rear or side of the property as has been expressed state 'shall' not 'whenever practical' and therefore, from a technical legal perspective, there's a greater emphasis put on the side and the rear requirement being mandatory. Whereas with respect to the ridgeline overlay siting, it's more preparatory and it's based principally on how visible is this structure going to be. That's the whole point and premise of the ridgeline overlay regulations is how visible is this going to be. And with our siting considerations, we have to consider how invisible is it going to be from the protected view sheds and so forth, including a county road, which is what it sits on versus other potential locations.

Glenn Ehlers: But it's still going to require a variance, correct?

Attorney Havens: That is correct.

Glenn Ehlers: Okay.

Attorney Havens: So on that note I had also one other point that I wanted to make. And Mr. Napolitano, I'm glad you're here because hopefully you can provide this Board with an explanation. If not, you have the liberty to rely on your representatives that have been before this Board previously. We just granted an area variance for a garage on 55 acres for a primary residence that never had any garage before. It's been identified previously that your house has a three-car garage attached to it physically, and now you're seeking an additional 4,500 square feet of garage space. When this Board grants a variance, one of the things that they have to consider is what are the practical difficulties that necessitates granting the variance. What practical difficulties is the property owner going to face when they're seeking any given variance? And in this case, it would be multiple variances because it would be the siting location, it would be the square footage, and the reference to four times is actually an overstatement slightly. It is four times the allowable square footage, not your residence, but of an accessory structure; 1200 square feet is what's permitted under the code. And so it's a bit of an overstatement, but not off by much. So the question is, can you please explain to the Board what practical difficulties or financial hardship that you would face that would necessitate the Board actually granting the three variances you'd be seeking? That's floor area variance, siting variance and height variance.

Anthony Napolitano: I don't think I have the knowledge base to answer that question in a way that's going to satisfy you. All I can say is I do not have enough room for the items that I require in my three-car garage. And it's an accessory structure.

*Inaudible - Several voices at same time*

Sabastion Carlton: ...understand that basically in the off-street parking code, you guys are only using one section of the code and not the entire off-street parking code. Because as David illustrated, if we are using the off-street parking code, to be reasonable we can't just cherry pick. It's just like in the building code. Or if you are using, for example, existing or proposed, once you move from one section of the code to the other, you can't just cherry pick different parts. So if we're using off-street parking, then that means we're able to reduce the building size to 1800 square feet because there's a large portion of it that's just storage and the rest of it is used as parking. So I don't think that's necessarily strikes a variance if the building then is smaller if we're using off-street parking guidelines.

Attorney Havens: Well the point being even if we were to interpret it the way you present...

Sabastion Carlton: It's not interpretation. I'm talking about what the code says.

Attorney Havens: It is an interpretation. That's what this Board does. They read the code and they say, well how do we interpret this? That's part of the fundamental responsibility of the Zoning Board of

Appeals is to review the code, look at applications and interpret the code to determine how this application fits within the zoning code and what's permissible and what's not. What requires a variance, and if so, by how much? So even if my point being, hypothetically speaking, even if we were to accept your interpretation of the code under off-street parking regulations and by your own admission without having any drawings or calculations in front of me, you stated it would be 1800 square feet. It still requires a variance. We just had to do a variance for somebody that wanted 240 square foot variance. <Inaudible— Sabastion Carlton begins speaking>...

Sabastion Carlton: Yeah. But if we wanted 1800 foot square we're allowed two structures.

Attorney Havens: My question, what is the practical difficulty?

Sabastion Carlton: Well, right now Mr. Napolitano is renting the building across the street to just store stuff. And he's trying to consolidate his lifestyle and have his stuff closer to him. So that building, I'm not sure what size it is. And I believe (turns to ask Anthony Napolitano) you have a couple other storage units right now with...

Napolitano: Four.

Sabastion Carlton: ...four storage units including that building right across from his driveway, which I think it was a garage?

Marc Malocsay: Body shop.

Napolitano: Body shop.

Sabastion Carlton: Exactly. So it's just so that he can have his stuff on his property. And there's one other point I want to make about the visual EAF. The visual EAF is very clear. It says, 'when viewed from scenic routes', it doesn't say county highways and Warwick has a scenic route map. That's not considered a scenic route.

Attorney Havens: While it's not specifically identified within the formal traditional provisions of the ridgeline overlay regulations, part of the ridgeline overlay regulations requires consideration of the visual EAF. And the visual EAF when we're considering ridgeline overlay regulations requires us to consider views from a county road. So indirectly that is the case.

Sabastion Carlton: When you read it because it actually gives you a list of items and it says...

Attorney Havens: You've made your point. We can agree to disagree on that issue. Give me one second...(asking Diane Bramich) you had a comment?

Diane Bramich: No I'm alright, I'm with you.

Shannon Folino: Sorry. I just have one more comment that I didn't get to say about the height because it was brought up. Marc, you had asked about if I felt confident with the height. The architect presented to you that the height based on the finished grade would be less than the 25 feet. But if you look at the plans, and I know you have them before you, this is what I was trying to express earlier. Sheet A.02, the three car bay portion, that roof slope is shown as 5 on 12. And that's,

Attorney Havens: There was, I'm sorry, there was an updated revision that shows it in the May 6th drawings as 8 on 12. I saw that and then there was an 8 on 12...

Shannon Folino: Okay.

Attorney Havens: ...that was submitted.

Shannon Folino: Yeah. Because the documents that we received did not say that. So I was just going to say I'm not confident in the heights that are being reported. And then I just want to state for the record, section 164-47.1 F(3)a this is in the ridgeline overlay requirements, and this is for visibility. "All structures shall be sited to avoid to the greatest extent practical occupying or obstructing public views of land within

the RL-O district. Public views shall be considered to be from any location listed on the SEQR Visual Environmental Assessment Form Addendum (V-EAF) pursuant to 6 NYCRR 6 17.20 Appendix B. These locations are frequented by the public and offer unobstructed views of the Town's ridgeline landscapes. Visibility shall be measured views a condition of no leaves on the trees." So that's verbatim the wording in the code. And I know that you're in agreement with that but and that's all I have on...

Attorney Havens: On item number 1 of the visual EAF, county roads is listed as one of the views we have to consider on the visual EAF.

Shannon Folino: Understood.

Marc Malocsay: So on the shortened version of that, I brought this up at a meeting that the whole idea of the ridgeline overlay was when you're at the Bellvale Creamery having ice cream and you're looking across the valley to Distillery, you don't want to see the lights, you don't want to see the taller buildings. I'm just saying Distillery, but in any place that's above the elevation of 600 feet. So that's the shortened version of why that's in there and what it says.

Shannon Folino: But the code doesn't say consider the views from Bellvale Creamery. That's what I'm not understanding.

Marc Malocsay: No...because no matter where you are in Warwick, the idea is when you're looking at elevations, you don't want to see anything.

Shannon Folino: Sure. And I think this comes into play with this application. It's like they're <inaudible> out development.

Marc Malocsay: I'm agreeing with you.

Shannon Folino: Okay. I'm just saying it's hard because you go back and forth and you're right, that's I think is representative of a good Board member who's paying attention to everything that's happening, but sometimes it's hard to follow. But you said Bellvale Creamery.

Marc Malocsay: I used it as an example. From there you can see so much of Warwick. The idea is that you just want to see, right?

Shannon Folino: Sure. Okay, thank you.

Attorney Havens: Is there any other specific comments from the public hearing? None? My recommendation, because we do have another application, people sitting here waiting, is close the public hearing and adjourn this for determinations at the following meeting.

Chairman Jansen: Okay.

Marc Malocsay: Do you need a motion?

Attorney Havens: I would, yes.

Marc Malocsay: I so move.

Chairman Jansen: So we have a motion to close the public hearing.

Attorney Havens: Close the public hearing and adjourn for determinations of the following meeting.

Chairman Jansen: Okay.

Diane Bramich: Second.

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

Board Members: Aye.

Chairman Jansen: Anyone else?

Board Members: No.



Glenn Ehlers: Mr. Havens, we're going to continue this without requesting a new application?

Attorney Havens: Mr. Napolitano, would you prefer to submit a new application requesting a specific variance for the location of where you've proposed your garage or would you prefer the Board to consider it as submitted?

Anthony Napolitano: I'm going to have to think about that and I can get back to you quickly if you don't mind.

Attorney Havens: Fine.

Napolitano: Thank you.

Attorney Havens: Yes.

**PUBLIC HEARING OF Lands of America, Inc./Jeffery Sapanaro** - regarding property located at 792 County Route 1, Pine Island, NY 10969, and designated on the Town tax map as Section 3, Block 2, Lot 14.2 and located in the LB and TN-O districts for an area variance from the Town Code §164-46 (J)(13)(a) permitting the existing conversion of 2,050 sq ft. of commercial ground floor space to residential space in an existing mixed-use building where residential space is ordinarily permitted, but limited to the second floor of such mixed-use buildings.

*Representing the Applicant: Kirk Rother*

Chairman Jansen: Please identify yourself for the record.

Kirk Rother: Good evening, Mr. Chairman, Kirk Rother representing Jeff Sapanaro, sitting front and center. We have a nice complicated application for you this evening.

Chairman Jansen: Please.

Kirk Rother: So Jeff purchased a property at 792 County Route 1 roughly two years ago. Mixed use building of commercial and residential, roughly 8,000 square feet. It's on the corner of Pine Island Turnpike and Liberty Corners Road right across from Orange County Automotive. I'm sure the Board is familiar with it, commonly known as the Green Valley Tack building. When Jeff purchased the property, the building has a site plan approval from June of 2000 Planning Board and permitted uses in the zone allow mixed residential commercial. However section of the code, which I cite here in the application, 164-46J(13)(a) limits the residential uses in the mixed use building to the second story of the structure. When Jeff purchased the building, there were two office spaces on the ground floor. One had already been converted to an apartment that was being used by the prior owner's son. The second space was vacant. As I'm sure the Board is aware, with Covid the office space demand plummeted. Jeff wasn't able to rent the office space for several months. So he converted the second space into an apartment also. Now when I say converted, he added a sink and an oven really is what you did right, Jeff?

Jeffrey Sapanaro: Just a sink.

Kirk Rother: A sink. Physically the structure, I submitted pictures to the Board. I have a few others here if you want so you can know which. These are the doors that we're talking about that are two that contain the residential uses in the building. There's no physical change to the outside of the structure. I pointed with red arrows on the door so you can see which two doors are the residential ones.

*Board Members review photos and comment amongst selves*

Kirk Rother: There's no physical change to the building whatsoever from the outside. So Jeff wanted to have a tenant move into one of the other commercial spaces. The Building Department denied him because he has an open violation. So we're before this Board tonight to request an area variance to allow the residential use on those two ground floor spaces.

Marc Malocsay: Ok. Before he says anything...I'm under the impression that if we can avoid giving a variance through whatever, it's better than giving a variance. With that said, you are moving from a commercial application to something that is lesser, being an apartment residence. I always thought that that was allowed with the Planning Department. You could always move to be something that's more restrictive in nature. So do we need a variance?

Attorney Havens: We do and I can explain why. So first of all I just wanted to note for the record that prior to providing a summary, Mr. Rother did in fact present the certified return receipt proof of mailing for the notice of hearing to the secretary. So for the record that's in there. We have an interesting application here that I don't see really much of any other circumstance where this would happen with the one exception of a mixed use building. And this is because there's only two properties under the town code that I'm aware of that permit more than one primary use essentially. And that would be farming when you have a primary residence on your farm, and mixed use. Under the mixed use regulations, it specifically authorizes only in the LB district, which is a very small district, and they happen to be in the LB district. But mixed use buildings are authorized only in the LB district. And I checked all the other provisions, 164-46J that are applicable to a mixed use. And the only issue that they have is the fact that under the traditional neighborhood overlay regulations, which this falls under as well as in the definitions of mixed use property, the code states that the lower floor is to be used for various commercial purposes. The upper floor for residences office space, it can be commercial or residential. And those are provisions that literally apply only to a mixed use building. There's no other use that I found; it's the only mixed use authorized other than farming on your primary residence. And so here's the reason why we need a variance. Okay?

Marc Malocsay: And it's not a use variance?

Attorney Havens: It's not, and this is the only reason why it's not a use variance. When I first looked at this I immediately thought, 'this is a use variance, it's the wrong application.' And then I had a conversation with Mr. Rother and we discussed it and I looked at the code a little more deeply and he helped me realize that what they're seeking is not a change in use. Use applies to the property itself or the building itself, not a room within the building. So if you look under 164-22 Terms Defined: use is "the specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained." And then special use—because mixed use requires a special use permit even in the LB zone, so it is a special use—is "A use which is deemed desirable for the public welfare within a given district or districts..."...and here we have the TN-O and the LB district, "...but which is potentially incompatible with permitted and accessory uses provided therein. A special use shall be subject to authorization and plan approval by the Planning Board pursuant to the provisions 164-46 of this Chapter." A use applies in every instance to a lot or a building, not a particular room or part of a building. With this one exception where it doesn't, where this one provision applicable to mixed uses says residences can only be on the second floor of a mixed use building. So essentially what the applicant is asking for is a change of location, of a permitted use within the same building on the same lot where this use is a permitted use. Residential is permitted within the building. It's just he's looking for first floor instead of second. So it's like front yard instead of backyard. It's an area variance for a permitted use.

Marc Malocsay: So assuming we give the variance, what will the building be then? What will be in the building then?

Jeffrey Sapanaro: Same as it is now.

Marc Malocsay: Which is...?

Kirk Rother: Green Valley Tack is still a commercial space. The space to the left of Green Valley Tack is...that's where Over The Moon wanted to move in, right?

Jeffrey Sapanaro: Oh, to the right of Green Valley Tack I have another tenant wanting to move in, but they won't let the new commercial tenant move in because I have this violation <inaudible>.

*Inaudible — several voices at same time*

Marc Malocsay: I got it. Okay.

Attorney Havens: So you're still going to have substantial commercial use on the ground floor. And you'll have residential on the upper floor, but they want to use two small sections of the ground floor for residence, when the code says a mixed use building residences are only allowed on the second floor.

Marc Malocsay: So it sounds pretty easy, but I'm going to ask you a question now. Why? I'm going to give you an example. Pools have to be 15 feet away from a house, that's what the law says. Why? Because we can't answer that question.

Attorney Havens: I can answer it for you. I looked it up. One second.

Marc Malocsay: Because what I don't want to do is to give a variance when there's a real good reason...

Attorney Havens: It has to do with tradition and here's why we really don't need to adhere to it. 164-46J subsection 13 specifically defines a two-story mixed use building. "The Town Board has determined that it is appropriate to provide a place in the community for attractive development that serves community needs and to promote a place where affordable housing can be integrated with businesses in a *traditional* manner." Tradition: subsection (a) Ground-floor uses in a two story mixed building are limited to retail banks and other commercial enterprises. Subsection (b) Second-floor uses are limited to one and two bedroom apartments, business and professional offices and live/work units. Those are the most relevant provisions of the special use regulations under 164-46J. Under the traditional neighborhood overlay district regulations, subsection 164-47a, purpose: in conformance with the town of Warwick Comprehensive plan. The purposes of the traditional neighborhood overlay district are as follows: number one, to extend greater opportunities for traditional community living, working, housing, and recreation to all residents of the town. Number four, to encourage a diversity of housing styles, types, and sizes to accommodate households of all ages, sizes, and incomes. Number five, to provide a mix of uses including residential, commercial, civic, et cetera.

Marc Malocsay: I wrote most of that so I'm familiar with it.

Attorney Havens: So what it's all based on is the longstanding traditional notion of Brooklyn was built with commercial stores on the ground floor and residences above.

Marc Malocsay: The idea was that they would also be taken care of if there was there was always somebody there. So okay. So I just wanted to make sure that if we did this and then it was like a technicality and somebody did an article, we just don't lose. There had to be a reason, that's why I asked the question, so we're fine.

Attorney Havens: Now I have one other issue that this Board has to consider. So because it arguably, for a multitude of reasons, it's an area variance on a county road, it had to be submitted to Orange County Planning Department. Response received on April 1st, 2024 says it's a local determination but they include the following comments. Number 1, district purpose. The stated purpose of the LB zoning district is to encourage increased pedestrian oriented commercial and retail activity in the town's hamlets, and create a location where greater flexibility is provided for mixed use of commercial and residential uses within individual structures to provide a variety of housing options and lower business costs. The loss of economical commercial spaces seems to infringe on the intent of the district. That being said, there's an alternate intent of the traditional neighborhood overlay that says we should be more flexible in affording housing opportunities, et cetera. So we have two competing district regulations that apply to the same parcel.

Marc Malocsay: Right. So...

Attorney Havens: Comment number 2, affordable housing. Should the project move forward as proposed, the housing units should be affordable to people making 80% of the county's median household income.

Accessible housing options are imperative to seniors, young families, as well as those that serve the community such as police officers, teachers, retail workers, et cetera, and meets the intent of the District. Their recommendation is it is a local determination but they want us to take these factors into consideration.

Marc Malocsay: Did you understand you can't charge much rent? That's what it just says.

Jeffrey Sapanaro: I know.

Marc Malocsay: Yeah, okay.

Jeffrey Sapanaro: My friend lives in one of them. There's no way he's getting an apartment in Warwick for a thousand dollars.

Marc Malocsay: Yeah. Ok <inaudible—crosstalk>, I just wanted to make sure you knew.

Jeffrey Sapanaro: Yeah, no, but it is, it's lower cost apartments.

Marc Malocsay: Yeah. Now with what we're giving though, there isn't a problem a few years from now that it can revert to the way that it was before because that's what the code says. So it could...

Attorney Havens: It would be permissible as of right because it's already authorized as mixed use.

Marc Malocsay: Okay. Right. Okay.

Attorney Havens: There would be nothing that would prevent the property owner from renting out the upstairs space as...

Marc Malocsay: Apartment?

Attorney Havens: Yes.

Marc Malocsay: And then the downstairs...

Attorney Havens: The downstairs space as office, business, retail, whatever.

Marc Malocsay: We're good.

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

Business Owner (Over the Moon): I'm the one that's trying to open the shop but the town won't let the change of use code for me to open my shop...

*Inaudible — several speaking at same time*

Business Owner (Over the Moon): ...allow me to move forward with my shop. So I would very much appreciate if you did that.

Unknown person from public: So you're 'Over the Moon'?

Business Owner (Over the Moon): Yeah I'm 'Over the Moon'.

Attorney Havens: That's public commenting, you're in favor of the application.

Business Owner (Over the Moon): Yes, I'm in favor of the application. And that would bring commercial business to the area and...

Jim Mehling: Increase pedestrian foot traffic.

Business Owner (Over the Moon): Absolutely.

Attorney Havens: The Zoning Board needs to discuss SEQR. This qualifies as a Type 2 application under SEQR 617.5(c)(18).

Jim Mehling: I make a motion we type this as a Class 2 action.

Diane Bramich: Second.

Attorney Havens: Thank you Jim, Diane.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: All right. So any other further questions or comments?

Marc Malocsay: No.

Attorney Havens: Considering the five statutory criteria for granting an area of variance, question 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 the applicant requests?" The applicant states no. And the reason given, "The structure is existing, there will be no change to the exterior." Does the Board agree with the applicant?

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 reason given as "market conditions for commercial office space in this location have resulted in the property owner not being able to rent space since taking ownership in October of 2021." Does the Board agree that there's no feasible method other than granting the variance?

Board Members: Yes.

Attorney Havens: Question number 3, "Is the requested variance substantial?" The applicant states no. And the reason given "existing building having a gross floor area of approximately 8,190 square feet that is currently used for mixed residential and commercial space proposes to convert two office units having a floor area of approximately 2050 square feet to residential use with no exterior change." Does the Board agree with the applicant that the requested variance is not substantial?

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 district?" The applicant states no. And the reason given is that the structure is existing and there will be no change to the exterior. Mixed use residential, commercial is a permitted use in the zone and for this parcel. Does the Board agree with the applicant that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Board Members: Yes.

Attorney Havens: Number 5, "Is the alleged difficulty self-created?" The applicant states yes. And the reason given, "The property was purchased by the current owner in 2021 with the intent to have a mixed use building. After many attempts to rent the commercial space, it's become apparent commercial spaces in the area are not needed and there's a need for residential space in this general area." Does the Board agree that the alleged difficulty is self-created?

Board Members: Yes.

Attorney Havens: Any further discussion or questions?

Board Members: No.

Chairman Jansen: Public hearing is closed.

Marc Malocsay: I'd like to move as advertised.

Diane Bramich: Second.

Chairman Jansen: There's a motion by Marc, seconded by Diane that we approve as advertised. All in favor?

Board Members: Aye

Chairman Jansen: Any opposed? Motion carried.

Mr. Malocsay makes a motion to adjourn the ZBA Meeting of May 28, 2024.

Seconded by Ms. Bramich. Motion carried; 5-Ayes and 0-Nays.