

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Jim Mehling

Marc Malocsay

Chris Daubert

Mary Garcia, ZBA Recording Secretary

**PUBLIC HEARING OF George DeGraw** - regarding property located at 50 Brook Trail, Greenwood Lake, New York, and designated on the Town tax map as Section 72 Block 8 Lot 2 and partially located in the SM district for an area variance permitting the pre-existing non-conforming 10' x 20' accessory carport to be located less than 5' from the front property line where a 30' setback is required.

Chairman Jansen: Anyone here for the George DeGraw hearing? That was pulled off the agenda at their request and it was for the variance permitting a pre-existing 10x20 accessory car park. They're going to be removing it in the next couple of days and we will hear from the Building Department about that one. Okay?

Attorney Havens: I believe officially they've withdrawn the application.

Chairman Jansen: Right.

**PUBLIC HEARING OF Frances & John Allen and Frances Lee Galardo** - regarding property located at 73 Liberty Corners Road, Warwick, New York, and designated on the Town tax map as Section 11 Block 1 Lots 18, 19, & 20 and partially located in both the SL & AI districts for area variances in relation to a lot line change permitting the lot area of Proposed Lot#1 to be 1.594+/- acres instead of the required 3 acres; and permitting the front of the pre-existing non-conforming dwelling on Proposed Lot#1 to be located 16.8' from the front property line, where a 50' setback is required.

**Continued from the 8/28/23 ZBA Meeting.**

Chairman Jansen: And we heard that one at the last meeting and we were waiting for a response from the County.

Attorney Havens: Yeah. I checked with the Planning Board secretary and as of today there was no response from the County. The GML 239 referral was made on August 18th so we're beyond the 30 days and we can move forward without County input.

Chairman Jansen: Okay. So I believe the public hearing on that was closed?

Attorney Havens: No, we need to open the public hearing. Last month we passed a motion that typed the action as a Type 2 action under...no, I'm sorry. Yep. We typed the action as a Type 2 action under Section 617.5C .16 and 17. So we just need...the public hearing was open. We typed the action but we couldn't close it because we didn't have a response from the Orange County Planning Department. There was none received and therefore we already received comments and details with respect to the site planning. Does the board have any other questions with respect to the site planning that was addressed at the last hearing?

Marc Malocsay: No.

Jim Mehling: No.

Attorney Havens: Okay. Does any members of the Board over here have any questions on the site planning? Okay. So does the ZBA needs to consider to determine whether or not a site inspection is necessary?

Board Members: No.

Attorney Havens: ZBA to consider whether any use restrictions or other conditions need to be imposed?

Marc Malocsay: No.

Jim Mehling: No, sir.

Attorney Havens: Alright, then you're ready. If there's no further comment from the public then we're ready to close the public hearing.

Chairman Jansen: Anyone from the public that wants to address this application? If not, I'll close the public hearing. Are you going to do the criteria?

Attorney Havens: Yep. Alright so with respect to the application of Galardo and Allen for a lot line change covering the 5 criteria for approval of an area variance, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of any variance that's requested? The applicant states no. And the reason for the no answer is "No new driveway entrances are proposed, just a realignment. No changes proposed to Lot 1, existing dwelling, or setback. Lot 2's new dwelling will be over 200 feet from any existing neighboring buildings, which are mostly single family residential uses, the same as the proposed use." With respect to question number two, "Can the benefit the applicant seeks be achieved by some feasible method other than the variance?" The applicant states yes with respect to area and no with respect to setback. And the answer for that is "For Lot 1 to

meet it's area requirement, Lot 2's dwelling would need to be double the distance from the street requiring twice the length, more expensive paved driveway, and 50% more ground disturbance. Lot 1 cannot meet the setback requirements without its dwelling being removed and rebuilt because it's pre-existing non-conforming. With respect to question three, "Is the requested variance substantial?" The applicant states yes. The answer for that statement is "Both variances are for significant percentages of the requirements; however, the proposed lot line change will decrease or keep the same overall nonconformities". I want to take us a step back. I just realized I forgot to have the Board answer each one of these, so we need to go back. Will an undesirable change be produced in the character of the neighborhood or a detriment to the nearby properties be created by granting the area variance requested? I've already explained to you the applicant stated no, and the reason...

Marc Malocsay: And I agree with the applicants.

Chairman Jansen: We all do.

Jim Mehling: Somewhat.

Attorney Havens: Everybody agrees this is no?

Marc Malocsay: Yes.

Jim Mehling: No.

Marc Malocsay: Correct.

Jim Mehling: Yes.

Attorney Havens: With respect to question number one, can the benefit the applicant seeks be achieved by some feasible method other than the variance? They stated yes with respect to area, no with respect to setback.

Chairman Jansen: We agree with the no.

Board members: Agree.

Attorney Havens: Agreed. With respect to question three, "Is the requested variance substantial?" The applicant states Yes.

Board members: Yes.

Attorney Havens: Question four, will the proposed variance have an adverse effect or impact on the physical or environmental condition in the neighborhood or district? The applicant states no. And the reason stated is less than one acre of disturbance is proposed for Lot 2's new dwelling with most of that area previously cleared. No changes are proposed to Lot 1's existing dwelling. So no impact is possible for that. Does the Board agree with the applicant's statement that the proposed variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district?

Board Members: Yes.

Attorney Havens: Question five, "Is the alleged difficulty self-created?" The applicant states yes. With respect to area? No. With respect to setback? The stated reason for the answer is "The applicant's acquired tax Lot number 20, which was undersized so the lot area non-conformity is self-created. Tax Lot 18 is not undersized but is black dirt so it's not buildable and is not contiguous with tax Lot number 20. The proposed lot line change will increase the overall conformity, but it was not possible to eliminate all nonconformities. Lot 1's exiting dwelling was built circa 1875 so it's front setback non-conformity predates zoning and is therefore not self-created. Does the board agree with the assessment...

Board Members: Yes.

Attorney Havens: ...of the applicant?

Board Members: Yes.

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

Diane Bramich: I would make that motion.

Marc Malocsay: Second.

Attorney Havens: For granting or denying granting?

Diane Bramich: Granting.

Marc Malocsay: Second.

Chairman Jansen: Seconded by Marc Malocsay, any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Thank you, sir.

Marc Malocsay: Thank you.

Jim Mehling: All done.

**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 8/28/23 ZBA Meeting.**

*Representing the Applicants: Dennis Lynch, Attorney and Sabastion Carlton, Architect*

Attorney Lynch: Good evening; would it please the Board <inaudible> any place I stand or would any place do? My pleasure to be here for you tonight. The first time being, I'd like to basically show you what we've done. We have neighbors that have raised questions and we've done things to address those questions. I would like to say right from the start though, is that I'm proud to be here because I see the American flag here. And as far as I know, this town and this country still respects property rights. And as your Council well knows that when you have zoning codes, those zoning codes are construed in favor of the property owner and against the municipality. Why I say that is I read from the prior minutes that there was a question about a barn. There was no question that my client took down a barn. And there's also no question that a barn is not mentioned in your code. It's not defined in your code.

Mary Garcia: Excuse me. I'm sorry, can you state your name please?

Attorney Lynch: I'm sorry. Dennis Lynch.

Mary Garcia: Thank you.

Attorney Lynch: We bring that to your attention because a lot of what's following here flows from people thinking that a barn is a prohibited use or not allowed in your code. To the contrary, a barn is something that is not regulated. And you have beautiful barns here throughout this town, I've seen it many times as I pass through. So I ask you to understand that we really are here about a barn. We did file an application that mentions a garage because we want to mitigate our damages. We don't want to have litigation involved with this if we can help it. But reason I bring it up is when you hear things like a garage and you look at things like off street parking spaces, that's for a garage, it's not for a barn. Our particular structure is on 16 acres. I have an affidavit I prepared which I'll submit to Council before we conclude our application and we welcome the public comment. We just want to give you an idea of what we have up front. But trying to fit a barn into a garage application presents things that I think are arbitrary **fictious**, like applying off street parking calculations. I think you'll see that we've met the requirements of even for a garage. True, a garage has a limitation of 1, excuse me, 1,200 square foot per for accessory structure. We've kind of rolled them into one for a 3,900 I think 50 square foot structure. And if you do want to use your off street parking calculations, what you'll find is that we are allowed to deduct from the square footage—it's in the code. And I'll give your Council the citation if he wants later on but it's in your code under the definition of gross floor area, Subsection 1, that we can deduct the square footage of the vehicles that we're parking there. So your code allows three automobiles per parking, per accessory structure. We could do three. We don't want to do that. We do want to do one. But if you use that, your code on the parking calculations, you'll find that we're below the threshold. The threshold total for accessory structures is we could have three or...I'm bad at math, otherwise I would've been an accountant, but it's 3,600 square feet and we're about 3,950 square feet or thereabouts. But if you deduct those nine parking spaces, we're under what the requirements are. I'm not here to confuse things, I'm not here to set things different than what the path that we're on right now, but I have had the pleasure of being before you. If I had, it would've been a different application. But with your permission, I'll ask our architect to make a presentation of what we've done to address these issues. Then we welcome the public comment, and

after the public comment, we request Counsel give us our due process rights to rebut anything that has been mentioned. Unless there's questions from you right now, I'll sit down and I want to thank you for your time this evening so far. Counsel I'm sorry, go ahead.

Attorney Havens: Yeah, Mr. Lynch, you had submitted a letter to my office today with respect to a few specific legal concerns. Before we get into any presentation from the applicant beyond what you've already presented I think it may be necessary for us to address some of those concerns that you raised.

Attorney Lynch: I wasn't addressing concerns, I was addressing concerns raised by others. It was a letter sent by one of the neighbors to you directly, I believe.

Attorney Havens: Yep.

Attorney Lynch: I responded to you directly and that was my response to that.

Attorney Havens: Okay. So in your letter you raised a concern about an expressed concern that was raised by a neighbor regarding a potential conflict of interest. And I have discussed that issue with the Chairman as well as the Board Member in question. And I'd like to provide the Board Member in question an opportunity to address the issue for the public.

Attorney Lynch: Please. I have no objection whatsoever.

Chris Daubert: Yeah, so I worked for the owner before and then...

Attorney Havens: Which owner?

Chris Daubert: The prior—Don Cosmo. The prior,...

Attorney Havens: The current owner, or the prior owner?

Chris Daubert: The prior owner. I worked for him, Don Cosmo. And then when Tony bought the property, I continued on service of mowing the grass and doing other things for him. But I don't have nothing to do really with the building and the barn. I'm not doing that part.

Attorney Havens: So Mr. Chairman, I'd like you to ask the Board to deliberate as to whether or not Mr. Daubert's existing arrangement as the landscaper for the applicant creates a conflict of interest sufficient for Mr. Daubert to recuse himself.

Attorney Havens: Do you want me to comment or do you want everyone else to comment?

Attorney Lynch: I'd like you to pull the Board.

Attorney Havens: Okay. What do you think? Is there a conflict of interest?

Jim Mehling: Myself, personally? No. I don't...

Chairman Jansen: Marc?

Jim Mehling: ...I've known Chris a short period of time, but I consider him to be a very honorable and decent man. And I know that given the circumstances and climate surrounding this application, that being the gentleman that he is, if he felt there was any cause for concern or alarm, he would do the standup thing and recuse himself.

Marc Malocsay: Exactly.

Jim Mehling: I do not bear witness against this man in any negative way, shape, or form. So I have no issue with him...

Chairman Jansen: Thank you.

Jim Mehling: ...at all.

Marc Malocsay: If a decision was made in favor or not in favor, and Chris were to benefit from that, I would say that there's a conflict of interest. But in the Town of Warwick, we know so many people and

we have different areas of expertise we need Chris on for, we'll just say on a landscaping and on some of these decisions, screening, et cetera. So if a decision is made and a variance is granted, would he in any way benefit from it? I can't...he's not building the building, and he's already been there as a landscaper, so I would say that if he's not benefiting, I'd say the answer's no.

Chairman Jansen: Diane?

Diane Bramich: I feel the same way. I've known Chris sitting on this Board for quite a few years now, and I find him to be a very upright person. He does not show anything that would be derogatory in respects to this application. I feel that he should stay on the Board for it.

Chairman Jansen: Thank you. And I feel the same way as the three of you do. I've known him for 20 or more years. It would be the same as saying that if in the future someday I might sell this guy a tree, I'm going to have a conflict of interest, that's bullshit.

Attorney Havens: Okay. So then we can move on with that?

Chairman Jansen: Yes. Sure.

Attorney Havens: If you can just give me a second. I have additional items I need to address with Mr. Lynch.

Attorney Lynch: I think we just want to highlight it. We have a long night and it will take as long as you want but the highlight to the changes are that the attic <inaudible> the attic was removed...

Sabastian Carlton: Attic height was lowered...

Attorney Lynch: Attic height was lowered,

Sabastian Carlton: ...based on the criteria for off street parking not being under 7 foot lowered height 6 foot...

Attorney Havens: I'm sorry. We will give you an opportunity to address the specific changes and details. But given the fact that Mr. Lynch submitted a legal letter specifically articulating certain legal positions on behalf of the applicant, we need to address those. Mr. Lynch, with respect to conflict of interest that was raised in your letter, the Board has addressed that. Do you still have any problem or obligation with the...

Attorney Lynch: No, I didn't raise it. I addressed what a neighbor raised.

Attorney Havens: Understood, that's fine. I just wanted to make sure the public had an opportunity to be fully aware and apprised.

Attorney Lynch: And you did this rightfully so, may I add.

Attorney Havens: With respect to the other legal issues that were raised in your letter, you referenced limitations of this Board not having the capacity to conduct architectural review citing Town Code Section 5-4. That particular section of the code only applies to the Architectural Review Board, it has nothing to do with the Zoning Board of Appeals.

Attorney Lynch: Could I address that please?

Attorney Havens: Sure.

Attorney Lynch: What I said is that we as a one-story, one family residence for accessory are not required to go to the Architectural Review Board, right?

Attorney Havens: This isn't the ARB.

Attorney Lynch: Right. I just want to make that clear.

Attorney Havens: Understood. And I don't think anybody on this Board has any interest in telling him what kind of siding to use.



Attorney Lynch: The only reason...

Attorney Havens: ...that's what the ARB would be doing.

Attorney Lynch: The only reason I bring it up is maybe I read your minutes from July 24th wrong, but I think there was some question about architectural issues. Now if I'm wrong about that, my memory is wrong; forgive my old age.

Attorney Havens: No. There's definitely architectural issues with respect to the size, square footage, height, et cetera, under code but not...

Attorney Lynch: Design.

Attorney Havens: ...design.

Attorney Lynch: Agreed, sir.

Attorney Havens: Okay. With respect to the scope of the ZBA's authority under town law Section 267B and town code Section 164-53[C][3] you've stated that the ZBA has no jurisdiction in any variance application to request information other than what's permitted under town law Section 267B and town code Section 164-53[C][3].

Attorney Lynch: I did say that for the area variance.

Attorney Havens: Understood. Yes. And with respect to those two provisions I have provided for you, there's a copy of each section of the code that you referenced, and...sorry, one second; looking for my copy. All right. In any event, I wanted to highlight town law 267-B regarding specifically permitted action by Board of Appeals. You referenced that our power is limited to Section 3 of such code. And Section 4 of that code specifically identifies imposition of conditions the Board of Appeals shall...

Attorney Lynch: I have no objection to that by the way. I can see you had complete imposed conditions. No objection whatsoever. I just was saying that the focus here is the area variance criteria that's all. I can see you have that power, you have other powers inherent, but I'm just trying to focus this on the criteria because as I read your minutes from last time, people that were objecting were talking about what could have happened in the past and why you have a bigger structure right now. None of that is relevant. None of that is evidence that is on this particular issue. What is on this particular issue relevant is the issue before you, not what somebody could have done in the past.

Attorney Havens: Okay. With respect to the two cases that you cited in your letter Joy Builders vs The Town of Clarkson...

Attorney Lynch: I cite many cases. I can charge by the citation to my client.

Attorney Havens: Yep. So the case of Joy Builders vs Town of Clarkstown, Appellate Division, Second Department, relates to the holdback of building permits as part of a subdivision application. And it specifically relates to the town's conveyance and dedication. The town was holding back building permits as part of a subdivision demanding the conveyance and dedication of private properties and streets to the town without consideration. I don't see any application of that particular case to our matter with the exception of the part of the holding that deals with legislative interpretation that we can address later if need be.

Attorney Lynch: That's all we're citing.

Attorney Havens: With respect to the other case that you cited Kamhi vs Planning Board of Yorktown Court of Appeals 1983. Again, with respect to that case, the holding of that case had to do with the mandatory conveyance of park land as part of a subdivision. That's not what we're talking about here. And that case specifically held the power to condition ownership and use of land contained in the statute

as a delegation of power to limit the transfer development and subdivision of park property. Not a grant of power to compel an uncompensated conveyance to the town.

Attorney Lynch: If I may Counsel, it's the issue of the delegation. What my point is I'm not saying it's fact <inaudible> that this Zoning Board has been delegated Congress of the Town Law and Town Code and when they go outside the delegated Congress's powers, that's where the issues come up. But you read the same cases, I just put an emphasis on something else. You're correct in how you read that and I believe I'm correct for the purposes I cited.

Attorney Havens: Alright; well we can respectfully disagree as to the applicability of those cases to this particular matter. I didn't find a single fact in there that was relevant to this particular case.

Attorney Lynch: Delegation of powers, that's my point.

Attorney Havens: Okay. And under delegation of powers, specifically Town Law 267B, permits the Zoning Board of Appeals to review area variances. And with respect to those area variances, the Zoning Board of Appeals is required to consider specifically five criteria. And that is under 267B Subsection 3B in making its determination the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider: 1), and this is mandatory considerations—whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance. 2), whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. 3), whether the requested area variance is substantial. 4), whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. And 5), whether the alleged difficulty was self-created. So those are the mandatory criteria that this Board has to consider. And in order to consider those criteria, they have to consider various different elements of the proposed project that's being submitted. Now this particular parcel also happens to lay within the Ridgeline Overlay District and under town code Section 164-47.1 regarding ridgeline overlay. There are from my view—from my reading—13 specific provisions within that section of the Code that specifically apply to mandatory restrictions that this Board has to consider regarding the location of where the improvement is going to be.

Attorney Lynch: If I may, I read your memo from the past. I know all those 13 you actually have given the Board. I was here and I have wonderful people here in Town Hall on Friday who gave me a copy of your Memo to the Board. So I agree with that; I have no disputes to that.

Attorney Havens: Okay. So then you're not disagreeing with the fact because the letter you submitted gave the impression that you disagree with the fact that this Board has the authority to determine where this particular structure should be placed.

Attorney Lynch: Well we're going to disagree on that, okay? I think that...

Attorney Havens: Okay let me address that. This is ridgeline overlay district code section 164-47.1[F][1]. Constructed structures shall not differ more than 20 feet in any direction from building site locations shown on approved subdivision or site plans at the time of building permit application. Wherever practical, structures shall be cited at the lowest elevation possible, to be visibly inconspicuous as possible when seen from a distance or from lower elevations. Under Subsection 3A, visibility: all structures shall be cited to avoid to the greatest extent practical occupying or obstructing public views of land within the ridgeline overlay district. Public views shall be considered to be from any location listed on the Seeker Visual Environmental Assessment Form addendum VEAf pursuant to Article 6 New York Code Rules and Regulation 617.20 Appendix B, the section to NYCRR 617 has to do with seeker regulations for those who aren't familiar with it. And Subsection D1 within the ridgeline overlay district regulations specifically states

the provisions of this section shall apply to all applications for land use development, including subdivision special use permit, site plan approval, zoning variances, building permits for new residential dwellings, dwelling additions exceeding 300 square feet, and accessory structures exceeding 300 square feet on any parcel of land lying fully or partially within the mapped ridgeline overlay district. I could read you the other nine provisions that specifically grant this Board authority to review the specific building height, vegetation, how many trees need to be on the property, where the building shall be cited so they do not protrude above treetops and ridgeline of hills as seen from public places and roads. I could go on but I don't want to waste the Board or the public's time with additional details.

Attorney Lynch: But I'm going to indicate to you two things. One, we're a nonconforming use as a Board. It's good for a year to keep that nonconforming use. So I think those regulations may not apply. Second of all, there's a concept that I taught my Ford Law School class last week called Void for Vagueness. How are we to determine from that great grand depiction, what we can and what we can't do? But that's not for tonight; that's a legal issue. If you had called me when you got my letter, I could have addressed it, but I'll address it certainly in a memo after public hearing is closed and I'll give you the cases, but I just thank you for your observations and I appreciate it.

Attorney Havens: Okay.

Attorney Lynch: Would you like to have the architect talk about the changes or something else?

Attorney Havens: Nope. Go right ahead.

Sabastion Carlton: Well I thank you guys for taking up the time again to meet on this a third time.

Chairman Jansen: You're going to have to set that at an angle there so everyone can see also (*regarding the display that Sabastion Carlton sets up*).

Attorney Havens: And if you can also just identify yourself for the secretary.

Sabastion Carlton: I'm Sabastion Carlton from <inaudible> Architects.

Sabastion Carlton: So last time there was some questions raised in regards to certain points. I'm not going to go over the entire project again because I'm sure you guys are pretty familiar with the project. I would just like to highlight the concerns that were brought up and the changes that were made to kind of address these concerns. One was the concern about the attic height as far as whether this could be included into the total square footage of the building. We lowered the ceiling height in the attic to 6'9" making it not part of the total square footage. We also addressed the lower portion of the garage area by removing the doors and based on guidelines from the Building Department, this now will be considered a carport, which then limits those square footages to what we previously proposed to the Board. As was mentioned, the client does have the right to construct 3 separate buildings on the site, 1200 square feet. So considering that that was done, what we would really be asking for is like 300 and change in square footages in difference as far as square footage's permitted on the site which is like a 9% variance request. As far as to the ridgeline issues that was brought up, I think we have demonstrated clearly based on the section that was produced, which I'm sure the Board have for them. If you guys would like to turn to C201, which is the cross section of the site showing where the building is placed. This leads into the other issue that was brought up about maybe moving the building to the rear of the building of the site could be a possible option. If you notice that basically by moving the building up higher under ridge would be almost 75 feet higher putting it in our opinion, even in greater visibility because we're moving it more into that ridgeline overlay. We also produced a map which was taken from your comprehensive plan, which kind of shows where the site is in relationship to things like sensitive archeological sites in the area and also the scenic routes. You guys will know that this site is not even within a scenic route nor is there any sensitive areas identified within the site. So based on the changes, we also produced a schematic diagram of what Mr.

Napolitano's plans for the entire is, which also is one of the reasons why he wanted to place the building where it is. There's a graphical diagram that was presented to you guys.

Attorney Lynch: If I may just supplement. Thank you, Sabastion. The additional submission about other parts of the property, that was just at the request of the Board. We're not asking for any approval whatsoever, just so that's clear. We just wanted to show you why we placed the structure where we did. And the last thing to expedite the presentation, I have with your permission, Counsel, an original affidavit that I will hand up to you, that would be his testimony on those exact issues raised. I have additional copies—confirmed copies for the Board, and I'll leave one copy here for the public <inaudible>. And with that, we finish resubmission with presentation as to changes of this particular Board. We're going to give it to the Town as for the record of the ZBA and that just goes over. Counsel, you eloquently stated those criteria. That just covers that in the <inaudible> form, but unless there's any suggestion you want to add.

Sabastion Carlton: No, that was it.

Attorney Lynch: We're here for questions, otherwise we welcome the public comments. We'll be taking notes on the public comments, we're recording all the comments and Counsel knows we can do that. And we'd like an opportunity under due process to respond to the public hearing. Thank you very much.

Attorney Havens: If we could debate on what the calculated floor area was with respect to this application, and we needed to have that ascertained. One of the reasons why as was explained—for those of you who weren't here last month—as was explained last month, we needed to ascertain with detailed floor plans what the size of the building is going to be with respect to the square foot of gross floor area. In order to even type this action under seeker, we as the Zoning Board considering this application are obligated under state seeker regulations to type the action. In the prior initial application that was submitted two months ago, we typed that action as a Type 2 action based on the fact that it was an expansion of an existing barn. This is a new application where there is no existing barn and they're putting up a new building because the existing barn was removed and therefore we have not been able to type it yet, simply based on the fact that there was two different submissions with respect to the actual building permit denial that was being appealed in this application stated that a building permit application for a detached two-story garage, 5,549 square feet was being denied because it exceeds 1200 square foot as the maximum allowed square footage of an accessory building. The applicant took the position at last month's hearing that it isn't 5,549 square feet, but instead is only 3,952 square feet. And we had presentation and argument from a neighbor who, forgive me, you're an architect or engineer? I don't remember (*asking Shannon Folino*)...

Shannon Folino: Engineer (*pointing to self*), Architect (*pointing to husband Tyler Folino*).

Attorney Havens: ...both essentially arguing that based on the schematics and drawings that were submitted in support of the building permit, that this could be potentially in excess of 6,000 square feet depending on how it was calculated and what the height of the attic space was and so forth. In light of those arguments, the applicant had agreed at last month's meeting to reduce the height of the attic so that the attic space wasn't to be calculated as part of the gross square footage. Unfortunately from what has been submitted, I don't have the capacity—despite having the ability to read architectural drawings—I don't have the capacity to specifically identify as of yet what the square footage of this building is, and we need to know that in order to even type this action.

Attorney Lynch: If I may, Counsel?

Attorney Havens: Yes.

Attorney Lynch: I believe the law is very clear. You take the application as presented. If somebody from the public wants to submit a certified engineering or survey or even architectural certification showing that we are incorrect, that's the right of the public to do that. But we have before you the architect whose

firm has an engineer who based it off the survey, and the numbers you have right now are not only with that attic lowered, but also as you might have heard, and I know a lot of things went on tonight with the carport on the bottom, if there's a carport, as I understand your building code and how it's interpreted, it's not included in the calculations of the square footage. But in all due respect, I think you have to take the application as it is. If the public wants to come forward and submit certified architectural certified engineering certified survey that shows that it's not correct, then we will address those. But I think you have to take it as it is. I don't think you as counsel have to take on that rule of the arm of what the square dimensions are.

Attorney Havens: I don't. My job is simply to help advise this Board so that they can determine what they believe to be the square footage, because they're the ones that actually have...

Attorney Lynch: <inaudible> 3,952 square feet. It's in the plans.

Attorney Havens: Okay. And in the building permit application that was denied that we're specifically appealing, that your client is specifically appealing. It states it was 5,549 square feet. So which one are we supposed to go with?

Attorney Lynch: What we're talking at the one right now, when it was initially denied we looked into it, we made a presentation, we heard from the public some concerns. So we addressed those by taking down the square footage. The attic issue wasn't removed, that was my misstatement as a layman. It was...what's the word?...

Sabastion Carlton: And one thing, remember we didn't...

Attorney Lynch: What's the, what did we say...

Sabastion Carlton: The ceiling height.

Attorney Lynch: Yeah, the height was lowered in addition, and I don't know if your building inspector's here, we also took out the bottom portion that was a garage and made it into a carport. Now again, check with your Building Department, but I believe a carport is not calculated into the square footage. So to answer your question directly, we applied for something initially it was denied. We heard from the board, we heard from the public, we lowered the amount of square footage and we're representing our plans as 3,952 square feet.

Chairman Jansen: The only thing is the carport part of it. Is that down to the ground level or is it built up on the sides?

Sabastion Carlton: It's three sides is per the Building Department's guidance, it's three sides of the, the building is built over and the front is open. And just for the record, and I know this is in the minutes from last meeting, what was...

Chairman Jansen: That's not my interpretation of a carport, but go ahead.

Sabastion Carlton: ...what was submitted as far as square footage to the Board from the Building Department, that's not what was put there, somehow the calculation was changed. That was not what was on our building application.

Attorney Lynch: We're going to build it as presented, but the Chairman said his understanding of a carport is different, maybe the best thing is let's have a public hearing adjourn and after it's closed, hear from the Building Department. And again, if you're right, you're right. And if it's not correct, then we'll know that. But that's a critical issue because under 4,000 square feet as council just mentioned, that's a threshold for a Type 2 action. And we believe we're under that. Is that 3,500...

Sabastion Carlton: 3,900.

Attorney Lynch: That includes the carport, correct?

Sabastion Carlton: That's not including the carport because...

<Inaudible —crosstalk between Attorney Lynch and Sabastion Carlton>

Attorney Lynch: ...does not include carport.

Sabastion Carlton: ...we removed the doors and we opened...

Attorney Lynch: But again, if you want to do the car—the off-street parking situation, and I think I mentioned before, your Counsel, and this is in your code I just saw the code defines gross floor area at Section 164-43.2. I think it's 1...to *exclude* the automobiles. So every 1200 square feet we can have three automobiles. We tend to have the equivalent of three garages together. I'm bad in math but that's nine cars. And I'm told that every car has a dimension of 9x18. Could be wrong on that.

Attorney Havens: Please clarify for me, how do you determine that you're entitled to nine cars?

Attorney Lynch: Three cars that your code says in the garage, you can have no more than three cars. Your definition says no more than 3 cars in each garage.

Attorney Havens: Right.

Attorney Lynch: So we have, rather than build 3 garages, we have 3,900 square feet of what we consider to be the equivalent of garages; that would be nine cars. Now, if Council's taking the position that we can only have 3 cars in 3,900 square feet, well then that's your position.

Marc Malocsay: You lost me. Unfortunately our code allows for the 1,200 square feet for the accessory structure.

Attorney Lynch: Correct.

Marc Malocsay: So...and we're going to use the word 'accessory structure'. We're not going to use 'barn', we're not going to use 'garage.'

Attorney Lynch: I'm with you a hundred percent.

Marc Malocsay: Okay. It makes it a lot easier.

Attorney Havens: I'm with you.

Marc Malocsay: So why are you coming up with 3 accessory structures?

Attorney Lynch: Because we can build as I understand your code, 3 accessory structures on this 16 acres.

Marc Malocsay: Alright, just a second. (*Marc Malocsay turns to Attorney Havens and asks*): I didn't think they were limited to three, but our code does say allowing three accessory structures?

Attorney Havens: No.

Marc Malocsay: I didn't think so. (*Marc Malocsay turn returns to Lynch and continues*): That's where you lost me, because...

Chris Daubert: You can build more than three.

Marc Malocsay: It's unfortunate...

Attorney Lynch: Forgive me. I was trying to be modest, okay? So we could build more than three, right?

Marc Malocsay: Right.

Attorney Lynch: I'm just trying to be somewhat realistic. Then maybe we want to have 30 cars. What I'm saying is that we're trying to...this goes back to the whole thing of a barn, I'm with you on accessory structure.

Marc Malocsay: Right.

Attorney Lynch: Okay. Accessory structure has no limitations on its size on your code except for sheds, pool cabanas, and something else.

Marc Malocsay: I thought, see...

Attorney Havens: No.

Marc Malocsay: No.

Attorney Havens: No, not at all.

Attorney Lynch: Okay. Tell me...

Attorney Havens: Every accessory structure is specifically limited to 1200 square feet.

Attorney Lynch: Okay. As I saw the definition of accessory...

Attorney Havens: I'll provide you with a copy. Give me two seconds.

Attorney Lynch: Counsel, I take your representation. What I was saying is that I can have many accessory structures.

Marc Malocsay: Correct.

Attorney Lynch: Yes, so I can be unlimited in how many cars I have. That's the point I was making.

Diane Bramich: Can I ask...

Attorney Havens: If they're independent structures; what you have here is a single structure.

Attorney Lynch: Well, I think...

Attorney Havens: You can say that there's six different entrances to it, but it's one structure.

Attorney Lynch: No, I'm not saying that. I'm simply saying we could build along the wall of the property line of the neighbor that's objecting I guess unlimited accessory structures. We don't want to do that.

Attorney Havens: Understood.

Attorney Lynch: Now. So if we're limited to 1,200 square feet for accessory structure, my point—I'm sorry to make it correctly, we could build unlimited amount of accessory structures. We could build 25,000 square feet of accessory structures in a different, 25 goes in 1200 how many times? But that's the problem with when you have a barn you're trying to make it something else. I'm sorry, you had a question, ma'am?

Diane Bramich: I have a question on the carports.

Attorney Lynch: Yes ma'am.

Diane Bramich: The only thing you're doing is taking the garage doors off and you consider that a carport?

Attorney Lynch: I'm not an expert, but my architect tells me that he spoke with the Building Department. Mr. Carlton, can you...

Diane Bramich: Just by taking a garage door off, you're making it a carport? So I could take the garage door off my house and make the garage a carport.

Sabastian Carlton: Three of the sides...

Attorney Lynch: What's that...

Sabastian Carlton: ...three of the sides also below grade. So per the Building Department's guidance, three of the sides are below grade and the front is exposed...

Chairman Jansen: But they're not...

Sabastian Carlton: ...it's considered a carport.

Chairman Jansen: ...not down to the floor of the garage.

Sabastion Carlton: Correct. So all three sides, like the back is below grade on the side. Both sides is below grade and only the front with no doors.

Attorney Lynch: This may be a Building Department issue; we have no problem getting that input.

Marc Malocsay: I think at this point it's very important because if we're looking at the difference between going from under 5,000 to over 5,000 square feet <inaudible> at 4,000...

Diane Bramich: I'm looking at your...

Marc Malocsay: ...excuse me, 4,000. So...

Attorney Lynch: I agree with you.

Sabastion Carlton: You don't look at the side elevation. The side is also open as well.

Chairman Jansen: Partially open.

Attorney Lynch: Listen, I agree if you don't have the comfort as to what is the correct Building Department information, then after the public hearing or now, let's adjourn it, let's get it before the Board. We only want what's allowed, that's all.

Marc Malocsay: Okay. So Jan, he makes a valid point. I would like to open it up to the public because of things that were stated tonight. But we really can't go forward until we know the size of the building that we're giving the variance for. But I did want to hear from the public, but I also wanted to ask just a few more questions.

Chairman Jansen: And the building still is in the same location that was proposed?

Attorney Lynch: Yes, that is correct. And we explained why that has to be.

Marc Malocsay: Has to be or wants?

Attorney Lynch: We have plans for the rest of the property that we've actually given to you. It's in your submission. We're not asking for approval. But just to go back and say again, we disagree, it's okay. Councilman, what's the power to say it shouldn't be here, it should be there. I know you have the statute, but is that statute what they call constitutional? Is there something called 'Void for Vagueness?' One of the important issues everybody has—you would have it too, as the public would have, if we come before you with an application, we need to know what's in your code, what we can and can't do. And frankly, it's already <inaudible> to us. But on the issue of the carport, a hundred percent agree. Let's hear from the Building Department. Let's get that cleared up. I welcome the public comment tonight. We're not asking for a decision tonight. And as for the measurements, if you want to have a town engineer look at the measurements or your Building Department look at the measurements, we have no problem with that.

Marc Malocsay: Okay. So this was something that I was going to bring up too because you have a very valid point. The location of the building, an accessory structure can be 5 feet from a property line, I think you showed it at 15 feet on the last set of plans.

Attorney Lynch: We moved it back.

Marc Malocsay: So you moved it back just a little bit. But we're looking at something and we're going to use the number now at 4,000 square feet. So the only thing before the Board is the square footage going from 1,200 square feet to 4,000 square feet.

Attorney Lynch: Overall, yes.

Marc Malocsay: So the interesting part is there probably wouldn't be a lot of opposition if it were moved to a location that was further away. Yet that doesn't change us in what we have to do to give a variance for 4,000 square feet, because it's the only thing that's before the Board. The location, if—and we've done this before where somebody wants to put a building and there's opposition, we found that it could go



someplace else on the property, the neighbor isn't complaining anymore, and we have given these variances. So again, it's interesting that before us is a variance for the size of the building, and we're using the number at 4,000 square feet as opposed to the 1,200. So same criteria is going to apply, it's still in ridgeline overlay. But on the plans that you submitted, an area that without having everything else, I just looked at the topos last time, just below number 8, between the house, and number 8 is one of your more level pieces of property, but it's also considerably further away from virtually everybody's piece of property. I have to ask the question on why it can't go there.

Attorney Lynch: And the answer we gave before, but we'll look into it, we're not looking to see everybody goes sideways. If the neighbors that they know me now, I'll give my name and number, if they call me up maybe we could resolve some of these things. Maybe we can. And I know every Board, I've been doing this for 40 years. I was young and thin like some people here on this Board were many 40 years ago. And I've been doing this 40 years and having a clash helps nobody. But as I said from the beginning, that flag gives us property rights. And that's why...

Jim Mehling: But it gives neighbor's property rights too.

Attorney Lynch: Yes—what, sorry?

Jim Mehling: It also grants rights to the neighbors surrounding the property. And that's the crux that we find ourselves.

Attorney Lynch: I agree and I agree it does. The question is what are those rights? And we can define those. But that being said, I hear what you want. You like to have a compromise that works. We'd love to see it too. It turns out that a critical issue is I hear from your Chair and you also raised it, is what does the Building Department say? And the other member said a carport. We'll ask the Building Department to give that in writing to you. This is why you have that. We're not looking to get something we're not entitled to get. But again, we're just looking to find out what it is that we have to do per the law to get the approvals and adjourning this after the public hearing and getting that input, having your town engineer if Counsel wants that or your Board wants it or your building inspector to do the measurements, no problem. We have no problem doing that.

Chairman Jansen: So let me continue the public hearing. Is there anyone from the public and please, if you are going to have something to say please come up here, state your name so she can get your name and briefly tell us what it is that you're concerned about. Come on up.

Tyler Folino: I'm Tyler Folino and that's Shannon Folino.

Shannon Folino: So we have had the opportunity to review the resubmitted documents. I just want to start off, I didn't have this in what we're going to say. I just want to be clear, I meant no offense or disrespect to Mr. Daubert or any members of the Board related to the conflict of interest. I just knew where this application was headed and I didn't want there to be a potential situation that could have undermined the entire decision that's made, whether it's approved or denied. So that's where that was coming from. I just want to make it clear that there was absolutely no disrespect intended there. The second thing is related to something that Mr. Lynch had said in relation to the fact that the code says absolutely nothing related to barns and that barns are not in the codes, therefore they're not permitted or that's how I'm viewing it. That is not the case. 'Barn' in the Table of Uses is actually listed under A5, "accessory use A5" that's only permitted accessory to the primary use of number 14, which is like commercial agricultural operations. So by that, that actually does show that that is not a permitted accessory use for a single family home as the principal use for the property. The argument that the building that was there previously was a barn, I think that's probably open to interpretation. The building that was previously there was a shed, a garage. It was timber post with some galvanized metal siding. It was not a barn. When you look at the definition of a barn, which correct—the Town of Warwick does not define

barn. But just Googling definition of a barn that would not fit what a barn is intended for. So I just wanted to get that out of the way because I felt like that continued to be a reoccurring theme about this being a barn and nonconforming use or existing nonconforming use. And the reality is the structure that was there was not a barn and a barn is not a permitted accessory use. So, I don't want to belabor all the issues that we have brought up previously, but with the revisions to the drawings, there are a couple of additional things that have come to mind and been brought to the forefront of our concerns. We still feel and stand our ground that all the area that is proposed in this building should be counted towards the floor area because it is an "accessory building" and the areas are connected to the accessory uses—of which the uses still have not been clearly identified what this building and all of the area inside of it is going to be used for. If these multiple different uses were to be split up into individual buildings that were compliant with the maximum permitted floor area, all of those individual areas would count. And the argument they could achieve the square footage in three accessory buildings is not true because that would not include their carport on the lower level. That is an accessory building and accessory use. And the square footage would count. If I was going to the Board, sorry—if I was going to the Building Department to build a carport, I would need a permit and that square foot of that carport would be counted as what I'm going there for. So if I wanted to build a carport that was 1500 square feet, I would get a denial from the building inspector saying I have to come before this Board to build that carport. At the last meeting we expressed all of our concerns related to all the floor area and the applicant stated disagreed because of both the attic and the lowest level. The applicant has now added what I'm going to put in quotations as "ceiling joists" in the unfinished attic space. What is the purpose of constructing ceiling joists that are lower than your collar ties in an unfinished attic? These ceiling joists, they serve no purpose if the attic is just going to be unfinished. They also serve no structural purpose whatsoever. So if they were to just not install these during construction, I honestly doubt the building inspector would even flag it because there's the collar ties, which are that structural member of the gable roof. And then the ceiling joists are for the lower level which is your floor joist for your attic. That's the other structural member. So those ceiling joists that they've added in the middle, one third per gable serves absolutely no purpose and could not be installed, not be removed. And then you have all of this square footage that now would have to be counted based off of the definition of the areas. The Town of Warwick doesn't define an attic, but when you look up the definition, we have found that an attic is defined as a space or room just below the roof of a building. And that in section 164-22 of the Town of Warwick zoning code, a story is defined as "that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, the space between any floor and the ceiling next above it." And a half-story is defined as "any space partially located within the roof framing, where the clear height is not more than 50% of such space between the top of the floor beams and the structural ceiling level is 7'6" or more." Based on these definitions, this attic space would be counted as a full story. And we believe the intent of the zoning code is that the clearance height within an attic space is based on the clearance height between the floor and the structural ceiling, not an artificial ceiling that is being added into this unfinished space because that is not a conventional way of finishing out attic spaces and especially not so for unfinished attic spaces. Similarly, the lowest level being a basement or actually a cellar, if you look at the definitions of the town code should not mean that it does not count towards the floor area for an accessory building. Once again, a garage isn't counted towards the livable floor area of a house because that is a house and the garage is not the livable floor area of your home, but the floor area of a garage is counted towards the floor area of an accessory building because that use is a garage. If the application was just for the lower level would that roughly 1,600 square feet area not need to come before the ZBA for a variance because the floor area would be zero square feet? Since it is a cellar, I don't think that that's the intent of the zoning code. I think the intent of the code is very clear that the floor areas being utilized within an accessory building for an accessory use should count in their entirety. The reality is that the permitted accessory use <inaudible> first single family dwelling in row A17 in the Table of Use requirements garden houses,

garages, sheds, tool houses, playhouses, all are typically slab on grade foundations or just a gravel pad. They're usually a single story. They don't have basements, they don't have attics. Basements not being included in the floor area of a building is because that building is devoted for a habitable or livable area. And that basement area is not a habitable area for that home, not because they're typically the foundational elements of a house. So if they're not being used as additional living space in a house, they shouldn't count towards the floor area of a home. But this is an accessory structure and the garage space or carport space or whatever the applicant wants to call it is quite literally the use so that should count towards the floor area. How do you exclude the floor area of a garage or an attic when the garage and storage within the attic is the accessory use that this building is being classified under? That is clearly not the intention of the code. When looking at the five factors that needs to be considered when looking at a variance, we disagree with the applicant's responses on their application. We'll not run through their responses because we know that the Board either reviewed them or will review them but we want to provide the following responses from our perspective. This will produce both an undesirable change in the character of the neighborhood and would be a detriment to nearby properties and the overall intent of the zoning code. The size and volume of this accessory structure is in excess of any accessory buildings in the area. In fact, as the applicant pointed out, this structure would more resemble a house. The scale and appearance of a building will resemble a house and the density of it is that of a house. In the RU district houses need to be 75 feet set back from the side property lines and the size of this structure in and of itself is out of the character of the neighborhood. It is larger than the majority of the homes in the area, including the property owner's home, so it should have to abide by the same setbacks of a home. Allowing these variances would be a detriment to nearby properties as it is setting a precedent that abnormally large structures can get built wherever they want to get built. Also in this instance, the structure is set 15 feet off the property line that is shared with our property and will impact the peaceful use and enjoyment of our property, our privacy with the third story windows of this structure looking down over our backyard and our porch and ultimately affect our overall quality of life at our home and property. We question what sort of landscaping that the applicant or owner's intending to plant between the building and the property line they believe would adequately screen the structure that is over 34 feet in height, roughly 30 1/2 feet above the grade from our side of the property; the southern corner, because there's several feet of bamboo into his property that leaves maybe roughly 10 feet for him to plant some sort of tree or screening. And again, what height are you planting these trees? What is the full mature height? Is there adequate space between the building and the property line for that tree to achieve its full height? The second item is the benefit being seek by the applicant can be achieved by some other feasible method other than a variance. The applicant can put an addition onto the principal building structure and/or have several separate accessory structures or some combination of both that is within the confines of the code not requiring any variances and it would be less impactful to the neighbors and neighborhood than the application that is currently before the Board. The applicant does not have a circumstance related to this property or request as to why the application cannot comply with the maximum permitted floor area for accessory building outside of simply disagreeing with the ordinance itself and feels that it shouldn't apply to this property. The applicant talks about limiting the environmental impact by citing the structure in the same location as the previously existing structure. However, the previously existing structure was 1,124 square feet based on their initial application. So there will still need to be site preparation for an additional 2,828 square feet of footprint for the structure. And the applicant had already cleared trees within that additional area to prepare for this structure prior to obtaining the variances required. Citing this building to another location on the property where multiple compliant buildings would not have any greater environmental impact based on the amount of work that is needed for the full building area. I also don't think that the applicant looks at the code of what is required or permitted since throughout this process, the applicant has had several claims that were not permitted that have suspiciously made their way out of the application while the building has maintained the same.

It may not be what is before this Board tonight, but the applicant did submit a landscape plan showing the gardens on his property. And we won't get into the details, but I did want to make them aware that there are multiple aspects of what's being proposed there that are not in compliance with the code. The third item is that the variance is substantial. I think there's no question to that. A typical accessory structure is one story. The project is proposing a building of three stories and each story is housing a different use that would otherwise need to be in a separate building if constructing a typical accessory building. In total amongst all the floors, this application based on our calculations, is requesting just over 8,000 square feet of usable accessory space, which is approximately 566% in excess of the maximum permitted floor area. Even if we just look at the floor area for the main level in the lower garage, that 5,549 square feet total is approximately 362% in excess of the maximum permitted floor area. Lastly, the 3,952 square feet the applicant is so adamant as being the only floor area that counts is still 229% in excess of the maximum permitted floor area. The location of such an excessive structure just 15 feet off the property line where an existing neighbor's home is located is an external obsolescence for a property in this area. No one wants a huge building living over their property and if we are the only house in this neighborhood with this condition, buyers are going to be less likely to buy this house. This proposed building dwarfs the appearance of nearby principal buildings that are single family homes. At the end of the day, we don't plan on selling our property anytime soon and any noise from the structure is likely to disturb us and the reduction of privacy impacts our quality of life. We bought our house because we loved that area of town. Truly we both grew up here. I grew up on the outskirts of Pine Island. Tyler grew up closer to the village and that location was kind of the mesh of our two childhoods essentially. The houses are close to the village, so the convenience aspect, but the houses are all spread out. They're not on top of each other. We all have a lot of land which provides a lot of privacy amongst us all and this proposed structure would add detriment to the area and reduce privacy, which changes the character of the neighborhood. The fourth item is that the applicant is proposing to regrade a portion of the site which is going to have an impact in stormwater runoff around the building, which is directly adjacent to the neighboring property (our property). The current grading plan submitted by the applicant differs from what is being shown on the various elevations. So we are unsure at this point to what extent the applicant plans to alter the topography surrounding the structure and how they plan to handle the stormwater runoff associated with converting a large pervious area into impervious area. The last item is that this difficulty is entirely self-created. The owner willingly purchased the property knowing the size of the existing home and accessory structures, the maximum permitted floor area for an accessory building is 1,200 square feet which makes sense for the permitted accessory uses to a single family home. This structure is a luxury, it's not a necessity. There are ways for the applicant to achieve the end goal without being as impactful to the surrounding properties and neighborhood. An addition to the existing principal structure is a reasonable option proposing the structure closer to the existing principal building on his property as compared to on top of an existing neighbor's home. If there really is a need for an entirely separate building, there's also another option of how this could be achieved without being as impactful to the surrounding area and the viewsheds from the county road, which is included in the visual EAF of seeker. The applicant still hasn't clearly defined the uses in this building that are generating the need to be so large. Typical three car garage, storage <inaudible> square feet tool houses, garden houses, sheds, they're all structures that are typically smaller than 1,200 square feet. And lastly, I remind you that the largest standard storage unit that you can lease is roughly 10'x30' or 300 square feet. And that's advertised to be large enough to store all the furniture items in a four plus bedroom home. For this latest revision, it appears the applicant has converted the workshop space into a storage space. And by our calculations, the building has roughly 1,600 square foot garage in the lowest level, a 1,500 square foot garage and another 700 square foot garage on the main level. And then there's roughly 1,500 square feet of storage space on the main level and another roughly 2,000 square feet of storage level space on the upper level, which is being conservative for the interpretation of the upper level. This excludes all the staircase area

on the main level and upper level and then some of the storage on the upper level. So in total this applicant needs roughly 3,800 square feet of garage space in addition to his 1,080 square feet garage that's already attached to his house and 3,500 square feet of storage space and has not clearly indicated why there's such an excess of space needed. The previous owners were able to maintain the 16 acre property with the existing accessory structures that were already on the property. Most lawn care services drive from house to house with only a tow-behind trailer to store all the things needed to maintain properties of all sizes. So why the applicant needs over 1,500 square feet for what was previously identified as heavy equipment storage still remains a mystery. It should not become the burden and detriment to the neighbors and surrounding property owners that such an excessive structure be built as the owner did not consider his needs before purchasing the home and that the owner did not familiarize himself with the local zoning laws for what is likely to be built in the property. We want to leave the Board with some final considerations. If the RU district for a single family home doesn't permit a guest house that's larger than the principal building, then why would we allow an accessory building be permitted to be larger than the principal building? There are still things within the architect's plan that were submitted that make it very difficult to know what is actually being proposed because it's not accurate. And it also makes it clear to tell what does and doesn't comply with the code. We are concerned that the owner could change the use of the building without needing any further construction or at least any that is visible from the outside. That is where my question regarding what mechanisms in place for the Town to ensure that the owner or any future owners does or do not change the use of this building after this building permit is closed out. If the building is being used for something other than what it's permitted for, then the onus appears to fall on us as the neighbors to prove to the Town that this be the case. Even if we have suspicions regarding the use and how the internal components are being utilized, does the town actually have right to enter the owner's property and building if there are no active building permits? And when the owner and all of his friends are hanging out in the structure on the weekend light emanating through the windows making noise, really utilizing the accessory building for something other than the permitted accessory uses for a single family home or anything that has even been presented here tonight, what would the Board recommend that we do? Because we clearly can't trespass on to our neighbor's property to prove that this is the case and the Building Department isn't open. And even if they were, they have plenty of other things that I'm sure take priority over this complaint. So we're just going to have to live with this accessory structure being utilized as an entertainment space, an extension of his home because we can't prove otherwise. Approving this variance with undermining existing zone regulations by further encouraging further deviations where no unique hardship exists sets a poor precedent for other property owners in the neighborhood by allowing a structure that is larger than most of the single family homes in the area be constructed under the guise of accessory structure so close to a property line. As we're all aware by this point, the maximum permitted floor area for accessory building is 1,200 square feet. And the town finds that it's appropriate for that to be located anywhere other than the minimum front yard as long as it's no closer than five feet from the side yard or rear yard setbacks. There's no arguing that. And once we start to exceed the maximum permitted floor area, that is where we say that the Board needs to consider the impacts that that large of a structure will have on surrounding properties. Our property's obviously the most impacted, but it impacts others as well, some of whom may not even realize it at this point in time. It is reasonable to see this proposed building and say, 'okay, this looks like a house.' In fact it's bigger than most houses in the area, the owner of this property included. So it should have to adhere to the principal building setbacks or relocated elsewhere on the property where it is not as impactful to adjacent properties, the public driving by on the county road admiring the natural landscape, and in a more useful location for the owner himself for what he's saying is going to use this building for. It has been suggested that some of our statements are speculative of what may or may not happen. But from our perspective there is a clear pattern here. The original application was made where the applicant misrepresented the building as existing with additions. And when we called that out, it changed to being a new construction

building. Then the application was resubmitted showing a bathroom. And when the Town made a comment about they're not being compliance with the Orange County Department of Health standards, the toilet and sink were removed but the room for the bathroom was left on the plans. Then we expressed concerns about if the originally proposed uses were permitted accessory uses for a single family home, like a workshop, heavy equipment storage, et cetera. And it appears that that was also a misrepresentation because now the applicant has limited the use to garage and storage space even though nothing else but the actual footprint size and layout of the building has changed. It feels like the story of this building and what it is going to be used for is constantly changing to fit this application into something that it is not; there's not a clear representation of what this building would be used for that could or should be relied upon. As a matter of fact, Sabastion and my sister coincidentally found themselves in a conversation at the Taste of Work event as my sister works for a lighting engineering and design company. And Sabastion mentioned that this building needs stage lighting and described it as having space for the owner's guests to stay. The story has repeatedly changed and it's become very clear to us that this applicant only cares about the size of the building that is being approved because the uses have remained flexible while still maintaining the exact same size building. If this building is less than 1,200 square feet or was complying with the principal building setbacks, we wouldn't have any complaints. But this is just a very substantially large and excessive structure that would truly impact our quality of life. We have made suggestions of what we thought are reasonable requests and wouldn't be as impactful to us and our other neighbors. The other thing that I just want to mention before we open up to someone else is there's been a lot of talk about what the Board can and cannot do and I think in a way that's trying to be kind of intimidating towards the Board, but the actual statutes from the state's guidelines for what is within your right as the Zoning Board...

Attorney Havens: I'm going to stop you there. I can advise the Board on what they can and can't do.

Shannon Folino: Okay.

Attorney Havens: Thank you.

Shannon Folino: Can I make mention of the minimum variance necessary and the conditions portion? This is just saying that the statutes code <inaudible> what the courts have previously held and that's "when granting either use or area variance a Zoning Board of Appeals must grant the minimum variance that it deems necessary and adequate while at the same time preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community. Thus the Board need not to grant an applicant everything he or she has asked for. Rather, the Board is required to grant the only approval absolutely necessary to afford relief." I just say that because that's where our argument about the justification of all the space that he needs. He still hasn't shown why he needs all of this space. And I think that's important for the conversation and consideration for the Board because it's the responsibility of the Board to grant the minimum variance that you all deem necessary. It's not what I deem necessary, it's not what they deem necessary. It's what you all interpret as the necessary to meet the intent of what he's asking for. And then just the statutes and power of the Board of Appeals for granting a use or area variance to impose such reasonable conditions and restrictions as are directly related to and incidental to the **pro use** of the property. So while I understand that this application's not requesting any setback variances, they are requesting an area variance, which I've talked about. And based on the code, the town finds that a building up to 1,200 square feet can be as close as five feet to the property line for the side or rear yards. When you start exceeding that square feet by as much square feet that the applicant is proposing, that's when I think you really need to look at the setbacks of other properties in the area. And I think that that's a reasonable condition for the Board to consider. That's all, thank you.

Attorney Havens: Thank you.

Tyler Folino: Thank you.

Chairman Jansen: Thank you. Anyone else?

Shannon Folino: Actually I did have one more question if that's okay?

Attorney Havens: Yep.

Shannon Folino: It's a question for Sabastion, actually.

Attorney Lynch: This is a public hearing for the Board to consider it. If you want my number you can talk to me afterwards, I'm right here.

Shannon Folino: So I can't ask Sabastion a question.

Attorney Lynch: You want to ask me a question?

Tyler Folino: Sabastion.

Shannon Folino: Sabastion a question. The architect.

Attorney Lynch: This is for the public hearing, for the public.

Shannon Folino: Okay. Then I'm just going to identify something and the Board can decide if they want to ask the architect that question. On...

Attorney Lynch: You're welcome to talk to me after this meeting <inaudible>.

Shannon Folino: Okay, then I'm just going to make a comment about something that is incorrect and inaccurate on the plans that impacts the height of the building.

Attorney Lynch: Talk to the board please.

Shannon Folino: Okay. Tyler, can you bring up the plan that has the section?

Tyler Folino: Yes.

Shannon Folino: So just to further drive home, I do agree with what the applicant's attorney had said regarding possibly getting input from the town engineer/town planner because I do think some of these things are very technical. But on sheet C2 that was submitted by the applicant, when you look at the building corner of the south, the bottom right building corner, there's no proposed grading that's located within that area. That corner is located between the 652 and the 654 concord. So that means that the elevation at that building corner is 653. When you look at the elevations that have been submitted by the applicant, it's on sheet A302. They show that from the finished floor elevation of the building to where the proposed grade, which again, there's no proposed grade from that area, but for argument's sake they show that that difference is 6'4". They also identified that the finished floor elevation is 649. So when you add 6'4" to that, that's above 653. They're basing their height calculations off of an elevation that is higher on the outside of the building. And it also plays into the fact that they're saying that the building is actually varied more than it really is because those existing elevations of that corner are 653. They're not proposing any changes to the grade, but their elevation is showing that this is actually 654...655,4 inches would be the elevation outside of the building. So I do agree that it may make sense to loop in the town engineer or the town planner, someone who could look at that and truly verify that what is being shown is accurate. Because I don't feel that it is. And I know that we can agree to disagree, but I work in engineering so I know how to read plans. That's all.

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

Gary Goldstein: Good evening Members of the Board; Gary Goldstein. I live in the district. I'm a lifelong resident of the Town of Warwick, I grew up here. And my personal view, when somebody makes an application to the Board, they're looking to do an improvement to their property. We should look at it as how do we make it happen? Not how do we deny it. And I hear the concerns of the next door neighbor. Those are subjective views though, I'm looking at it objectively. I live about a half mile away from his

property. I go past his property every day and just from the presentation I heard from Mr. Lynch and I guess the neighbors acknowledged there was a structure in this location previously, whether we want to call it a barn, whatever we want to call it. Apparently it was an unsightly structure. I'm just hearing that there's a 3,950 square foot building structure that's going into place here and I don't see how it's not a benefit to the community. I've looked at the standards and I don't see anything that would indicate that it's a detriment to the health, safety or welfare of the community or the adjoining neighbor. It seems like it obviously would be a benefit to the property owner. I've been past the property, like I said, everyday. You really aren't even going to see where this building is when you're going by it on the road. But let's look at what is in the community right across the street for 20-some odd years. There was an auto body shop there that had nothing but broken down cars outside of it. Then more recently it was a septic system business. Now I think it's been painted like a brick red color and I think right now it's a vacant building. So I don't see how putting this structure here that's an architectural—well architecturally designed building—is going to be a detriment to the community. Further, I look at it as the town of Warwick is a municipal corporation. As homeowners, we're all shareholders in that corporation; I'm a shareholder. Every member in this Board that lives in the town is a shareholder in the corporation. If one of the shareholders is going to invest, what I would think would be a substantial amount of money in building a 3,900 square foot structure, that's his business, God bless him. It's going to benefit the community. It's going to increase the values within the area and within the District. If it benefits him and it increases the values, it's benefiting me, it's benefiting everybody else in the District. I would understand the concerns of the adjoining neighbor and that I'm not living there, they are. But this is a fairly wooded lot. There's a tree line that appears to go up between the two properties. I don't even know how visible it's going to be to the adjoining neighbor, quite frankly, all of the area, if not most of the year when the trees are full of leaves. So I don't know who it is, but if this property owner wants to put a structure like this on his property that's not going to be highly visible from the road, and quite frankly it might be more of a benefit if it was, and it's going to benefit his property, there's going to be a minimal effect on the adjoining neighbor, and I think it's going to benefit at least the surrounding community and the District where I live, I'm only a half mile away, then I'm all for it. Thank you.

Chairman Jansen: Anyone else? Yes.

Jeff Filipowski: Jeff Filipowski. I live at across at 41 Pine Island Turnpike, right across from Dr. John.

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

Jeff Filipowski:

Mary Garcia: Thank you.

Jeff Filipowski: I lived there before Tony moved in. I moved there when I was a kid, where the location is going to be. I leave my driveway every day. I'm not going to see it. No impact whatsoever. And I'm right across the street. So I don't mind him enhancing his property; I support any enhancement in Warwick. But I just want to let you know I can't see it and I'm right across the street, so...

Chairman Jansen: Thank you.

Jeff Filipowski: It's not going to impact me at all. Thank you.

Chairman Jansen: Anyone else?

Mr. Runnion: My question's to the Board. My name's Mr. Runnion. I'm a resident of the District. I work with the Federal Government; privacy is very important to us.

Mary Garcia: I'm sorry, the last name...

Mr. Runnion: Runnion.

Mary Garcia: Can you spell it please?



Mr. Runnion:

Mary Garcia: Thank you.

Runnion: Privacy is very important to us. I've heard on two separate occasions of the inquisitive nature of what Mr. Napolitano was going to put in his building. Is this an overreach of the Board? I'm asking Counsel to do that; maybe you can go back and look. I'm not sure I would want people asking what I'm going to put in my house. Certainly if I ask you for my professional business what you're doing with your property, what you're doing with your personal goods, you might have issue with that, as you should. So I just ask the Board look at the question about use, is this an overreach from the Board or not? Thank you.

Chairman Jansen: Anyone else? Okay, so we're leaving this open?

Diane Bramich: You got a hand up.

Mary Garcia: She's raising her hand.

Chairman Jansen: Yes.

Shannon Folino: I just want to make one more comment. I would appreciate if members of the Board could drive along the property and look up and see the giant clearing in the trees where the pad once was and where the rest of the building's going to be to see that it will be very visible from the street. Mr. Filipowski you've mentioned that he won't see it from his house. Perhaps he won't see it when the leaves are fully grown in because we do have really great vegetation along our, my property, our neighbor's property. When the leaves are fully gone, Mr. Filipowski will see it. If he doesn't care, that's fine, that's his opinion. And I also just question the relationships to some people, to Mr. Napolitano. Mr. Runnion, do you know Mr. Napolitano at all?

*Crosstalk - Inaudible*

Attorney Lynch: ...people's applications.

Shannon Folino: Okay. That's fine.

Chairman Jansen: Alright, anyone else? If not the public hearing's going to remain open.

Attorney Lynch: May I ask the public hearing be closed this way we know exactly what the numerous comments are?

Attorney Havens: I'm sorry we can't close the public hearing. We haven't even been able to ascertain the actual square footage of this building to even type it for seeker purposes.

Attorney Lynch: Well we'll disagree on that because I think that you're outside your jurisdiction; that you have an application here. If you don't want to close the public hearing, fine. But I did indicate that I would ask the Building Department to comment on the issue of the carport... Counsel to suggest that you are the arbitrary...

Attorney Havens: I'm not.

Attorney Lynch: You just said you don't have enough information about the plans. That's completely wrong. This is arbitrary and capricious. I sat here and I'm listening to comments and I welcome the comments. What I don't welcome is arbitrary and capricious action. Thank you.

Chairman Jansen: I just want to tell you that we support our Attorney and he has the right to ask the questions and to make recommendations to us. Thank you.

Attorney Lynch: And I respect that right. And if it's arbitrary and capricious I'll take my <inaudible> Void for Vagueness too.

Chairman Jansen: Next step?

Attorney Havens: Are you specifically requesting that we close the public hearing? Is that what you as the applicant's attorney are specifically requesting?

Attorney Lynch: Absolutely, unequivocally. You have plans before you that are certified by professionals as to what the dimensions are. I would ask you to close the public hearing, if you want to have the public hearing reopened with your town engineer or your building official to look at these plans and say that they're not correct, that's certainly your right.

Attorney Havens: What's...

Attorney Lynch: I'm sorry?

Attorney Havens: What's the point of closing the public hearing and then trying to reopen it? We would have to actually approve a rehearing.

Attorney Lynch: No...

Attorney Havens: Yes. We would have to approve a rehearing...

Attorney Lynch: Counsel, you, we open, we may do our respect on disagreement. You can reopen the purpose of hearing if you want to hear from the architect, I'm sorry, from the engineer, from the building inspector. I understand the question. Valid questions. I think three people have the questions. What is the carport? But that has nothing to do with public comment. The public hearing should be closed. To suggest you don't know what the square footage is I think that manifesting arbitrary approaches. I ask you close the public hearing. If you find a reason to reopen it afterwards, that's your right to do that. But I can't be suffering from a situation where every time there's a new round of comments, there's a new round of issues. This is the time to hear them right now. Otherwise we just go on and on forever. And that may be the goal of some people. It's not my goal.

Marc Malocsay: If I may? There was a couple of questions that we did ask though. The first one was on the location of the building.

Attorney Lynch: A hundred percent. And I said I'd get back to you on that.

Marc Malocsay: But if you get back to us on a different location of the building, I really think that the public should have input on where you're putting the building or a new location.

Attorney Lynch: And if we come back with a new location and new <inaudible>, you should have a reopen of the hearing and reposting it. I support that move.

Marc Malocsay: I don't see...

Attorney Lynch: So I respect your position. I'm just telling you my position. Of course the Board makes its own decisions. I just want to indicate I can't be in a situation where every meeting is a new public hearing. A public hearing at some point in time the evidence has to close. You have to make a decision. That's all I'm asking for.

Marc Malocsay: Okay.

Diane Bramich: Poll the Board.

Chris Daubert: No.

Diane Bramich: No.

Marc Malocsay: No?

Diane Bramich: No. Keep it open.

Marc Malocsay: No.

Chairman Jansen: Okay.

Jim Mehling: No.

Chairman Jansen: Alright. No. So we're keeping it open.

Attorney Havens: Make it known on the record that the Board was polled. Is that unanimous, keep it open?

Chairman Jansen: Yes.

Diane Bramich: Yes.

Chairman Jansen: Yes.

Attorney Havens: So what I'm going to strongly recommend under these circumstances...a question.

Diane Bramich: Go ahead.

Attorney Havens: He pointed out I'm not the arbiter of this Board. Does this Board, anybody on this Board feel like they have a good idea of what the square footage of the applicant's building is supposed to be?

Chairman Jansen: Not really, because we don't know what's counted.

Jim Mehling: I'm a mechanical engineer, not an architect. I will defer to a person whose expertise, education, and knowledge supersedes mine in a particular field of expertise. And I think that Building Department should view the plans and give us a determinate number so that we can all agree that this is the number. Based on what the Building Department and the town engineer states, this is what it is. With all due respect to the applicant, to his counsel, to his architect: I don't know you from Adam. I don't say that means that I don't trust or take you at your word. We as a Board have an obligation to take people at their word, both you and people that would counter your discussion. We want to make sure that we're as clear as possible. At least I do, so that there's absolutely no chance that down the road litigation rises or someone contemplates. We're trying to be as clear and fair as possible in respecting everyone's rights.

Attorney Lynch: I agree with you all of our rights. I offered...

Jim Mehling: I respect and honor that flag as much as you and anyone in this room and take very seriously, very, very seriously those powers seated to individuals under the Constitution of the United States. And I uphold those every single day of my life, especially when I sit here and serve my town and the residents thereof through being on this Board.

Attorney Lynch: I agree with you...

Jim Mehling: Okay.

Attorney Lynch: ...and I'm the one who suggested you have the town engineer or the Building Department look at the plans. I suggested that. I suggested you adjourn for that purpose. I'm the one who's committed to making sure you have accurate plans. We're in agreement.

Chris Daubert: Beautiful.

Attorney Lynch: Other than what property right owners have, we may disagree on that, but everything else we're in agreement on.

Chairman Jansen: Okay. So to be continued.

Attorney Havens: So we have a motion to refer this application to the town engineer and Building Department for calculation of the actual gross floor area and square footage...

Jim Mehling: And also the interpretation of the carport

Attorney Havens: ...as well as an interpretation of what they see to be the height. Given the fact that the ridgeline overlay district regulations specifically limit Subsection 7E states that "the maximum building

height requirement shall apply to the peak of the roofline except for cupolas and turrets.” Whereas I'm looking at this application, the submission that was submitted and the height is calculated on an average between the eave and the peak as though it were not in a ridgeline overlay district. And that's not applicable here. So the 28 foot height is significantly higher, even as calculated here is still higher than what's legally permissible in the ridgeline overlay district, which is a specific height restriction applicable to that particular district. And that depends on how you calculate average mean grade and whether or not you're calculating actual height to the peak, which from my calculations, even from taking your average grade as true, you're looking at 30 foot height, actually over 30 feet I believe, but I could be wrong and we'll leave that up to the professional engineers.

Attorney Lynch: And I agree with you on that. I just ask one thing, that you adjourn this now to a specific date, your next Board meeting, this way there's no need to republish any notice if you do it.

Attorney Havens: There's no need. They didn't need to republish for this one.

Attorney Lynch: I'm saying just when you adjourn...

Attorney Havens: There's no need to republish, it'll be adjourned to the next meeting.

Attorney Lynch: Okay. Would you set a date on the record just so the audience is aware?

Diane Bramich: It's October...I had it, hold on.

Attorney Lynch: Whenever the next meeting is.

Diane Bramich: Here it is.

Attorney Havens: Mr. Sabastion.

Sabastion Carlton: I think we addressed the reason why we calculated the building.

Attorney Lynch: Let's do this. Let's just get an adjourn date first.

Diane Bramich: October 25th.

Sabastion Carlton: I think we addressed the reason why we calculated the building height the way we did based on the other provisions in the ridgeline district, which said that you can provide the site showing where the building will be located, those provisions as far as height can be waived.

Attorney Havens: So what you're asking for is a waiver of the ridgeline overlay district specific height limitation.

Attorney Lynch: If we are, we'll put that before you formally, he's just making a comment as to what it was. But we have no objection to you looking at it. We may also respond with a firmer submission based on what we heard, but trust me, whatever we ask you for, it will be in writing done formally.

Chairman Jansen: Okay. Thank you.

Diane Bramich: I make the motion.

Attorney Havens: To refer this application to the town...

Diane Bramich: Yes.

Attorney Havens: ...Town Engineer and the Town Building Inspector.

Diane Bramich: Yes.

Chairman Jansen: And motioned by Diane. And a Second?

Marc Malocsay: I Second it.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: So we're adjourning to the next Board meeting, is that correct?

Diane Bramich: October 25th.

Jim Mehling: October 25th.

Thank you very much for your time today, I appreciate it.

Chairman Jansen: Thank you.