Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, October 24th 2012 at 7:30 p.m., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518

Board Members: 

Present: Geoffrey Egginton, Chairman 
Carolyn Mandelker 
Robin Price, Jr. 
Thomas Casper 
Jason Krellenstein 

Absent: None 

Also Present: Alex Posadas, ZBA Secretary

The Meeting was called to order at 7:30 p.m. Chairman Egginton announced that the next ZBA meeting will be Wednesday, November 28th with a site walk scheduled for Saturday, November 17th. Chairman Egginton moved to approve the minutes of the August 29th minutes. The motion was seconded by Mr. Casper; In favor: Ms. Mandelker, Mr. Price, Mr. Krellenstein, Mr. Casper and Chairman Egginton; Absent: None; Abstained: None; 

I. DECISIONS (Tentative)

Cal. No. 05-12-SP
Application of Anthony and Annemarie Mendola, 1320 Route 35, South Salem, NY 10590 for a Special Permit pursuant to Article IV, § 220-23A (9) and Article V, § 220-38 of the Zoning Ordinance to allow the storage of Contractor’s Equipment. Order to Remedy issued on 1/31/12.

The property is located on the north side of Route 35, designated on the Tax Map as Sheet 39, Block 10543, Lot 39, in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant at the October 24th meeting.

Chairman Egginton stated that the applicant has outstanding issues with the Planning Board. 

THE PUBLIC HEARING IS HELD OPEN.

Cal. No. 10-12-BZ
Application of Golden’s Bridge Fire Department, 254 Waccabuc Road, Golden’s Bridge, New York 10526 for a variance of Chapter 185, § 185-5(11) of the Code of the Town of Lewisboro in the matter of the proposed installation of an official public information LED sign that will be larger than permitted (proposed 24 square feet where 15 square feet is permitted).

The property is located on the south side of Waccabuc Road, designated on the Tax Map as Sheet 08, Block 10778, Lot 31, in an R-2A, Two-Acre Residential District.

Mr. Brancati, Sr. and Mr. Vasi, AIA were present at the October 24th meeting.

Chairman Egginton stated that the applicant went before the Town Board for a legislative change to the Ordinance.
Mr. Brancati, Sr. stated that the Town Board did pass a legislative change.

Mr. Vasi submitted a revised site plan. He stated that the Zoning Ordinance requires a 15’ setback for the sign and the proposed location for the sign is perpendicular to the existing brick wall and the memorial bell.

Chairman Egginton stated that the revised plan shows the sign moved into the fire house property.

Mr. Vasi stated that the Golden’s Bridge sign was straddling the property line. He stated that he did prepare a full scale mock up for the site walk. Mr. Vasi stated that ACARC requested some embellishments to make it look similar to some of the other signs in town.

Chairman Egginton asked about the text.

Mr. Vasi stated that there are 3 levels of text possibilities.

Mr. Brancati stated that ACARC had requested no more than 12” font and the old oval sign has been removed.

Mr. Casper stated that the ZBA’s purview is limited to the location of the sign in relation to the setback.

Mr. Krellenstein asked if the variance request is for the front yard setback only and not the size of the sign.

Mr. Casper stated that he recalls hearing about the change in the Ordinance. He stated that if it turns out that the ZBA has missed something then the applicant should come back and request it. Mr. Casper stated that in terms of the setback from the road, it certainly does not cause any obstruction nor would it impact ingress or egress.

Ms. Mandelker asked if the other sign will be removed.

Mr. Brancati, Sr. responded that the sign has been relocated.

Chairman Egginton stated that the applicant is requesting that the proposed sign be located 2.3’ from the property line where 15’ is required. Chairman Egginton moved that the application be approved as amended based on the revised site plan dated August 30th 2012 for the following reasons:
  • That there will be no undesirable change in the character of the nearby property;
  • That there is no practical alternative to the requested variance and the sign is for the benefit of the public;
  • That the area variance is relatively substantial, it needs to be visible to motorists;
  • That there will be no adverse environmental impact or adverse impact;
  • That the difficulty is not self-created;

The motion was seconded by Mr. Casper; In favor: Ms. Mandelker, Mr. Casper, Mr. Price, Mr. Krellenstein and Chairman Egginton; To Deny: None; Abstain: None; Absent: None;

CASE CLOSED.
**Cal. No. 19-12-BZ**

Application of Sylvain Côté, 33 Truesdale Lake Drive, South Salem, New York 10590

[Owner of Record: Connie Plaehn, 14 Gilbert Street, South Salem, New York 10590] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of an increase in non-conformity other than use due to the proposed installation of a generator and a/c condenser unit that will be closer to the side lot line than permitted in an R-¼A, One Quarter-Acre Residential District.

The property is located on the east side of Gilbert Street, designated on the Tax Map as Sheet 36F, Block 10806, Lot 29, in an R-¼A, One Quarter-Acre Residential District.

Mr. Côté was present at the October 24th meeting. Mrs. Law, Ms. Hamilton and Dr. Sachs were also present.

Chairman Egginton stated that they received a copy of a survey yesterday. He stated that the purview of the ZBA is related to the setback issues.

Ms. Hamilton stated that the side yard setback is narrower than today’s Code. She stated that there is a noise factor associated with the proposed generator and a/c condenser, as well as an issue of combustibility. Ms. Hamilton stated that they are requesting that the variance request be denied. She stated that the concrete slabs have already been placed in the setback in violation.

Dr. Sachs read a letter from Mr. Jeff Vreeland dated 10/23/12.

The Board reviewed a survey dated October 12th 2012.

Mr. Price asked if the generator and a/c condenser could be relocated to the front of the house which would be in compliance.

Mr. Côté responded that it would be by the front door which is not desirable to him.

Chairman Egginton stated that there is a planter there.

Mr. Côté suggested installing the generator and a/c condenser on the roof.

Mr. Price stated that the roof is not flat.

Ms. Mandelker asked if the objection is to the generator or the a/c condenser.

Mrs. Law objected to both units.

Mr. Côté provided the ZBA with general information regarding levels of noise from the American Academy of Audiology. He stated that he had difficulty finding a sound engineer. Mr. Côté stated that he would be able to install a portable generator which would be louder than a standby generator. He stated that they must operate a sump pump via generator when the power is out.

Mr. Casper asked if the Building Inspector has reviewed the survey.

Ms. Posadas responded that Mr. Côté delivered the survey to the Building Department.
Ms. Hamilton stated that Mr. Côté started to dig out the basement and asked if the basement was on the original plan. She questioned whether the applicant’s building permit included the work to the basement. Ms. Hamilton stated that Mr. Côté’s poor planning should not be a problem for the neighbors, the neighborhood or the boards in the town. She stated that previously there were no window wells and during the construction and renovation, the workers were removing dirt from the basement. Ms. Hamilton stated that Mr. Côté is requesting the generator for the sump pumps to pump water from the basement. She stated that it is not fair that the equipment should be installed in the side yard setback.

Mr. Krellenstein stated that this is an “as built” application and an encroachment on a small side yard setback with no justification for it. He stated that every time they review this application, something else crops up including the window wells. Mr. Krellenstein stated that the applicant has not justified it and in addition to the two “as built” units we have the window wells to consider as well. He stated that this applicant will be before the ZBA again in a few months with something else and the survey is not revealing except that it reveals yet another problem possibly with the validity of the survey.

Ms. Mandelker asked if the original plan had an a/c condenser included.

Mr. Côté responded that it was on 3 out of 4 pages.

Mr. Casper stated that it was on a drawing.

Ms. Posadas stated that it was not part of the ZBA application, not part of the building permit application; otherwise he would not be applying for it now.

Chairman Egginton stated that the survey reveals the window wells encroach on the setback.

Mr. Krellenstein stated that he is uncomfortable that the applicants are going to play gotcha with the board members. He stated that if the applicant has not identified every variance sought that it is somehow the ZBA’s responsibility to identify them. Mr. Krellenstein stated that he does not believe that it is the ZBA’s role. He stated that the applicant makes the application for the variance he wants.

Chairman Egginton stated that he agrees with Mr. Krellenstein. He stated that the original application did not have the window wells that are protruding out into both side yard setbacks; this is not before the ZBA as part of this application. Chairman Egginton stated that he personally can not approve this application as it stands. He stated that the window wells need to be removed.

Mr. Côté responded that it is for egress for a finished basement.

Chairman Egginton stated that that is a problem that will have to be resolved another way and both the generator and a/c condenser need to be removed.

Ms. Mandelker stated that she does not have an issue with the a/c unit in the proposed location because they do not tend to make a lot of noise. She asked if there is an alternate location for the a/c condenser unit.

Chairman Egginton responded that there are alternate locations for both the generator and a/c
condenser in the middle of the site.

Mr. Côté asked if he could install the units on the roof.

Mr. Price responded that the applicant should speak with the Building Inspector.

Mr. Côté responded that he did ask the Building Inspector.

Mr. Price asked what the Building Inspector’s response was.

Mr. Casper stated that he would not vote on hearsay.

Mr. Côté stated that it would be a nice eyesore for the neighborhood and that is what they deserve.

Mr. Casper responded that the neighbors are protecting their homes. He asked that the applicant respect the neighbors. Mr. Casper stated that he is not bifurcating this application and he would vote to turn it down.

Mr. Krellenstein stated that the issue is whether the applicant has met the criteria for a variance. He stated that the applicant indicates and other board members have indicated that there may be alternate locations for the a/c condenser and generator. Mr. Krellenstein stated that the a/c condenser is an “as built” encroaching already on a smaller setback. He stated that in his view the applicant does not meet the criteria.

Mr. Casper stated that he is not sure if the walls are structures and where the flammable material is and no one has presented anything showing that it has to be 5’ in any direction. He stated that every time they receive a new document, there are window wells popping up and walls are on both the neighbor’s property to the left as you face the applicant’s property and on the Truesdale Lake Property Owners Association to the right and that these walls may not be as described. Mr. Casper stated that he assumes that the certification on the survey is OK.

Mr. Côté stated that the stone wall on the beach side was a concrete wall that he embellished at his expense.

Chairman Egginton stated that the board members have proposed that the a/c condenser and generator be relocated near the front door in the planter or on the other side of the tiled walk which would not require a variance and be away from the neighbor. Chairman Egginton stated that relocating the units to the roof is not part of this application. He stated that the other board members are indicating that they do not want to carry this application over for another month. Chairman Egginton moved that the application be denied as presented because it does not meet the criteria

- That there will be an undesirable change in the character of the nearby property as a result of granting the variance;
- That there is a practical alternative to the requested variance;
- That the area variance is substantial, the property and the house are legally non-conforming. The applicant would be extending the non-conformity;
- That there will be an adverse impact on the neighborhood;
- That the difficulty is self-created;
The motion was seconded by Mr. Krellenstein. To Deny: Mr. Casper, Mr. Price, Mr. Krellenstein, Ms. Mandelker and Chairman Egginton. To Approve: None; Abstain: None; Absent: None; CASE CLOSED.

Cal. No. 23-12-BZ
Application of John Belizaire, 56 East Ridge Road, Waccabuc, NY 10597 for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of an “As Built” 12’ by 12’ enclosure which is closer to the side lot line (generator was approved at 23 feet where 50 feet is required) than permitted in an R-4A, Four-Acre Residential District. Installation of the generator was previously approved under Cal. No. 02-10-BZ.

The property is located on the west side of East Ridge Road, designated on the Tax Map as Sheet 25, Block 10803, Lots 68 & 91, in an R-4A, Four-Acre Residential District.

No one was present at the October 24th meeting to represent the applicant.

Mr. Price stated that the applicant had previously received a variance for the installation of a large generator on a concrete pad. He stated that then the applicant installed a 15’ by 15’ shed over the generator too close to the side line. Mr. Price stated that it is not the most attractive shed and the applicant could have screened the generator with trees or plantings. He stated that he can not approve the application.

Ms. Mandelker asked if the generator could have been relocated to an alternate site on the vast property. She stated that the property manager mentioned that the property owner will be demolishing the house.

Chairman Egginton stated that he did not attend the site walk on October 20th

Mr. Casper stated that the installation of just the generator was approved as constructed and then the applicant constructed a structure around it that mirrors the architecture of the house but that was not approved by the ZBA, creating something larger than what was approved by the Board.

Mr. Krellenstein stated that it is an “as built” structure and it could have screened the generator with trees.

Mr. Casper stated he would vote to deny. He stated that the ZBA is trying to be a little stricter with applicants that know what they are doing, when they do it and they nonetheless choose to proceed without necessary approvals ultimately looking for Board confirmation after the fact.

Ms. Mandelker moved that the application be denied.
The motion was seconded by Mr. Price. To Deny: Mr. Casper, Mr. Price, Mr. Krellenstein and Ms. Mandelker. To Approve: None; Abstain: Chairman Egginton; Absent: None; CASE CLOSED.

Cal. No. 24-12-BZ
Application of Jerry Wishner, 44 Gilbert Street, South Salem, NY 10590 for a variance of [1] Article IV, § 220-23E of the Zoning Ordinance in the matter of a proposed addition that will be closer to the front lot line (proposed/existing 15’ where 25’ is required) and [2] Article III, § 220-9D (2) of the Zoning Ordinance in the matter of the proposed addition that will result in the increase in non-conformity other than use than permitted in a R-1/4A, One-Quarter Acre District.

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The property is located on the east side of Gilbert Street, designated on the Tax Map as Sheet 36D, Block 10806, Lots 5&6, in an R-1/4A, One-Quarter Acre Residential District.

Mr. Wishner was present at the October 24th meeting.

Chairman Egginton stated that a site walk was conducted on October 20th.

Mr. Krellenstein stated that the applicant is building up over one side of the house. He asked if the neighbor’s have expressed any concern.

Mr. Wishner responded that the neighbors did not express any concern.

Mr. Casper stated that this is near the edge of the street and there aren’t a lot of options.

Chairman Egginton moved that the application be approved as presented for the following reasons:

- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance;
- That the area variance is relatively unsubstantial;
- That there will be no adverse environmental impact;
- That the difficulty is self-created, it would not preclude the approval of the variance;

The motion was seconded by Mr. Krellenstein; In favor: Mr. Casper, Mr. Price, Ms. Mandelker, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: None; Absent: None; CASE CLOSED.

Cal. No. 25-12-BZ
Application of Viktor Solhrik, AIA LE, PO Box 696, Katonah, NY 10536 [Owner of Record: Shawn Bader, 84 Post Office Road, Waccabuc, NY 10597] for a variance of [1]Article IV, § 220-23E of the Zoning Ordinance in the matter of a proposed addition that will be closer to the front lot line (proposed 22.8’ where 50’ is required) and [2] Article III, § 220-9D (2) of the Zoning Ordinance in the matter of the proposed addition that will result in the increase in non-conformity other than use than permitted in a R-2A, Two Acre District.

The property is located on the south side of Post Office Road, designated on the Tax Map as Sheet 25, Block 10812, Lot 2, in an R-2A, Two Acre Residential District.

Mr. Solhrik and Mr. Bader were present at the October 24th meeting.

Chairman Egginton stated that they have received a revised drawing.

Mr. Solhrik stated that the overhang over the bump out was shown on the original plan however the dimension to that 2.5’ overhang was not shown. He stated that the actual dimension is 20.2’ to the property line. Mr. Solhrik stated that they would like a little more protection from an overhang over the garage, so they would like the overhang supported by 3 brackets. He stated that it would not get any closer to the property line but it is in the setback. Mr. Solhrik stated that the lean to bump out in the back is the only addition that meets the setback requirements.

Chairman Egginton stated that a site walk was conducted on October 20th.
Mr. Krellenstein stated that with the clarification in the plans it did not strike him as an egregious application. He stated that the applicant is increasing the mass but it does not seem to affect the neighbors and the property seems well screened on the affected side.

Mr. Krellenstein moved that the application be approved as revised for the following reasons:
- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance, in fact the request only increases the mass, yet remains in the footprint;
- That the area variance is relatively unsubstantial;
- That there will be no adverse environmental impact;
- That the difficulty is self-created, it would not preclude the approval of the variance;

The motion was seconded by Ms. Mandelker; In favor: Mr. Casper, Mr. Price, Ms. Mandelker and Mr. Krellenstein. To Deny: None; Abstain: Chairman Egginton; Absent: None; CASE CLOSED.

III. PUBLIC HEARINGS NEW

Cal. No. 26-12-BZ
Application of Denise and Alan Simon, 1 Lakeview Road, South Salem, New York 10590 for a variance of Article IV, § 220-23E of the Zoning Ordinance in the matter of an “As Built” hot tub which is closer to the rear lot line (existing 19’ where 25’ is required) than permitted in an R-¼A, One Quarter-Acre Residential District.

The property is located on the north side of Lakeview Road, designated on the Tax Map as Sheet 33B, Block 11368, Lot 24 in an R-¼A, One Quarter-Acre Residential District.

There was no objection to the public hearing notice.

Ms. Simon was present at the October 24th meeting. She stated that she purchased the house a year ago and at the closing they learned that there was no certificate of occupancy on the hot tub. Ms. Simon stated that it was one of the reasons they purchased the home and they held money in escrow to proceed with the closing.

Chairman Egginton stated that the public hearing will remain open and a site walk will be conducted on the morning of Saturday, November 17th 2012.

THE PUBLIC HEARING IS HELD OPEN.

Cal. No. 27-12-BZ
Application of New York SMSA Limited Partnership d/b/a Verizon Wireless, 4 Centerock Road, West Nyack, NY 10994 [Owner of Record: American Tower, 10 Presidential Way, Woburn, MA] for the proposed replacement and additional antennas that are to be located on the Tower at a maximum height of 138’3”, below the height of existing antennas on the Tower which are in excess of 158’.

Although §220-41.1E (1) of the Zoning Code of the Town of Lewisboro indicates that the maximum height of an antenna tower is 120’, Applicant requests that the Zoning Board of Appeals find that a variance is not required since Applicant’s antennas are below existing antennas on the Tower, or in the alternative, Applicant requests the Zoning Board of Appeals grant a height variance of 18’3” for its antennas.
The property is located on the south side of Route 35, designated on the Tax Map as Sheet 40, Block 10263, Lots 1 and 62 in an R-4A, Four-Acre Residential District.

There was no objection to the public hearing notice.

Mr. Michael Sheridan, Esq. was present at the October 24th meeting. He stated that Verizon wireless will be replacing existing antennas and add additional antennas on the existing tower. Mr. Sheridan stated that the tower is located in a densely wooded area. He stated that they are requesting that the Zoning Board of Appeals find that a variance is not required since Verizon’s antennas are below existing antennas on the Tower.

Mr. Krellenstein asked if the applicant received a variance for the original antennas.

Mr. Sheridan stated that there is no indication that the original antennas received a variance.

Mr. Casper stated that the tower is old.

Mr. Sheridan stated that probably from the 1980’s or 1990’s.

Ms. Posadas stated that there is no indication in the Town records that there was a variance for the Verizon equipment to be placed on the tower.

Mr. Casper asked if the Verizon equipment predates the Ordinance with the height limitation of 120’.

Ms. Posadas stated that §220-41.1E (1) changed to 120’ in 2008.

Mr. Casper asked if the applicant meets the fall zone limitations.

Chairman Egginton stated that the new Verizon antennas will be 18’3” taller than what the Ordinance allows.

Mr. Casper asked if the antennas are at 158’.

Mr. Sheridan responded that the applicant’s antennas are existing at 158’.

Mr. Krellenstein stated that he does not want to vote on the application tonight. He stated that he would like to further review the Middle Class Tax Relief and Jobs Creation Act of 2012.

Mr. Casper stated that he would like Mr. Mole to opine.

Mr. Price stated that regarding other cell towers in town, the carriers do not apply for a variance, but they do appear before the Planning Board for approval.

Mr. Sheridan asked that the ZBA seek input from the Building Inspector.

Chairman Egginton stated that the ZBA would be seeking input from the Town Attorney.

Mr. Sheridan asked that the ZBA seek the Town Attorney’s approval this week, so that the application can proceed before the Planning Board.
Mr. Krellenstein stated that that would be unusual in that the Town Attorney is not the sixth member of the ZBA and the ZBA is not subject to his approval but rather his advice. He stated that he understands the dilemma but he wants to think about it before he makes his decision. Mr. Krellenstein stated that he is not comfortable voting on the application tonight.

Chairman Egginton stated that Mr. Krellenstein reflects his opinion as well but they have to pursue their due diligence.

**THE PUBLIC HEARING IS HELD OPEN.**

**Cal. No. 28-12-BZ**

Application of Bruno Gioffre, 2900 Westchester Avenue, Purchase, New York 10577  
[Subject Property: Grissini Ristorante, 355 Smith Ridge Road, South Salem, NY 10590]  
[Owner of Record: Nuo and Christine Camaj, 11 Hilltop Drive, North Salem, NY 10560]  
For a request for an extension of time for the application previously approved under Cal. No. 18-11BZ.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 49A, Block 9846, Lot 10, in an R-1A, One-Acre Residential District.

There was no objection to the public hearing notice.

Mr. Gioffre, Esq. was present at the October 24th meeting.

Chairman Egginton stated that he recalled the application.

Mr. Gioffre stated that there is peace in the neighborhood and the restaurant is under new ownership. He stated that the new owner has done substantial improvements inside the restaurant. Mr. Gioffre stated that they submitted a request for an extension of time of one year. He submitted an affidavit indicating the acknowledgment and acceptance of all of the terms of the Planning Board’s resolution.

Mr. Casper asked when the closing occurred.

Mr. Gioffre responded 3-4 months ago.

Mr. Casper asked if the applicant has been before the Planning Board in the last six months.

Mr. Gioffre stated that they have removed the side patio.

Chairman Egginton stated that the resolution under Cal. No. 18-11BZ is dated December 5th 2011.

Mr. Krellenstein stated that the ZBA has granted extensions of time on applications where there was a financial hardship upon the applicant. He stated that this is not distant from that and stated that he would be inclined to grant the extension of time. Mr. Krellenstein stated that the application was made prior to the resolution expiring and there has been a change in ownership. He stated that the applicant has appeared before the Planning Board and they have complied with one of the requirements to remove the side patio. Mr. Krellenstein stated that he is mindful that they give the new owner the opportunity to realize upon the variances that have been granted. He stated that he would be inclined to grant an extension of time.
Chairman Egginton moved that the application for an extension of time be approved for one year.

The motion was seconded by Mr. Price; In favor: Mr. Casper, Mr. Price, Ms. Mandelker, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: None; Absent: None;

CASE CLOSED.

Cal. No. 29-12-BZ
Application of Charisma Holding Corp., dba Estate Motors–Mercedes Benz, 321 Route 22, Golden’s Bridge, New York 10526 for a request for an extension of time for the application previously approved under Cal. No. 18-10BZ.

The properties are located on the east side of Route 22, designated on the Tax Map as Sheet 04, Block 11135, Lots 1,2,3,7 & 8 in a GB, General Business District and Sheet 04, Block 11135, Lots 4 & 6 in a RB, Retail Business District.

There was no objection to the public hearing notice.

Mr. Al DelBello, Esq. was present at the October 24th meeting. He stated that based on their correspondence, they slipped up and were unaware that the policy had changed. Mr. DelBello stated that they are seeking an extension of time to coincide with their site plan approval.

Chairman Egginton read an email from Lambert Wixson dated October 21st 2012 into the record.

Mr. DelBello stated that they acknowledge that this is a real problem. He stated that they have accomplished 21 of 60 conditions for the Planning Board. Mr. DelBello stated that they can not initiate the drainage work until they satisfy the 60 conditions and obtain a building permit. He stated that the drainage work will be the first phase of construction and will be very disruptive because it goes down the main driveway.

Chairman Egginton asked what has transpired since the variances were granted by the ZBA.

Mr. DelBello stated that the one approval that is pending is the septic approval. He stated that today’s requirements can not be met on that site, so the applicant has applied for a waiver. Mr. DelBello stated that they submitted correspondence documenting the progress on the application.

Mr. Krellenstein stated that the issue is that the variances have expired. He stated that as in the past nothing has been done to remediate the neighbor’s problems. Mr. Krellenstein stated that he is wrestling with does it further advance anybody’s interest to require the applicant to reapply for the variances, will that help the neighbor remediate their problems or is it better to acknowledge that there is ambiguity in the resolution as to what was needed to be done to toll the variance and simply grant the extension. He stated that when the application was made, he voted against it because the request was for too many variances and no justification or proof that Mercedes Benz compelled all the requirements. Mr. Krellenstein stated that the law is that if the variances have already expired then you need to have a new hearing and reapply. He stated that he is wrestling with whether the variances have expired or not, the approval itself states that it continues as long as work has commenced. Mr. Krellenstein stated that there is no doubt that the applicant has been working on this, even though they have not put a shovel in the ground. He stated that he has to conclude on some level that to force the applicant to start again is not going to get the problems fixed; it will start another ten year process. Mr. Krellenstein stated that some diligence would have ensured that the ZBA’s criteria would have been met but it is an artificial distinction of little
value to stand on because the application has technically expired. He stated that his inclination is to grant the extension and put conditions on it, but that has not proven effective because the applicant continues to delay addressing the problems of the neighbors until their problems are solved.

Mr. Wixson stated that the neighbors have suffered a lot and they just want something in place to ensure that the project moves along. He stated that this is an opportunity to put checks and balances into the system.

Mr. DelBello stated that they can not bifurcate the site plan.

Chairman Egginton stated that one of the reasons that he voted for the application was that the first phase of the project would be to address the drainage issues.

Mr. Krellenstein stated that anything can happen, the variances from the DEP may not be granted or Mercedes Benz may change its design criteria again. He stated that the problems with the neighbors are on the back burner and not of material concern to the applicant. Mr. Krellenstein stated that it is becoming increasingly apparent that the problems that have been identified will be ameliorated.

Mr. Casper asked if the applicant can help protect the homes of the neighbors.

Mr. DelBello stated that they had their engineers look at some temporary solutions such as building a small berm or a dry well but due to the grade on the back parking lot, it would fill up in a rain storm.

Mr. Casper asked about commercial sump pumps. He stated that the neighbors are hurting as a result of this.

Mr. DelBello stated that they fully acknowledge the problem.

Mr. John Pappalardo of Green Hill Road stated that the water that would be absorbed in a dry well would be less water to the neighbor’s basements.

Mr. Casper stated that unfortunately they do not have jurisdiction to base that on.

Ms. DeNicola asked for information regarding why the septic system is an issue.

Mr. DelBello responded that the septic system is an old system and they refurbished it with new crushed stone but it still does not comply with today’s standards.

Ms. DeNicola asked why the septic system was refurbished.

Mr. DelBello responded that he does not know why the engineer did the work on the septic system.

Ms. DeNicola stated that an oil spill was investigated and cleaned up. She questioned whether the oil washed onto her property which caused everything to die. Ms. DeNicola stated that she contacted the health department. She stated that the Planning Board’s resolution has a specific statement that says no work will be done to the septic system. Ms. DeNicola asked if the...
applicant does not get the waiver from DEP how would the applicant resolve the septic issue. She voiced her concern of waiting an additional ten years for the issues to be resolved. Ms. DeNicola stated that she has a large new area of dead grass which is parallel to the septic work.

Mr. Krellenstein stated that perhaps the applicant can make a proposal to ameliorate some of these issues on a short term basis. He read correspondence dated October 12th from Mr. DelBello as follows, “the applicant has three months to obtain an extension of the variances, and one (1) year from the date of the endorsement of the site development plan to obtain a building permit for the Project.” Mr. Krellenstein stated that the ZBA does not need to vote tonight.

Chairman Egginton asked if the ZBA could put a recommendation not a condition on their approval.

Mr. Krellenstein stated that he would like to hear what the applicant is prepared to do before he votes.

Mr. DelBello stated that whatever his client does will not solve the issue but they will try to ameliorate it to some degree.

Chairman Egginton stated that as a show of good faith they would like the applicant to ameliorate the issues on a temporary basis.

Mr. DelBello agreed.

Mr. Krellenstein stated that he does not know that the ZBA can impose conditions.

THE PUBLIC HEARING IS HELD OPEN.

IV. NEW BUSINESS/CORRESPONDENCE