

TOWN OF WALLKILL
ZONING BOARD OF APPEAL

OCTOBER 16, 2017

PRESENT:

V. Biondollilo
R. deRoziere, Chairperson
K. Dunn
M. Langley
S. Najac
J. Schultz
A. Vavricka

J. Furst, Esq.

MEETING OPENING:

The meeting opened with the pledge to the flag followed by the roll call and presentation of the September 11th Meeting Minutes.

Mr. deRoziere: I Move to accept the September 11, 2017 Meeting Minutes; Seconded (Najac); All in favor; Motion carried.

LIASION COMMENTS AND UP-DATES:

Mr. Dulgarian: Two meetings and September 20th: Columbia Self Storage on 17M and 302 were added and U-Haul was added use (in back). Devitt came in for 599 East Main Phase 1 and has been approved. HomePro Exterior (the red barn by Rt 17) came for a use for construction builders and was tabled to further review the plans on storage and parking are submitted. Dunning Hotel which is next to Honda was if for a discussion of what is needed - traffic studies, etc. and what is required of them.

October 4th: Dunkin Donuts (old Friendly location) was tabled due to parking, but the site plan is good. The mall where Friendly was is shared parking and was not extended to Dunkin Donuts – parking is on their site but not enough to stand alone and Sonic did similar. They are in contract negotiations and therefore it was tabled. Poccactello Fire House and Fisher Retail both requested and received extensions as their projects move forward.

TRAINING UP-DATES:

J. Furst, Esq.: The topic of ‘Open Meeting Law’ is being scheduled for November or December based on agenda schedule and will help you to meet your 4 hour annual in-service education/training. Discussion is to conduct it in November.

CORRESPONDENCE:

Mr. deRoziere:

No requests for extensions have been received for review at this evening’s meeting.

PUBLIC HEARINGS:

GNS Group, Ltd.
(Dunkin Donuts /
Crystal Run Crossing): Request for a variance of 249 (sign area):
1) To increase to 258 SF.
Property located at Two Ben Gillman Way
(SEC 78 BL 1 LOT 80.61)
Designated OR

Mr. deRoziere: The mailings were reviewed by the Board and filed for the record.

Ms Najac: The Public Hearing Notice was read at 7:38 pm.

Mr. deRoziere: I Move to open the Public Hearing at 7:40 pm; Seconded; (Najac); All in favor;
Motion carried.

Mr. deRoziere: Please present your request.

Nancy Forrest, Lodi Signs: There was a change – originally there were 10 variances and eliminated 5 awnings and arrived at what we are requesting. The canopy and menu board sign have permits on. There question was when we applied if they were directional and were told to put them on the agenda. I have variances so them canopy/menu can be eliminated from discussion and that takes 48 SF off the request.

J Furst, Esq.: What do you have?

Nancy Forrest, Lodi Signs: 2 signs on either side of the building: a 4 x 3ft illuminated sign with the Dunkin Donut cup logo and another 13ft was proposed so now 8 x 4ft and the small 13” x 30” little drive thru by the entrance to drive thru. There were 2 more and I have permits for them from Building.

Mr. deRoziere: We granted variances for signs.

Nancy Forrest, Lodi Signs: They are within the property and directional and do not need a variance now.

Mr. deRoziere: What was the area you came up with?

Nancy Forrest, Lodi Signs: A little less than 47 SF.

J. Furst, Esq.: The Code permits up to 50 SF. How big were directional the ones you got permits for?

Nancy Forrest, Lodi Signs: 50 SF yes. One is 6 SF canopy for cars to go under and menu board 32. The menu is directional and it is because it is in the back of the building.

J. Furst, Esq.: Where did you get 130 SF?

Nancy Forrest, Lodi Signs: 50 SF sign is already up and looking for additional 80 SF in addition to 50 SF approved is total of 130 SF.

J. Furst, Esq.: This is addition to what was originally approved - 80 SF and it is now 40 vs 47 SF additional. The request is less than what they are requesting because interpretation some directional and not wall signs which do not come into play. [copies of permits provided].

Mr. deRoziere: When variance given area from 75 SF to 211 SF allowed in previous granted variances. They were allowed 211 SF and now asking for 47 SF now.

Nancy Forrest, Lodi Signs: In 2014 calculations were for one street and end result is 2 streets with two frontages.

J. Furst, Esq.: What is total SF existing and proposed?

Nancy Forrest, Lodi Signs: : 2 - 2x7ft on back wall; 2 - on front are each 14 SF.
The pylon for Sunoco - 2 signs are 2x12ft or 24 SF each.
Without anything we have total of 248 for both the building and pylon from the variances.

Mr. deRoziere: The signs included in 211 SF are not related to Dunkin Donuts; there is Gas Land. You are going from 211 SF originally and now plus 47 SF then you will be covered total SF.

Nancy Forrest, Lodi Signs: In 2014 calculations were for one street and end result are 2 streets with 2 frontages for less of a variance.

J. Furst, Esq.: What is total SF of all signage existing and proposed?

Nancy Forrest, Lodi Signs: I don't have that file with me: variances for 2 - 5x5ft on back wall allow on back wall until new extension done and give it 10 years and 2 on front are 14 SF each. Don't have Sunoco pylon and 2 on pylon are 2 x 12 or 24 SF each.

J. Furst, Esq.: She is adding 47 to 50 SF I think.

Nancy Forrest, Lodi Signs: without anything you have in front of you 248 both pylon and building – somewhere in that areas but may be wrong on the other ones.

Mr. deRoziere: The signs in 211 SF feet are also other signs not related to Dunkin Donuts. Because it is GasLand, gas station, Sunoco and other signs on the building.

Nancy Forrest, Lodi Signs: there is Dunkin Donuts sign on pylon and small one on front and back. Did not bring that file.

Mr. deRoziere: 211 plus 47 – 211 was granted. Use of 47 ft we will be covered for SF.

J. Furst, Esq.: The figures you provided you needed up to 130 SF sign face area.

Nancy Forrest, Lodi Signs: Where that came in to play is talking about – I miss understood question you asked me and said 50 SF already on building normally allowed – added that and how come up with 130 SF was approved as part of the variance from 2014. I did not add the 50 as it had sign permit.

Mr. deRoziere: Variance and Code is 50 SF permitted and you want area to allow area variance to permit 130 SF sign face on subject property, we are looking at 211 plus 47 SF or 258 SF total signs.

Nancy Forrest, Lodi Signs: I am confusing approved variances.

J. Furst, Esq.: We have to look at entire property not just Dunkin Donuts.

Nancy Forrest, Lodi Signs: The variance already granted.

Mr. deRoziere: The variance is with the property and have to look at the whole property and at the review, we needed to know what was allowed, what was original variance and missing piece – what was variance granted for – what was the addition. The missing piece has to be added to the 47 for total just calculated. Problem is notice is not accurate.

Nancy Forrest, Lodi Signs: The Public Notice is asking for more?

Ms Najac: You are expanding for what you are now asking for total of 258 SF.

Nancy Forrest, Lodi Signs: We had that when she looked up variance granted for 211 last month. We did have that. In discussion I did not know that had to be added – we are talking about addition to what is there and came up with the 80 SF+.

Mr. deRoziere: Do we have to re-notice?

J. Furst, Esq.: Yes.

Mr. deRoziere: Are there any comments from the Board? (No)

Mr. deRoziere: Any questions or comments from the Public? (No).

J. Furst, Esq.: It is substantial from (Public Hearing) Notice only because the baseline is incorrect – amount of SF of signage is greater than what was in the notice.

Nancy Forrest, Lodi Signs: I assumed that was separate from what I was doing now.

J. Furst, Esq.: There was a prior variance.

Mr. deRoziere: We have number of 113 SF and is basically double it. There is no one here tonight from the Public Hearing and if double it maybe someone will be. We will need to re-notice it. It is substantially incorrect. You said you did not realize you had to add that unfortunately it is the case here.

Nancy Forrest, Lodi Signs: The 211 was brought up and you asked how much it was and we looked it up.

Mr. deRoziere: The notice is substantially incorrect.

Nancy Forrest, Lodi Signs: That wasn't in our discussion then.

Mr. deRoziere: You said you did not know you had to add that.

Nancy Forrest, Lodi Signs: No I have never had to do it in the past with a double variance like that.

Mr. deRoziere: That is the case here. Sorry to tell you that.

J. Furst, Esq.: The notice is adding 47 SF to the original 211 SF granted previously.

Mr. deRoziere: I Move to close the Public Hearing at 7:57 pm; Seconded (Dunn); All in favor; Motion carried.

Mr. deRoziere: I Move to hold a Public Hearing for Dunkin Donuts (Gloede Signs) on November 13 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: It is necessary to notify everyone within 500 feet of your property. You can obtain the list of names from the Town Assessor's Office after you receive a call. The notice of the Public Hearing will be in the Times Herald Record Public Notice Section one week from this evening. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified, registered mail, or provide proof of certified mailing from the US Postal Service. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

Kenneth L. LaBagh: Request for a variance of 249.8 (oversized accessory building)
1) Accessory building from 28x28ft to 30x50ft for personal storage.
Property located at 106 Gillen Road
(SEC 4 BL 2 LOT 3)
Designated HC

Mr. deRoziere: The mailings were reviewed by the Board and filed for the record.

Ms Najac: The Public Hearing Notice was read at 7:58 pm.

Mr. deRoziere: I Move to open the Public Hearing at 8:00 pm; All in favor; Motion carried.

Mr. deRoziere: Please present your request.

Mr. LaBagh: It is for a building from 28x28 to 30 x 50ft to store my personal things, motor home, etc.

Mr. deRoziere: Any questions from the Board? (No)

Mr. deRoziere: Any questions from the Public? (No)

Mr. deRoziere: We reached to the County who said it is local determination.

Mr. deRoziere: I Move to close the Public Hearing at 8:02 pm; Seconded (Biondollilo); All in favor; Motion carried.

Mr. deRoziere: I Move this is a Type II Action for the purposes of SEQRA; Seconded (Dunn); All in favor; Motion carried.

Mr. deRoziere: I Move to grant the following variance: An oversized accessory building from 28x28ft to 30ft x 50ft; Seconded (Najac).

DISCUSSION:

Ms Najac: This is HC and ability to build there.

Ms Schultz: They are looking for a flat roof and height it is fine.

Ms Vavricka: This is designated HC.

Mr. Langley: Support this as well.

Mr. Dunn: There is plenty of room and will not impede anything.

Mr. Biondollilo: I see the size.

VOTE:

In favor (aye) 7 Najac, Schultz, Vavricka, Langley, Dunn, Biondollilo, deRoziere

Opposed (nay) 0

DECISION:

Mr. deRoziere: The variance is granted, please see the Building Department.

PUBLIC HEARING: (Continuance)

491 North Street, LLC:
(Blumel Road)

Request for a variance of 249-20.D(1) (area):

1. Lot size – 15 parcels from 3 acres to sizes ranging from 0.75 to 1.23 acres;
2. Lot width – 4 parcels from 150ft to 128ft to 149ft;
3. Lot depth – 4 parcels from 133ft to 190ft;
4. Lot frontage – 8 parcels from 100ft to 141ft;

For subdivision of the existing 14 acre parcel into 15 single residential lots.

Property located at 74 Blumel Road
(SEC 41 BL 1 LOT 15.1 and 15.2)

Designated R-2

Mr. deRoziere: I Move to continue the Public Hearing at 8:04 pm; Seconded (Najac); All in favor; Motion carried.

Dennis Lynch, M.A. Day Engineering, P.C.: We are proposing a 15 lot subdivisions and are here for variances of area of the lots where the existing calls for 1.5 acres and minimum size .75 of an acre, 4 for width and 4 for setbacks.

Mr. deRoziere: There are multiple requests on the allowed lots: area and multiple variances for width, depth, etc.

Dennis Lynch, PE: Each lot will be minimum of .75 acre 1.3 and average is 0.85 acre. Last month you asked for aerial of properties (we provided) of 500 feet and to see residential properties range from 0.5 to 0.75 and average of 0.40. Twice size of surrounding properties is being proposed.

Mr. deRoziere: I want to confirm we have latest drawing with latest requests of 8/27/17.

Dennis Lynch, PE: Yes. The one that was at Planning (Board) was 10/11.

Mr. deRoziere: We will reference 8/27/17 for the bulk table.

J. Furst, Esq.: The bulk table remains the same?

Dennis Lynch, PE: Yes.

Mr. Biondollilo: The one driveway changed?

Ms Najac: Yes.

Mr. deRoziere: Any questions from the Board? (No)

Mr. deRoziere: Any questions or comments from the Public? We heard your concerns last month.

Note Kelly, 10 Laddie Lane (Public): Last month requested map with what it would look like if they followed the law without the variances.

Dennis Lunch, Engn.: It was submitted – small one.

Note Kelly, 10 Laddie Lane: I am interested in what the Planning Board (PB) thinks of them following the law?

Mr. deRoziere: There've been several discussions of what could go there and that layout shows 8 properties with duplexes if you look closely - as of right, they may be allowed – special use permit by the PB it could possibly go in there. Something else is potentially are town house or apartment houses or limited to 8 or 7 smaller lots - very large 4000 s/f houses as well.

One of the solutions was to come up with the present plan for the 15 smaller single family homes and if you look at entire project and the homes and how they fit in the neighborhood, they are within the 'characteristic of the neighborhood'. They have agreed to other improvements as well as keeping as many trees and buffer to minimize impact those to the area, which some were concerned with. Hope that answers what they could do and what they want to do.

Note Kelly, 10 Laddie Lane: Last month the Zoning Board (ZB) asked them to come back to show a map if they followed the law so thoughts of the Planning Board after comparing those.

Mr. deRoziere: We will come to that when go through the 5 factors.

Mr. deRoziere: Any other questions from the Public? (Yes)

Dave Davies, 13 Laddie Road: Laddie Road is adjacent to this property it has got deeds with drainage easements is it proper to add them around border to help drainage to adjacent Laddie Road because of steep hill coming down – along the border perhaps?

Mr. deRoziere: Drainage is a concern and the addressed by the Town Engineer and the Planning Board and there is existing drainage at the bottom and whatever is required for drainage/storm water issues will be reviewed and addressed.

David Davies: The PB can deem it necessary.

J. Furst, Esq.: Some things are requires as they have to submit 'storm drainage' as part of plan and it is reviewed by town engineer – you have to contain all the run off and is State standards. The Planning Board to approve anything the engineer has to see it complies with the state requirement. Stormwater needs to address that.

David Davies: Time to do that in before they divide property up and get boundaries with it on or not on the easement?

J. Furst, Esq.: The PB will require it as a condition of approval – easements if required and not know until engineer reviews it. If they don't receive variances they will not go forward with that. There are no details on storm water yet.

David Davies: Is there a place in Planning on what has happened on Laddie Road over the years on the boundary to help them plan in terms of water?

Ms Najac: You can reach out to Planning Department.

J. Furst, Esq.: They will have their own hearing during Planning Board process. Look for that notice.

Tracy Pastar, Six Laddie Road: I understand he wants to keep 30 feet of woods and who will maintain trees over time –owner of the property – cut it down because they don't know the rules?

J. Furst, Esq.: That is a PB question, but normally the private property owner has restrictive covenant in their deed that says they can't clear cut the buffer – the buffer it what the buffer is.

Tracy Pastar: Replace them as the trees die off?

J. Furst, Esq. : That is the Planning Board.

Mr. deRoziere: Whatever rules are decided upon it becomes Code Enforcement. They enforce what the land owner is suppose to be maintaining – that is where that comes from.

Michael Melendez, 11 Robert Blues Place (Public): No familiar with building - when you build everything as once or will it be as you sell the land?

Mr. deRoziere: (To the applicant). The phasing can be addressed by Mr. Fidanza:

Franco Fidanza: We will develop as we sell the lots – not all in one shot. Maybe build one spec home to see what we have but create the lots and clean them up and get them ready for building and build as you sell the lots.

Mr. deRoziere: Some amenities and improvements planned includes all the properties and not seeded but sod will be put down and when complete ready to move in.

Michael Melendez: We have young kids in the neighborhood and if you continue to build for months on years ahead vs in 6 months is more habitable to people.

Mr. deRoziere: Share that with the Planning Board as well.

Ms Najac: I would like to thank public for coming out with your excellent concerns and many will be addressed by the Planning Board. There are some concerns – buffer, safety, drainage and you are addressing them as you plan the site plan. I did see one of your maps I had not that now shows trees, buffer zone and it was good to see taking in consideration of land as it is now and idea of constructing the home and reducing the upset as much as possible and appreciated by the neighbors. Concerns I had were addressed with this and information provided. It is a good option for the neighborhood.

Harold Harvey, 7 Laddie Road: (looked at the map) Looking at this - how close will he be? I am on the buffer – how many feet?

Dennis Lynch, PE: Show us on the map where you are: (and so he did)

Ms Najac: How far from my back yard? Minimum set back is 30 feet. Does not mean he is going to build that 30 feet.

Mr. deRoziere: Looking at Lot #7 the rear yard is 140 feet proposed or minimum of 30 feet and now proposing 140 feet to the property line – not the house.

Harold Harvey: The sewer system and the little hill right there and the back yard and everything after that is his property basically.

Mr. deRoziere: From your property to the house should be 140 feet based on bulk table.

Harold Harvey: Basically 4 trees.

Mr. Langley: Can you fit one more house behind you at 30 feet wide – probably talking 160 feet from back of house and back of their house. It is a pretty good size.

Harold Harvey: Three trees – I can see maybe from my line to 160 feet you talking about.

Mr. Langley: Average house is 30 feet wide and you are thinking potential 5 house sizes between back of you and that house – picture 5 of your houses between back of yours and the new houses.

Ms Najac: How big are your trees?

Mr. deRoziere: Any other questions from the Public?

David Davies: I heard and have been in and out – someone said, since last meeting - and may be verified here – the utilities are under ground?

Dennis Lynch, PE: Yes.

Mr. Valentin: I am a resident, neighbor and the Town Supervisor – right now our houses where we live are closer than what these houses are based on design. Other emphasis if you look at what is potentially there – what he build duplex on each lot we found as town board typically are investment properties – rental. Not good for us and see that as more of an impact. Put your mind at ease distance is further than what we currently live in. Any type of drainage will go to the PB and give opportunity to improve issues. Clarity and piece of mind.

Mr. deRoziere: Any other comments or questions from the Public? (No)

Mr. deRoziere: Any comments from the Board? (No)

Mr. deRoziere: There are 5 factors to consider:

- 1) *if alleged difficulty is self created* – almost always with area variance.
- 2) *if it is substantial* – look at it 2 ways –substantial from 1.5 acre requirement, however if look at other parcels in surrounding area this is larger than adjacent parcels.
- 3) *if benefit is feasible by other means* – look if it have adverse effects – those things would be mitigated by the PB and design of storm water site plan.

4) *is it an undesirable character to the neighborhood or nearby properties* – improvement of the area and improve the characteristic of the neighborhood. Some of the things the PB has asked for improvements have been made and people happy to see.

The benefit to the neighborhood and increase to character of the neighborhood heavily weighs in this request for a variance.

Mr. deRoziere: Any other comments or questions from the Board? (No)

Mr. deRoziere; I Move to close the Public Hearing at 8:30 pm; Seconded (Najac); All in favor; Motion carried.

J. Frust, Esq.: As part of SEQRA, the ZBA as Lead Agency has to answer some questions before declaring negative declaration or determine if it needs environmental impact statement. You are saying no further environmental studies and question is is there no impact or small to moderate impact. Is it moderate to large impact? It is moderate to large. It is one or the other?

Will proposed action create material conflict with adopted land use plan or zoning regulations?

Obviously small change but as far as existing plan in the existing community it is consistent with what is already there.

Mr. deRoziere: We consider that ‘no’.

Will proposed action result in change in use or intensity of the land?

Well it is single family – yes but still over 14 acres with 15 houses so again compared to existing in the community that same 14 acres would have a lot more houses.

Will proposed action impair character/quality of existing community?

No, you mentioned it is in character with the neighborhood.

Will the proposed action impact on environment characteristics that cause the establishment of a critical environmental area?

No, there are DEC designated areas / conditions, special park land, marshes, not the case here.

Will the proposed action result in adverse change in existing level of traffic or affect infrastructure for mass transit, walkway?

You have to look at what is permitted as 'right' – which they do for 8 single family homes and even with special use permit put in duplexes for 16 units. Question as far as traffic – looking at it as comparison – without duplex have one less unit, town houses or apartments have more. It has to be significant change. With any development there is change the question is if significant and if level of INS.

Will proposed action cause increase use of energy and if fails to incorporate reasonable energy conservation or renewable energy opportunities?

These are single family homes and would not have huge impact on the grid.

Will proposed action impact the existing public water supplies or sewer?

You are looking at 15 single family homes should not be impact to community public water or sewer.

Will proposed action impare quality of important historic, archeological or architectural aesthetic resources in the area?

There are none in the area.

Will proposed action result in adverse change in natural resources, wetlands, water bodies, ground water, pond?

No DEC wetlands on this, no army corps wetlands. Slight impact with some trees removed and landscaping as part of the plan so the impact is small to moderate.

Will proposed action result in increase in potential for erosion, flooding or drainage problems?

Address in storm water management through the DEC.

Will proposed action result create hazard to environmental resources and human health?

Adding single family homes would not create environmental hazard. Any impacts are small to moderate.

J. Furst, Esq.: It is an unlisted action and you are conducting an uncoordinated review. The PB will have to do their own analysis. It coincides with short form EIS we received.

Mr. deRoziere: I Move this Board views this as a Negative Declaration for the purposes of SEQRA; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: Grant the following variances:

1) Area variances listed in Bulk Table CS-101 Revision 8/15/2017; Seconded (Najac).

DISCUSSION:

Mr. Biondollilo: There are substantial variances to be dealt with but think these 15 single family homes is better addition to other options the owner could do. No substantial change to the neighborhood.

Mr. Dunn: I agree with Mr. Biondollilo –it will not be undesirable and is a big improvement to that corner.

Ms Najac: *Undesirable change to the character of the neighborhood character or nearby properties* – it is in line even the zoning which is a little out of line for the area acreage of 1.5 and most lots are 0.25 to 1.5 acres. Having larger lots is awkward and not flowed with the character of neighborhood.

Ms Schultz: I agree with previous comments and he is going above looking at site plan and landscaping and looking at stone wall at entrances and vote YES and see another single family home development.

Mr. Langly: My consideration is neighbors and people who live there and I would be thinking same thing. Best use of the property and they are focused on fitting in the community and the double development without going through the process this improvement.

Ms Vavricka: Even though new to the Board, I have looked at prior minutes and read the neighbor comments and don't live in the neighborhood and feel comfortable to vote on this and think of possibilities of what could go and use of the land an what he is doing creating lot sizes are better character to the neighborhood. Hate to see bigger houses or duplexes. I put myself and know you don't want to see any thing developed but it is going to be development and nice for the character of the neighborhood.

Mr. deRoziere: For reasons stated before I am in favor of this.

VOTE:

In favor (aye) 7 Dunn, Biondollilo, Najac, Schultz, Langley, Vavricka, deRoziere

Opposed (nay) 0

DECISION:

Mr. deRoziere: The variances are granted, please continue with the Planning Board.

Dennis Lynch, Engn.: We have met numerous times with the Town Engineer and Planning Board and all the comments on the public drainage and we are working with the PB to address and take comments from last and take them into consideration when working on this.

Ms Najac: The Planning Board meets the 1st 3rd Wednesday. There will be Public hearing and you will receive a notice. They are not on the agenda yet.

Rachael &
Christine Gaupman

Request for a variance of 249-8.A(5) and 249-112.D(2):
1. Accessory building in front of primary building.
For installation of free-standing ground-mounted
solar panels in the front yard.
Property located at 115 Bowser Road
(SEC 21 BL 1 LOT 69)
Designated RA

Mr. deRoziere: This is a continuance from September.

Richard Gaupman: 332 feet off the roadway, next page is from road where house sits – flag lot and it sits 480 ft off the roadway and the array from previous page – no way will you see it from the roadway the bottom picture is where it sits off the side of the house (facing Bowser) on the right side of the property. Last page shows ariel view from Google Earth it is wooded area, front yard septic and where proposed solar array is best spot as you get to back more trees have to be removed plus the ground starts to fall off or go down quite a bit and harder to get array over in that area. Plus on bottom and handed out last meeting when subdivided – on the plans the trees stone walls are to be preserved where no new construction and proposing where it is clear now.

Mr. deRoziere: We have a letter from LighthouseSolar:

September 12, 2017

It was requested at the September 11 meeting that a few items be addressed. A member of the board asked why the array could not be placed on the roof even though that faces the front yard too. There are several answers to this question so I will list them.

1) There are two viable roof planes that could be used however the production is much less than a ground mount for several reasons. The first is that the roof planes are closer to the tree line and the second roof is behind the higher front roof. Both situations will create shade issues. Given the tree proximity and shading, the array stands to produce 10% less than a ground mounted array. If the array produces about 15,000kWh/year as a ground mount then it would lose about 1,500kWh/year. At a conservative .18 cents/kWh from O&R, that translates to \$270 a year. After 20 years, that comes to \$ 5,400 in savings that would be lost.

2) The roof tops will both hold more snow than a ground mount due to the other roof planes and their valleys.

3) The home is a beautiful craftsman design. Aesthetically, solar on the roof of this home will have a negative effect. Since the array is broken up and given the multiple roof lines, the array

will not be balanced and will use a saw tooth patten. In addition, there will be several conduits running between the multiple arrays. We always approach the roof first as it is more cost effective however in this case, it would ruin the homes aesthetic value while offering less solar gain.

4) If the array was on the roof and since they have a whole house generator, w would still need to trench to the meter stanchion for interconnection. This is an added hardship.

5) Finally, given the roof size constraints, the system would need to be smaller. It would not fit the number of panels as in the current ground mount.

6) It was always an intention to construct a garage in the back. Since nobody can see the array, why take this away?

All modules used today use an anti-reflective tempered glass. Module glare is often a misconception. We've complete hundreds of ground mounted arrays since 2008 and never had an issue with this. If this was an issue I don't think hundreds of solar farms would be built around airports.

Sincerely,

Jason Iahn,
General Manager

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Mr. deRoziere: Any questions from the Board?

Mr. Langley: Trenching to whole house generator – we have solar on our roof installed by LighthouseSolar and can sit and say what was told is accurate. Take letter in same vein.

We have to look at alternatives – based on our house – don't have whole house generator. How come this has to be trenched. We talked about array in the back yard. We maxed out the state credit on the roof. You are trenching to whole house generator.

Matt Calardo, LighthouseSolar: When you have generator you have transfer switch and generator feeds circuits in the house. It is adjacent to main 200 amp circuit panel. They have combination service entrance here – so meter is in service entrance with a panel of 200 amp disconnect and directly adjacent is automatic transfer and generator there as well. We need to tie solar into that automatic transfer switch so when grid goes down, solar system's electrical

current is isolated same way the grid is. No point going back to mainservice in the house – 2 redundant systems one at stanchion and one in the house and aspects of code for 2 disconnects. We have to electrically interconnect. With ground mounted solar array we have to trench with ground mount to the house or in this case preferable to stanchion. It is same distance either way.

Mr. Langley: If on roof you still have to trench to other panel?

Matt Calardo: Yes, if on roof down exterior to main service panel in the house. With their situation of transfer at stanchion still have to go back to transfer switch.

Mr. deRoziere: Please show on the map the locations.

Mr. Gaupman: If on roof still have to trench back over here (drawing) to the transfer.

Ms Vavricka: If on the roof, have to take down trees?

Matt Calardo: If on roof solar greater amount of space going south and greater need. On the roof required to clear trees south and west closer to lot line and have space where propping.

Ms Vavricka: Still clear trees?

Matt Calardo: It has already been done for the installation.

Mr. Biondollilo: Where the panels will go – will it get enough sun?

Matt Calardo: Yes for the full value for NY incentive.

Ms Vavricka: The picture (go behind trees?)

Mr. Gaupman: Right near neighbors out building (drawing).

Mr. deRoziere: Any questions from the Public? (No)

Mr. deRoziere: Any questions or comments from the Board?

Ms Schultz: What is percentage of land is going to be covered?

Mrs. Gaupman: We have 5.8 acres.

Mr. Gaupman: We have 50 x 11 not true because of tilt of the panels.

Ms Schultz: Small amount.

Mr. Biondollilo: Where panels are – the morning sun is which way?

Matt Calardo: Facing directly south and sunrise on Bowser Road.

Mr. Biondollilo: No sun until Noon?

Matt Calardo: No, depending on time of year from 9 and 8-10 most days. More sun expose in afternoon and gets a little eclipsed in the morning.

Mr. Biondollilo: It has to be over it with the trees to get it.

Matt Calardo: Solar access is sufficient.

Mr. deRoziere: Any further comments or questions from the Board? (No)

Mr. deRoziere; I Move to close the Public Hearing at 9:02 pm; Seconded (Biondollilo); All in favor; Motion carried.

Mr. deRoziere: I Move this Board views this as a Type II for purposes of SEQRA; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: I Move to grant the following variance: 1) Free standing solar array ground mount as accessory in front of primary structure; Seconded (Najac).

DISCUSSION:

Mr. Dunn: The Code says no solar in front yard but this circumstance it is hidden from the road behind trees other house and like to stick with the Code, this is the best location for this.

Ms Najac: *Can benefit be met by other means* – you have done good job of presenting that and appreciate effort and don't think it is undesirable change but is substantial request. It is not physical impact – and it is self created.

Ms Schultz: Looking at updated zoning – it is unique house/lot and not seen and spoke to neighbors in front. There needs to be ingress egress for emergency and it is and it can't be more than 10% of property and no glare issue.

Mr. Langly: It has no impact to the neighbors, not good alternatives having this and support.

Ms Vavricka: I support this because it should not be in front yard and look better where it is and not taking down more trees. From Bowser Road it is not seen.

Mr. Biondollilo: It is not an undesirable change but my concern is that it is in front of the house. We have had issues prior and set precedence and having said that almost 6 acres of land set back far enough and is solar and in agreement with.

Mr. deRoziere: Originally I viewed it negative originally with the accessory in front of primary structure and after seeing it and uniqueness of property and clear and access make the most sense to maximum benefit..

VOTE:

In favor (aye) 7 Dunn, Najac, Schultz, Vavricka, Langley, Biondollilo, deRoziere

Opposed (nay) 0

DECISION:

Mr. deRoziere: The variance is granted, please see the Building Department.

Eric Ring:

Request for a variance of 249-39.1.D (setback):

1. Side yard from 50ft to 13ft;
2. Front yard from 50ft to 40ft;
3. Lot area from 3.0 acres to 1.5 acres;

For the proposed utilization of an existing commercial building as a church.

Property located at 40 Dunning Road

Designated TC

Mr. deRoziere: I Move to continue the Public Hearing at 9:04 pm; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: Please give us a review of your application.

Laura Frampton (For Mr. Ring): Here for Eric Ring who is out of the country. Three setbacks variances on 3 sides and we need one more and then pretty sure need 3 acres and and we only 1.5 but parking is ample for their seating so I don't think we need to get the 3 acres.

Mr. deRoziere: What has changed originally it was thought you needed 3 acres plus 50 foot set back from any boundry lines. After some further review of the Code we discovered that where in deed the code does require that churches or religious institutions in commercial or industrial district requires special use permit, does need to meet those requirements. It turns out in Town Center district it is going to be religious/church use is allowed use so that part of the Code does not apply. So that was discovered so what we would like to do here is instead of asking for area variance is to convert it to an interpretation of the Code. We opened the public hearing that allows us to vote that.

Mr. deRoziere: Are there any questions from the Board? (No)

Mr. deRoziere: Any questions or comments from the Public? (Yes)

Bill McDermott (Public): I own 50 Dunning Road and the 6 acres next door – the old Rusty Nail. For 40 years I have paid over \$800,000 in taxes. If you amatorize it, I think you will find it is worth 2.5 million or better. For years if you know the property, you can see I have struggled to find someone might who want to do something. For the last several months most of the year we went into contract 70, 80 days ago. There is someone interested they want to put a hotel and restaurant. If you want a restaurant or hotel on it you need a liquor license and liquor license can't be put next to a church. I think that – sorry repeating myself - granting this after I paid all these taxes and struggled to keep property is tanament to the taking of my property. It is

extreme hardship - all that money is just gone poof I should have just let it go then. If town is not back my restaurant zoning which is still in tact. There are also as far as I know, I am pretty sure 3 including the one on my property - 3 hotels planned for that neighborhood who would have the same problem and one (1) restaurant.

Mr. deRoziere: This is the Zoning Board – we were presented specifically for a variance to go from 3 acres to whatever the variance requirement was and to reduce the 50 foot buffer to the closest boundary for a church or religious institution because it was thought that section of the Code applied to this piece of property. Upon further review, that section of the Code does not apply to this piece of property and therefore, it is an allowed use. In other words, the owner of the property can use it for that use for religious institution or church – it was retail because they are changing the use, they still have to go before the Planning Board. All the ZBA is doing is realizing they did not have to come in front of us for a variance. That is the interpretation that we will be ruling on.

Mr. McDermott: So if I am interpreting you correctly, this now goes to the Planning Board?

Mr. deRoziere: Yes sir.

Mr. McDermott: It is three hours down here and 3 hours home. Thank you very much.

Ms Najac: Thank you for making the trip.

Mr. McDermott: I am not.

Mr. deRoziere: Anyone else from the Public wishing to speak to this application? (No)

Mr. deRoziere: Any further comments from the Board? (No)

Mr. deRoziere: I Move to close the Public Hearing at 9:14 pm; Seconded (Dunn); All in favor; Motion carried.

J. Furst, Esq.: This is an interpretation and they are Type II Action for SEQRA.

Mr. deRoziere; I Move this Board views this as a Type II for the purposes of SEQRA; Seconded (Dunn); All in favor; Motion carried.

Mr. deRoziere: The Town of Wallkill Zoning Board of Appeals deems this as an interpretation and that a variance is not required as this is an allowed use.

DISCUSSION:

(None)

VOTE:

In favor (aye) 7 Biondollilo, Dunn, Najac, Schultz, Langley, Vavricka, deRoziere

Opposed (nay) 0

DECISION:

Mr. deRoziere: The interpretation has been made, therefore you can now continue with the Planning Board.

CN Direct Construction, Inc.
(Elizabeth & Patricia Jones)

Request for a variance of 249-19.D (area):

1. Lot area from 3.0 acres to 1.84 acres;
2. Lot depth from 300ft to 222ft;

For construction of a single-family dwelling on an existing non-conforming lot.

Property located at 165 Derby Road

(SEC 21 BL 1 LOT 46)

Designated RA

Mr. deRoziere: I Move to continue the Public Hearing at 9:17 pm; All in favor; Motion carried.

Mr. deRoziere: This is continued, can you give us a review of what you are asking for.

Arnie Silver: Been here the past two meetings and decided to bring my engineer to clarify some things brought up by Dick McGoey.

John Fuller, Engn.: Review for the benefit of the Board, there are 2 variances necessary for the parcel: 1) lot area – we submitted to you the septic for proposed single family residential dwelling had in Mardis Soils Group 4 which requires 3 acre minimum; the parcel is approximately 1.84 acres – so require lot area variance; also to develop as single family residential lot depth in zone is 300 feet, the particular parcel average depth of 222 feet so need variance for lot depth as well. I consulted with applicant regarding his desire to develop single family dwelling as parcel we feel if property can properly engineered to allow for single family residence with quick well and septic and separation from adjoining parcels of land, that it is consistent with other dwellings and lot sizes of similar development on Derby Road in this area of the Town.

I received some emails that were exchanged with Mr. McGoey and prepared this evening to answer any concerns or questions the Board has or the public has with regards to engineering as it relates to this parcel of land. So with that I am open to any questions you may have.

Mr. deRoziere: Any questions from the Board? (Yes)

Mr. Langley: So I am – this is first time I am hearing this but obviously reviewed this. For me it is decision or abstaining – just a couple of general questions? You don't currently own the lot you are in plans to buy it if everything works out?

John Fuller, Engn.: That is correct, the applicant is in contract with current owner who has owned parcel of land since 1974. And if he is successful of accomplishing the variance necessary the contract will still go through.

Mr. Langley: We will get to this when we vote, the point about alternatives- pretty familiar with the Town and there are quite a good number of lots for sale out there. I am struggle with that a little bit. We are talking about a lot that is below the acreage in fact within a few miles of where I currently live there are many lots available. They may not be the right price and understand that lots – prices can vary dramatically because everything is odd shaped around here. But I going to struggle with that being that there does appear to be many alternatives unless there is something unwritten I am not aware of. Again, I don't state that lightly either. I think if people work hard and they buy a lot or looking to buy a lot you know, I am willing to listen to anything and a lot of land available in the County and in this Town. I would love to hear from you not trying to be difficult.

Arnie Silver: I have been building here for many years and also a Wallkill resident and also been real estate broker for 30 years. There are not many lots available for sale – there are not. Some available are not feasible and don't make sense. Is it really about lots and alternatives? We were asked by the owner to enter into a contract with them for a variance so they could get relief from the zoning board. I don't understand your point about there being other lots available to buy and not buy this. The owner wants to sell the property – she has contracted with us to do it and get the variance and known you for 43 years and paid substantial amount of taxes on it. Its not about other properties – not to be disrespectful – not about availability of other lots to buy.

Mr. Langley: I see it as it is. I am not going to think about it and not take the time again and have to be comfortable with this and let the other Members ask questions if they have them.

Mr. deRoziere: Anyone else from the Board? (Yes)

Ms Najac: You used word viable – I think that is the question on this lot here. If it is a viable lot. So, there seems to be a fairly clear definition of what is viable in the Town of Wallkill and it falls on your shoulders to prove to use this lot – which we do not think is viable by definition of the Town of Wallkill Law – is.

Mr. deRoziere: Any questions from the Public to speak to this? (Yes)

Fred and Caroline Dustumbo, 183 Derby Road: (handed out photo of house and property). (this is my house right there – showed the Board): Last meeting he stated why didn't we buy the property (handed out the copies). I can look along with you while you look at the first page.

Mr. deRoziere: If you want to review this with us.

Mrs. Dustumbo: He asked why we did not purchase the property when we first built ours in 2003, in 2004, 2006 and 2011 I sent owners Patricia and Mary Jones certified letters which I have certification they sent back, with no response. In 2017...

Ms Najac: Letters were request to...

Mrs. Dustumbo: ...purchase this piece of property right in front of our house. A few years back a gentleman Joseph Survella contacted us came to our house if he wants to sell the property we would be first in line. He decided he wanted to sell it and he asked for a high price and we were not willing to pay that. across the street we bought 7 acres for \$ 39,000 he wanted a large amount over \$75,000...

Arnie Silver: ...no it was \$25,000...

Mrs. Dustumbo: ...he came down to \$75 for this 1.8 acres right in front of us. He came down because we said no. So we told him 'no' and week later for sale sign went up on the property. I did some research on Derby Road because we've live there for 13 years and before 2007 it was 2 acre minimum, correct? There was zero homes built 1-9 is number of acres one built in 1974 and goes down how many homes were built with 2 acre minimum, understand?

Mr. deRoziere: Yes.

Mrs. Dustumbo: The one built in 2004 there was a fire on the trailer and trailer came down and they put up another house and that is not an acre even worth of property. They were still in the Code.

Mr. deRoziere: That is the one across the street – it was existing non-conforming so they were allowed to build.

Mrs. Dustumbo: There was trailer on it and trailer burned down and they were able to rebuild their house.

Mr. deRoziere: Any why the house is that shape that it is.

Mrs. Dustumbo: And its on a tiny piece of property. And then we have the 1.8 acres which is also on Derby Road 21-1-10, this property was sold in 2007 to Mr. Silver. He built a house on it was sold to Homestead Home Builders which is Mr. Silver, it was sold again in 2008 to Miller Family – sold again in 2012 to McVoid Family and house is currently for sale right now. So that

is only house that has been built on that road that needed a variance since 1910. And it was 1.8 acres and needed 2 acres so it was 0.2 acre that they needed. They had depth, whatever which I am sure – which is fine, you need 0.2 acre that is fine.

Mr. deRoziere: What we don't know if it was approved building lot prior to that.

Mrs. Dustumbo: It was suppose to be 2 acre.

Mr. deRoziere: At one point it was 1 acre – key is if approved building lot – if Planning Board approved building lot at some point in sub division when it was within the allowed Code, we don't know that, so making that statement to you. Just don't know the situation there.

Mrs. Dustumbo: So that house is for sale again. I am giving you history of the street. The property the 1.8 acres is on is on a slant. So and we have footing drains from our house that go all the way out to back of our house so it doesn't give us...

Mr. deRoziere: ...you are referring to property that is in question right now?

Mrs. Dustumbo: Our property has footing drains from gutters that go all the way out to back of property so we don't have puddles because it is wet lands.

Mr. deRoziere: Goes to back of your property? Okay.

Mrs. Dustumbo: Exactly – where is the drainage going to go from this house because on one side is a house and other side is our property and in back is our property. Already in front of my house is a swamp that is where I got the tractor, truck and backhoe stuck.

Mr. deRoziere: We will get to issue of drainage.

Mrs. Dustumbo: Was there an environmental study?

Mr. deRoziere: There was a review done by our Town Engineer.

Mrs. Dustumbo: What is the amount between the house and the rock wall he can build?

Mr. deRoziere: If you look on the drawings as far as the set backs go – the point here is as long variance approved and builds within those standards we can't say anything about that.

Mrs. Dustumbo: The trees would come down – they are 80 feet tall, the trees there are mostly on the top so no buffer between the properties. They have grown up.

Mr. deRoziere: Unfortunately there is little we can do about that now. We are looking at 2 variances: 1) from 3 acres to 1.84 acres; 2) lot depth from 300 to 222 feet.

Mrs. Dustumbo: Which is a big...I think all I have right now. It is very undesirable for the neighborhood with all lots that are there and homes that are on it and would be hardship to have a house in my front yard – their back yard in my front yard. I don't think ... I didn't hear what you said about footage – from their rock wall?

Ms Najac: Minimum 70 feet from your lot and then what they have on here is 150 feet.

Mrs. Dustumbo: From road frontage to the house not going to give them very much?

Mr. Biondollilo: 60.

Ms Najac: Setback is 70 feet and they have 150 feet.

John Fuller, Engn.: The house fits quite comfortably in setback envelope because the setback distances for proposed the dwelling.

Ms Najac: They are asking for the depth.

Mrs. Dustumbo: Can I give my personal opinion – I feel they have interest in living there. I think that because he has already built homes in the area and built on our road that have been sale for 3 times, he is just looking to build a house like the gentleman said, a lot of other property that can be for sale. I drove around for 9 months when I was pregnant with my son and found vacant pieces of property and went to the Town and researched property – 7 acres across the street did not have for sale sign on it went to the Town found out who owned it wrote them a letter and asked if they wanted to sell it. Just because there is not a for sale sign does not mean it is not for sale. I think they are in it just to buy a house or buy property, put up a house and sell it like across the street and they want to put another one and in with the Planning Board now. They are with zoning or whatever this is. I work in medical field and don't know anything about this. I think it is just – it has nothing to do with it living on the street- want to make money to buy property put the house and sell it. People who do own the property do not want to live here either. We have talked to them the one lady is 90 years old, Patricia Jones or whichever one and live in the City and don't want to live here. So if you can please take that into consideration.

Mr. deRoziere: We appreciate your input and take everything into consideration. You have head me talk about the 5 factors we have to take into consideration.

Mr. Dustumbo: May I just say something. Thinking to what Joan said, sorry I forgot your name, and again, like I said last time, we are talking 1.8 acres – we are talking not enough. Again, I am going to repeat this – if you do this for these people you will have to do it for everybody else and that is what is going to be. Its kind of simple, think about it.

Mrs. Dustumbo: We have 7 acres across the street.

Mr. deRoziere: There are 5 factors we have to consider.

Mr. Dustumbo: Is that the only piece of property that is on Derby Road – I don't think so. There is a lot of property on Bowser a lot of property all over the place. You actually have to put a house there right in front of my house where I have to get up in the morning and see that. I have been living there for 14 years. I have 6 acres.

Mrs. Dustumbo: The gentleman across the street has 17 and he will put up a whole slew of houses and I will subdivide and put up a slew.

Mr. Langley: I know, and don't take this lightly and see both sides – I know areas well and the area well and know there are houses that are grandfathered and you can see them and that is fine. I have an old house grandfathered in many ways built over a hundred years ago. I understand and think biggest thing I struggle with is opening a can of works – if I am developer and come in and buy 35 acres why not make each one 1.8 acres – I am struggling with all of these things. I totally know the area.

Mr. Langley: I know there are houses grandfathered in many ways – struggle with opeing up can of worms buy 35 acres why not each lot 1.8 acres? Totally know the area.

John Fuller, Engn.: The only thing I would say is it is a pre-existing lot and you have a new sub division I think precedence is set is you meet the zoning regulations for given lot what we are dealing with here is pre-existing lot that has been in existence for quite a long time.

Arnie Silver: It should not matter that there is a residence on this.

Mr. deRoziere: To clarify, this is not an approved building lot. We have to make that distinction.

John Fuller, Engn.: It is a pre-existing lot and the Chairman's point – preexisting lot of land currently within the Town of Wallkill.

Mr. Langley: If there was a house on here I don't think we would be having this conversation because there would be existing – an existing.

Mrs. Dustumbo: The house across the street that burned and they put up another one.

Mr. deRoziere: Anyone else from the Public?

Mr. Dustumbo: Thank you very much.

Lauren Warren, 116 Derby Road: I am speaking for myself and also a neighbor who sent a letter in (into the record). Thank you I have now seen you officially for a year. I am from 116 Derby Road. We have been here - we have a public hearing and I think it is still open, and my main concern is setting a precedence. I have 1.8 acres right next to me and its still open. It's a worry for me its tight there, drainage issue on or under the road, everyone keeps to themselves, I am really concerned about starting to pack houses in. I have grown up around here and born on Properous Valley Road. There are lots for sale – I know 2 on Dosen Road right now, some on High Apple Road – other lots and have concern with people wanting to build on smaller lots – basically to build and sell them. Not building and coming to the community. I am sure if they were offered the land at a lot extension price they would take it. The same for me with lot next to me they wanted \$ 80,000 and is 1.8 acres for a lot extension. I can't afford \$ 80,000 so for developer to come in in for \$80,000 and maybe put a house on it that is type of precedence we are setting if we allow this to happen. Again, thank you all I appreciate it.

Robert Kileta, 138 Derby: One reason to not grant variance adverse affect to the community?

Undesirable character.

Robert: Who decides? People who live in the community. I am like everyone in 2007 it went from 2 to 3 acres – why are we going back wards there is a master plan. I have been coming here for a years.

Mr. deRoziere: That is why we have the Zoning and we decide.

Mr. deRoziere: Anyone else from the Public wishing to speak? (Yes)

Robert Kileta, 208 Derby Road: Question for the Board – one reason not to grant the variance was please correct me, adverse affect to the community.

Mr. deRoziere: There is adverse environmental affect and also undesirable change to the neighborhood or nearby properties.

Mr. Kileta: Who determines what is undesirable to the community? People who live in the community – probably your best bet. Just a little food for thought. I am just like everyone else – the Town did a Master Plan in 2007 it went from 2 acres to 3 correct?

Mr. deRoziere: Yes.

Mr. Kileta: Why are we going backwards – Master Plan? For the good of the community. I am not arguing but giving food for thought. I have been coming here pretty much every month for a year. I'd rather be home.

Mr. Kileta: Please take into consideration the people who also live there.

Mr. deRoziere: Of course we do and take it very seriously.

Mr. Kileta: I have not heard anyone form the community to say 'we think it is a great idea'.

Ms Najac: I like to see community to show up and that is important.

Mr. Kileta: I lived here 12years and came back and bought larger parcel so I could have...you know I grew up there.

Mr. deRoziere: Glad to have you back.

Mr. Kileta: Lets hope I stay and don't cut it up into 1.8 acres.

Ted Cappazzolli, 276 Derby Road: I live next door to the 1.8 acre lot that Mr. Silver and Mr. Knogbin built on. I don't see a problem with this – I really don't. I thought it improved the neighborhood, they built a very nice home, they asked me all through the process about tree removal, rock walls, drainage and I have no problem with it. I mean I don't see a problem increasing the home values and I think that is what it does as in putting in a nice house to live in next door to me. The neighbors next to me on that one 1.8 acre lot their front yard is my backyard and we don't see each other. I mean its...I don't know, I don't have problem with development in the area I think its good and the neighbors around me to keep to themselves. It's a neighborhood that no one rally associates with each other, so I mean, I get the concerns on the drainage, blah, blah, but I don't see a problem with it increasing values of the homes in the neighborhood. I think that is what that does.

Mr. deRoziere: Thank you very much.

Mrs. Dumbusto: Can I say one thing.

Mr. de Roziere: Anyone else from the Public? (No)

Mrs. Dumbusto: The house he is talking about – his house is 20 feet from the road the house they put up is 400 feet back from the property line.

Mr. Cappazzolli: My house is 75 feet back.

Mr. deRoziere: That is semantics from the decision we are making. He is putting it into perspective for us.

Mrs. Dumbusto: He is saying his is front yard is back yard, but the driveway is probably 300 feet long so you can't even see the house from his house and don't know house is there its that far back from the house.

Mr. deRoziere: Thank you. We have a letter for the record from one of the neighbors:

Ms Najac:

“To Whom it may Concern: We recently found out there is appeal in process for changing the zoning for the property at 165 Derby Road. The application is for 2 area variances for property that would be substantial deviations from the zoning requirements for Derby Road.

We strongly oppose this application. This is a rural area and road and if granted this application to squeeze a home in a too small lot is in direct conflict with zoning we understood to be in effect on the road prior to the purchase of our home. We purchased our home and property because we understood that any further development on the road would require reasonably large lots to keep the rural nature of the area in tact.

We are also concerned about impacts on the water table as we draw our water from wells here on Derby Road. Allowing the zoning variance opens the door for future applications for smaller than required lots to go through and this precedence is set. Once that door is open there might not be nothing to stop future developers from arguing that this has already been allowed and therefore they should be allowed to do the same. Over development could easily impact all residents of immediate area should there be too large burden on the water table.

We respectfully request you to deny this appeal.

*Honor and Edward Kerwan
219 Derby Road, Middletown, NY 10940*

Mr. deRoziere: Thank you. Any questions from the Board?

Mr. deRoziere: I Move to close the Public Hearing at 9:43 pm.

Arnie Silver: Can we talk about other things about McGoey's comments or are you ready to vote now. I have more information to talk about because this went off in a bit of a tangent here.

Mr. deRoziere: I am sorry about that.

Arnie Silver: I think this whole conversation with the owners there – kind of got off on a tangent to having other land to buy. This is in my opinion it is a perfect lot that they need relief from the Zoning Board. It was zoned as mentioned for 43 years by no means is a 2 acre lot – a 1.8 acre lot a small lot. It meets all the requirements for everything for a building lot and I don't know if some of the people mentioned – it is characteristic of the neighborhood. I took the immediate tax map there are 1,2,3,4,5,6,7,8,9,10,11, 12, 13 lots on this little tax map of lots that are that size or smaller. And for someone to have owned the property for 43 years what is there next step – to do an Article 78? I mean that is what we probably boil down to, we are hoping this is a reasonable request on this property. A fact that even Mr. McGoey mentions in his letter he does not see any problem with drainage affecting any of the neighbors. He mentioned it in his letter.

It is not considered a large variance there were 2 variances granted, yes myself on one lot and a lot across the street that is a tiny little lot that was granted a variance as well.

The bottom line is, this lot is large enough to support a single family home without a doubt and no other relief these people can get besides having you grant a variance. Anything you want to speak about as far as the drainage issue that McGoey brought up.

John Fuller, Engn.: I was in contact with Mr. McGoey with regards to some technical issues and I would submit to the Board as a professional, clearly the lot can be developed as a single family residential lot being it can have well and septic on it with adequate separation distances required by the Department of Health to adjoining parcels of land.

With regard to concerns about drainage which are legitimate concern – it is a growing trend in our industry especially in site development to deal with drainage issues. For this type of development I think it can be developed with adequate buffer maintained between the adjoining

neighbors and lots and drainage handled in a way. We have attested to that and handled in way that it will not have negative impact on adjoining parcels. The lot of land has only 5% slope across it's width and depth which is really manageable slope – not very steep slope at all for drainage issues. I submit to you it is very developable piece of land and as Mr. Silver alluded to with regards to current ownership of the property this property without can not be developed in any capacity without coming before this Board and granting the variance. The simplest development in the parcel in the Tow of Wallkill is a single family dwelling and it is very consistent with the neighborhood.

Arnie Silver: I'd like to say something else – that the property lost my train of thought. I do want to bring up something else I discussed. I did some research – the neighbors came out that they don't want it built up. Each case is looked at individually I believe. As far as setting a precedence you have already given two variances and others within the town it is not an unreasonable size. And, as far as the neighbor's comments – uh, I believe that New York Case Law states that, and I hope you can verify with me, it is NY Case Law undisputed law that the ZBA may not base its decision on generalized community opposition or pressure. Everything they stated is generalized – there was nothing would have negative impact on neighboring properties. And so – is that correct about that law – case law? If it is correct if neighbors are complaining – I can see the man behind, Mr. Dustumbo, he does not want a house behind him. First of all it is not directly behind him there is 200 feet between the house we propose and his house. We would plan, I would keep 25 feet of a buffer area protect him. He bought the lot many many years ago knowing there is a lot here. There is nothing that – everything is generalized nothing they substantially stated that would affect value of their home. Who would not want a brand new home on the street and I have done it a couple of times on the street. Yes, I am a builder – I build homes and sell to young families who want to live in a nice area. This would be like a travesty if it is not granted. What is our next step – to sue the Town, we do not want to do an Article 78. The owners they mentioned is 90 years old and the other lady is I think is 80 something – they owned this property for so man years how can you deny them to sell it so they can recoup some money in their golden years?

Ms Najac: Why did it take them so long?

Arnie Silver: I don't know, maybe they were going to live here eventually I really don't know that is not our issue, why, it's the facts are they have owned it for so many years and if you don't grant the variance you are denying them the right to sell the properties and use the monies at this stage in live. We have proved the lot is a buildable lot – it is not uncharacteristic of the neighborhood. Mr. McGoey also agreed that there is no problem with drainage or run off.

You would be creating an Article 78 situation which no one wants to do. We have right to continue this but I would rather just...when we got involved with this lot we said this should be a

slam dunk deal. There are many lots on street similar in size, a 300 foot width lot you have no neighbors on either side of you. The whole street has lots that same size and like I said you granted variances on this street. To me I thought this would be no opposition and only opposition was from Mr. Dustumbo because his house is somewhat on the side and in the back and a little bit on the side. We offered to put up as much buffer to screen between us. It really like...I don't understand the other neighbors.

Mr. deRoziere; You are repeating yourself.

Arnie Silver: I am repeating myself. It would be a travesty to not grant this lot and variance. The ownership and how much money and it's the truth, dramatic or not.

Mr. deRoziere: With that we will close the public hearing.

Mr. deRoziere: I Move to close the Public Hearing at 9:51 pm; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: There are five factors the Board considers and some of them have been brought up:

1) Impact environment – In this case it may not be an issue. The opinion of the Town Engineer there could be adequate septic design possible but has not been proven yet. It seems to mitigate the water shed by proper site design – response we received.

2) However it may be possible to achieve benefit by other means – the owner and does not sound like it has happened – to at least explore possibility of either acquiring adjacent vacant property or selling this sub standard unimproved lot to adjoining neighbor. That has not been as demonstrated today, something that was pursued by current owner.

3) This request I feel is substantial – it is 40% reduction of required lot size based on a 3 acre area. And lot size required by soil formula as well.

4) Self created – yes almost are self created either by current or previous owners.

5) The request to me and is most bearing for me – request is undesirable change to character of the neighborhood. the proposal would seriously compromise the character of the neighborhood which consisted of overwhelming of parcels which meet the requirement minimum requirements. There are 41 in the tax map you showed us conforming lots and 26 non-conforming lots. I did not calculate total acreage. If you take total acreage of total non-conforming acreage to total conforming acreage you would see huge difference in ratios.

So I feel to be consistent with the Master Plan you want to reduce the number of non-conforming within with districts and to preserve the special rural agriculture and historical qualities of Walkkill and feel adding multiple houses especially in a rural area is not the way to go – that I my personal opinion. I wanted to express that to everyone that is here and make a matter of record.

Arnie Silver: Can we ask to postpone?

Mr. deRoziere: The Public Hearing is closed.

J. Furst, Esq.: The Board does not need to make a decision tonight, they have 60 days after closing the Public Hearing.

Ms Najac: What benefit would it be to postpone as we can't receive any information. Deliberate the information we have tonight.

Mr. deRoziere: We can vote tonight. Does anyone want to extend it.

Mr. Biondollilo: I am not comfortable yet.

Mr. Dunn: I am on the fence.

Mr. deRoziere: We can vote next month.

Mr. Biondollilo: I would like to do that.

Mr. deRoziere: The Public Hearing is closed but hold the vote until the next meeting on November 13, 2017.

Mr. deRoziere: I Move that the Public Hearing is closed (at 9:51 pm) and to hold the vote on November 13, 2017 at 7:30 pm as soon thereafter; Seconded (Najac); All in favor; Motion carried.

HEARING REVIEWS: (November 13, 2017)

O&B Realty Corp: (signs)

Dean Meci, Estimator, Quality Signs:

Mr. deRoziere: Is this back-to-back TV size style?

D. Meci: Actually it is 7ft3” x 2ft .

Mr. deRoziere: It fits within the size. No Code section for what you are asking for a variance – you are asking for a ‘use’ and the Code does not allow.

D. Meci: I was asked to come to the ZBA for the electric sign.

J. Furst, Esq.: This is a ‘use’.

Ms Najac: It is only one in the Town?

D. Meci: There is no code for this type of sign system.

J. Furst, Esq.: At the Building Department - did they give a reason?

D. Meci: They are not allowed in the Town but they exist: the car wash by Stewarts, Sealey’s Carwash on Schutt Road, Sonic, Liquor, CVS, Antons, Silver Lake Fire Department in 2007/8, Liberty Environmental and BayWash.

Mr. deRoziere: Just because they have one does not mean it is properly permitted or using them for a variance granted.

D. Meci: I accept that. We applied for silver lake fire district and approved and put up.

Ms Najac: If the exact same style is at the previously mentioned places, why so easy to say ‘no’ to you?

Mr. deRoziere: Section 249-11: prohibited signs #3 animated sign with moving parts, motion picture, animated, chasing or twinkling signs. Animated is not allowed. Changing sign is one issue.

D. Meci: It will change.

Mr. deRoziere: Moving parts or lighting.

Ms Najac: Animated signs are in the TOW.

Mr. deRoziere: Are they legal – animated or digital signs are different.

Ms Najac: We put limits how often it changes and even with Rite Aid - it also has to have access to safety concerns.

J. Furst, Esq.: Treat everyone the same unless policy has changed.

Ms Najac: It may be the term ‘electronic message center’.

Mr. deRoziere: Building Department deems these animated signs and not allowed.

Ms Schultz: What about TV?

Mr. deRoziere: Moving parts, motion projection or flashing, twinkling lights.

D. Meci: The message is stationary and then another appears.

Mr. deRoziere: Changing signs are not allowed. Just because there are signs are up and lighted and used does not mean they are allowed.

Ms Najac: We know the variance at least.

Mr. deRoziere: Relief for 249-11e ‘animated signs’.

Ms Vavricka; Did you get a letter?

D. Meci: No.

Mr. deRoziere: I got the understanding they are not allowed – prohibited.

J. Furst, Esq.: The Building Department should send letter saying why.

J. Furst, Esq.: This is sign variance – it s a use variance – use something not prohibited. Trying to do something that is not permitted.

Ms Najac: The billboards?

Mr. deRoziere: Billboards are totally different.

D. Meci: Who permitted the existing signs?

Mr. deRoziere: You will have to find out from the Building Department.

D. Meci: Who tell us that?

Ms Najac: The Town.

Mr. Dunn: The most recent was Sonic.

Ms Najac: What was approved does not guarantee what would be granted.

Mr. deRoziere: Electronic message center?

D. Meci: You can call it a digital or electronic sign.

Mr. deRoziere: Animated sign as applies to the code so a 'Use Variance'.

Mr. deRoziere: We will amend it from sign to use variance and are difficult to get. The Use Variance to allow and under Section 249-11e.

J. Furst, Esq.: Do some work on how other existing signs were approved will be helpful to the Board.

Mr. deRoziere: I Move to hold a Public Hearing on November 13, 2017 at 7:30 pm or as soon thereafter as the matter can be heard; Second (Najac); All in favor; Motion carried.

Mr. deRoziere: It is necessary to notify everyone within 500 feet of your property. You can obtain the list of names from the Town Assessor's Office after you receive a call. The notice of the Public Hearing will be in the Times Herald Record Public Notice Section one week from this evening. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified, registered mail, or provide proof of certified mailing from the US Postal Service. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

Deerfield Commons: (area / building length interpretation)

Joe Faul, with Mr. Ben Balm, developer of the property: It is a 52 acre parcel which fronts on Inwood Road and Foster Road. Went to the Planning Board for a zone change for overlay for senior housing. Approval 252 units off Inwood Road as part of the approval requested take section off 211 and utilize for commercial development. We are done with the Town Board for zone change for senior housing. Density calculations for total number of units is 252 units in this zone require 16 acres so well within density requirements. Town wanted future access for development in the rear as well. Not in front of the Planning Board for commercial piece. It is 2 phase process. What we are before the Planning Board is 252 senior housing. If we did not need subdivision and keep on one lot only need building length if take a look at hand out across street is within 1 foot of what we proposing for building length. We went to the Town Board meetings with different concepts and one was 160 ft building length and 26 units in building but it filled up more property and the town board wanted to see condensing in court yard layout they insisted on working around. Once with this layout this is what their preferred plan. Building length variance needed. The board will provide letter of support from town and planning boards.

Variance is 3 phase project for financing purposes and each on own tax lot and where have issues. Initially we are looking for interpretation for other variances when look at code sections refer to over all site minimum set back requirements. We are here for the section of Code for overall but since building 2 buildings per section state funding have issues meeting variances on individual. Without sub division meet all but building length.

Mr. deRoziere; We have to view all variances.

Joe Faul: Through 1968 court case they own that 3.5 acres (90 foot sliver) we reached out to the Palisade Park. The variances are the same and lots got smaller and added variances for lot coverage.

Mr. Balm: Background – modified plan 10 times and town board wo said this is plan they want and why we are here. The town bord actually wanted it condensed and leave rest alone.

Mr. Biondollilo: Same as Oak Ridge?

Mr. Balm: Yes. Senior no special needs. Oak Ridge and Sunrise are both the same.

Mr. deRoziere: Any other senior housing with 260 feet?

Mr. Balm: They are 35 feet high. We have several in New Windsor and done a lot in a lot of towns.

Mr. deRoziere: Do you know why 160 foot limit?

Mr. Balm: No. It is in this Town. These are seen all over.

Mr. Biondollilo: Is it fixed rate?

Mr. Balm: Yes.

Mr. deRoziere: The 160ft to 260ft and variance is needed because of subdivision for funds to proceed with the buildings. Housing Trust Fund or Bond with tax credit each is dependent on budget with the State.

Mr. deRoziere: I Move to hold a Public Hearing on November 13, 2017 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded (Biondollilo); All in favor; Motion carried.

Mr. deRoziere: It is necessary to notify everyone within 500 feet of your property. You can obtain the list of names from the Town Assessor's Office after you receive a call. The notice of the Public Hearing will be in the Times Herald Record Public Notice Section one week from this evening. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified, registered mail, or provide proof of certified mailing from the US Postal Service. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

Mt. Carmel (Rev. Paul Denault): (Accessory in front of primary structure)

T. DePuy: Combination retirement home with chapel in front existing chapel and there are 2 office areas and the Planning Board looked it over and requested the ZBA look at accessory use in front of primary and access through – City and Town – from private to town and city line runs through.

Mr. deRoziere: Parking lot is existing and is being relocated?

T. DePuy: Yes. We do not need any more parking with HC and only 8 units.

J. Furst, Esq.: Need parking calculations – take existing and add 8 residential units.

Ms Najac: Where is the pond?

T. DePuy: (showed on map) the ponds, old house, barn.

Ms Najac: Road frontage is on Willow Avenue.

T. DePuy: City (Middletown) access is to County 78.

J. Furst, Esq.: I don't think they need primary use. Church is not just a cathedral it has offices.

Mr. deRoziere: Church or religious institution. They have living quarters, a chapel and offices.

T. DePuy: Parking lot will be relocated – slip up hill and road in back relocated to access.

J. Furst, Esq.: Set back variance from front yard. It is all one use.

Mr. deRoziere: The table is to include setback 50 feet from any line and why only listed. This is R1.

Mr. deRoziere: I Move to hold a Public Hearing on November 13, 2017 at 7:30 PM or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. deRoziere: It is necessary to notify everyone within 500 feet of your property. You can obtain the list of names from the Town Assessor's Office after you receive a call. The notice of the Public Hearing will be in the Times Herald Record Public Notice Section one week from this evening. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified, registered mail, or provide proof of certified mailing from the US Postal Service. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

GNS Group, Ltd. (Dunkin Donuts / Crystal Run Crossing): (sign area)

Mr. deRoziere: I Move to hold a Public Hearing for Dunkin Donuts (Gloede Signs) on November 13 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded (Najac); All in favor; Motion carried.

Mr. deRoziere: It is necessary to notify everyone within 500 feet of your property. You can obtain the list of names from the Town Assessor's Office after you receive a call. The notice of the Public Hearing will be in the Times Herald Record Public Notice Section one week from

this evening. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified, registered mail, or provide proof of certified mailing from the US Postal Service. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

MEETING CLOSE:

Mr. deRoziere: There being no further items to be discussed, I Move to close the Public Hearing at 10:59 pm; Seconded (All in favor); Motion carried.

TSB:jcd 14,981

TOWN OF WALLKILL
ZONING BOARD OF APPEALS
DECISION SHEET

OCTOBER 16, 2017

GNS Group, Ltd.

(Dunkin Donuts / Crystal Run Crossing)

Request for a variance of 249 (sign area):

To increase to 258 SF.

Property located at Two Ben Gillman Way

(SEC 78 BL 1 LOT 80.61)

Designated OR

DECISION: Action to be taken -

Application to republish

PUBLIC HEARING scheduled for November 13, 2017

Kenneth L. LaBagh

Request for a variance of 249.8 (oversized accessory building)

1) Accessory building from 28x28ft to 30x50ft for personal storage.

Property located at 106 Gillen Road

(SEC 4 BL 2 LOT 3)

Designated HC

DECISION: Variance granted

491 North Street, LLC:
(Blumel Road)

Request for a variance of 249-20.D(1) (area):

1. Lot size – 15 parcels from 3 acres to sizes ranging from 0.75 to 1.23 acres;
2. Lot width – 4 parcels from 150ft to 128ft to 149ft;
3. Lot depth – 4 parcels from 133ft to 190ft;
4. Lot frontage – 8 parcels from 100ft to 141ft;

For subdivision of the existing 14 acre parcel into 15 single residential lots.

Property located at 74 Blumel Road
(SEC 41 BL 1 LOT 15.1 and 15.2)

Designated R-2

DECISION: Variances granted

[Reference Area Bulk Table C2 / August 15, 2017]

Rachael & Christine Gaupman

Request for a variance of 249-8.A(5) and 249-112.D(2):

1. Accessory building in front of primary structure.
For installation of free-standing ground-mounted solar panels in the front of primary building (residence) (in the front yard)

Property located at 115 Bowser Road
(SEC 21 BL 1 LOT 69)

Designated RA

DECISION: Variance granted

Eric Ring

Request for a variance of 249-39.1.D (setback):

1. Side yard from 50ft to 13ft;
2. Front yard from 50ft to 40ft;
3. Lot area from 3.0 acres to 1.5 acres;

For the proposed utilization of an existing commercial building as a church.

Property located at 40 Dunning Road

Designated TC

DECISION: Interpretation:

The Town of Wallkill Zoning Board of Appeals deems this as an interpretation: that a variance is not required as this is an allowed use.

CN Direct Construction, Inc.
(Elizabeth & Patricia Jones)

Request for a variance of 249-19.D (area):

1. Lot area from 3.0 acres to 1.84 acres;
2. Lot depth from 300ft to 222ft;

For construction of a single-family home on an existing non-conforming lot.

Property located at 165 Derby Road

(SEC 21 BL 1 LOT 46)

Designated RA

DECISION: Public Hearing closed.

Vote postponed to November 13, 2017

Linden Development:

Request for a variance of 249-19(D)(1) (area):

1. Side yard from 100ft to 80.4ft;
2. Width from 200ft to 135ft;
3. Lot frontage from 200ft to 115ft;
4. Area from 2.0 acres to 1.87 acres;

For construction of a single-family home.

Property located at 172 Derby Road
(SEC 21 BL 1 LOT 38.2)

Designated RA

DECISION: Not present