TOWN OF WALLKILL ZONING BOARD OF APPEAL

JUNE 14, 2004

PRESENT:

J. Mattatall
W. Morgan
E. Raffo
R.Schoenberg
O. Smith, Chairperson
P. Thompson

Joseph A. Owen, Esq.

W. J. Barrett, Asst. Building Inspector (Guest)

ABSENT/EXCUSED:

MEETING OPENING:

The monthly meeting of the Town of Wallkill Zoning Board of Appeals opened with the pledge to the flag, followed by the roll call and presentation of the May 10, 2004 Meeting Minutes.

The Motion was made to accept the minutes as written; Seconded; All in favor; Motion carried.

The following hearings were Continued, Reviews made for July 12, 2004, and the Public Hearings conducted and voted upon as noted.

CONTINUANCE:

DUSO PROPERTIES (Stan Stolz):

Request for a variance of: 1) 249-20-D (lot width) on Lot #5 from 200 ft to 120.89 ft;
2) interpretation of 249-20-D (soils formula) 3.25 acres to: #1 1.37, #2 1.68, #3 1.75, and #4 1.89 ; Property located at the east side of M&M Road (approx. 3000ft south of Rt 17M (SEC14 BL 1 LOT 103.2 and 104.13); Designated R-2.

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

Mrs. Thompson: If you have one less lot you can create descent lots.

John. Nosek, Roger Ferris Engn: The last lot is a farm parcel with access off M&M.

We are requesting interpretation of the ordinance and also a variance. If possible, to act on the interpretation before the variance. I would like to give a quick summary. The soils are in R2 and the attorney presented 2 letters to you.

Mr. Smith: We can only interpret to what we have before us; not general. Apply to what is in front of us. With Type C Lot it does still say that it is subject to soil review.

John Nosek, Roger Ferris Engn.: It does not say soils formula.

Mr. Smith: I understand that. Any further comments from the Board?

Mrs. Thompson: We must abide by the soils formula.

Mr. Smith: I think soils formula does apply. Had lots 1, 2, 3 and 4 been enlarged slightly and 1 and 2 been homogeneous with each other along the road.

John Nosek, Roger Ferris Engn.: I wanted to address that based on your interpretation and go into that discussion.

Mr. Smith: The Public Hearing is closed and will take a vote. Again, for myself, I wish these were slightly larger – at least 1 and 2 to be homogeneous in size and appreciate the flag lot, but as it stands it's a new sub division. If you disagree with the soils map you can go to the Conservation Board and have it re-classified. You thought there were different types. You may have to go to that. In any event, we are going to take a vote.

John Nosek, Roger Ferris Engn.: Only other suggestion to make is in discussion with client, we could lengthen 1 and 2 and make them 1.75 acres with the understanding that the farm parcel is un-sub-dividable and no further subdivision. No more than 5 lots permitted. But we need a variance for those lots. We discussed losing a lot and my client financially could not get reasonable return and avoid cul-de-sac and road extension for the lots. If the board would consider that we would agree to no further sub division.

Mr. Smith: We are going to go to a vote, however. That is a new application.

John Nosek, Roger Ferris Engn.: One question, would the Board look favorably on that. We don't want to go to expense if not. For subsequent application, would you feel more agreeable to that - 5 lots and making them bigger.

Mr. Morgan: Probably.

Mrs. Thompson: Why should we worry about your client's financial problems we are here for the Town of Wallkill. That is not our responsibility.

Mr. Smith: See the Conservation Board.

Mr. Smith: I Move to accept the application for property on the East side of M&M Road 103.2 and 104.13, for a variance of: 1) 249-20D (200 ft lot width on #5 on map presented from 200 ft to 120.89 ft; and 2) interpretation to the acreage required computed by soils formula 3.25 acres to lot 1.37, 1.68, 1.75, and 1.89; Seconded.

DISCUSSION:

None.

VOTE:

In favor (aye):	0
Abstain:	1
Opposed (nay):	5

DECISION:

Mr. Smith: The variance is denied.

Mr. Morgan: Submit another plan like cul-de-sac.

Mr. Smith: This is not best in keeping with the Town of Wallkill.

John Nosek, Roger Ferris Engn.: The soils formula does apply?

Mr. Smith: Yes, the way it was worded.

XL CONSTRUCTION (Asher Sussman) Lot 1.31:

LOT # 1: Request for a variance of 249-22-D (front yard setback) from 35ft to 31ft; 2) rear yard from 30ft to 20ft; for entrance porch and rear deck with steps; Property located on Third Street (SEC 52 BL 12 LOT 1.31); Designated R-1.

Alan Lippman, Esq.: You needed the building department information regarding these 2 lots. A representative from the Town is at the foot of the table, is that correct?

Mr. Mattatall: That is correct.

W. J. Barrett, As't. Building Inspector: I am here for something else.

Alan Lippman, Esq.: You were going to issue subpoena or someone else here tonight.

Mr. Smith: There was not a subpoena to be issued.

Mr. Mattatall: It was not necessary.

Alan Lippman, Esq.: It is not necessary? Are the papers here?

Mr. Smith: What papers?

Alan Lippman, Esq.: I made representations to the Board that the site plans submitted and plans for structures for the building permits reflected the inclusion of the decks and the over hang over the front stoop. And that the plans clearly showed they extended, each of them, beyond the building envelope and went unnoticed or it was allowed.

Mrs. Thompson: It was not on the plans the building inspector okayed.

Alan Lippman, Esq.: Reason I am here is to look at the plans the building department produced.

Mr. Mattatall: I have a file here….

Mr.Smith: If he approves them, I don't know if that relieves…

Alan Lippman, Esq.: It was issue of our good faith or bad faith .

Mr. Smith: There is subdivision map on file and it shows the building envelope. The original filed map shows a smaller house.

Alan Lippman, Esq.: Where is the plot plan submitted?

W. J. Barrett, As't. Building Inspector : This is what is submitted in the file.

Alan Lippman, Esq.: Mrs. Thompson suggested…

Mr. Smith; …I have this from the first night.
Alan Lippman, Esq.: It is a question if what we gave you is consistent in the building department's file. And why we adjourned last time. (looking at a file) they are shown….I'll bring this up to the Chair. The deck is shown and the roof overhang is shown.

Mr. Smith: That is presumption of the building envelope. Is there a site plan in there?

Mr. Smith: I have a site plan.

Alan Lippman, Esq.: Not the one submitted with the building permit. If that is so, we applied for building permit for a foundation and building shown on the plans – all shown.

Mr. Smith: If you violate a set back…

Alan Lippman, Esq.: …not questioning if we are in compliance – we are not, because everyone made a mistake, the building department and applicant believing what had been asked for for permit purposes and it is clear now it is not okay. No one asked for something and built something. Build as permit authorized. Last month we discussed if variances could be justified – style of house could be gabled roof area over the steps and stoop in front of front door would be consistent with buildings around the neighborhood. They all have or many - have same type of structure. In back border by very large wet area and no one can get near house with new house on the land. It is wet lands.

John Noesek, Roger Ferris Engn.: Very low lying.

Alan Lippman, Esq.: If we are encroaching it is not meaningful in terms of having structures separated by good dimension; this deck can't be seen once you are in piece behind us by…

John Noesek, Roger Ferris Engn.: 40 or 50 feet…

Alan Lippman, Esq.: You can't see it, and can't build unless cut all trees down.

I don't think there is a purpose to be served by telling us we can't build a deck or the roof and you have standards that apply for your consideration for area variances, I have to look for them, in case of area variance, your duty is clear to take into consideration benefit of the application as weighted against safety and welfare. If you grant each of these variances, same set of physical circumstances, I don't think anyone in the neighborhood will be adversely affected by these 4 structures and to make this determination consider if undesirable change and if character will be created by granting area variance. Don't see any reason for any one to conclude any adverse change will occur because of rear or front structure. If benefit can be gained it is virtually impossible. No other way than through a variance. If area variance is substantial – don't think deck in the rear facing not capable of development and shielding decks from the nearest neighbors – is substantial. Nor adding simple roof structure over existing step is substantial. If variance have adverse condition of physical environment – no reason whit it would. Self created or not – may be self created because of a mistake but that consideration is relevant but not precluding granting the variance.
We meet those standards and believe it is not reasonable to conclude that the benefit to the applicant weighed against the neighborhood or community weighs in favor of the neighbor – it weighs in favor of the applicant. Thank you.

Mr. Smith: Any questions from the Public: (no)

Mr. Smith: Any questions from the Board?

Alan Lippman, Esq.: No one here on the last occasion.

Mrs. Thompson: Mr. Mulqueen.

Alan Lippman, Esq.: Yes he was, I don't know how I overlooked him.

Mrs. Thompson: Throw out zoning and do what they want? That is what the people did.

Alan Lippman, Esq.: I am asking. I would not ask that in any case. Statute describes the fact you must take into consideration, in case of are a variance, while it may be self imposed hardship, that alone does not determine the application. I said and documents he brought, bear out the filings were consistent with papers presented last month. Did show structures and it is clear if building permit was issued, they were issued by mistake for which there is no responsibility on the part of the Town.

Mr. Smith: House plans with deck and stoop.

Alan Lippman, Esq.: And site plan.

Mr. Smith: Not sure they were submitted at the same time.

Alan Lippman, Esq.: No permit issued without the plan and showing the yard requirements. The reason we asked for records that we did not pull wool over anyone's eyes. We did it innocently albeit by mistake.

Mr. Mattatall: The builder did not know it fell within requirements and that the building department did not realize that?

Alan Lippman, Esq.: Not the length but the depth – with respect to depth, if structure roofed portion over deck falls within the – must fall within the setbacks or if it can fall beyond. On looking at the requirements, they are not allowed beyond the setback. Only issue is there basis to say NO when no one is hurt when standards are met.

Mr. Mattatall: You don't need to delve into it. It's a governmental entity. I can live with that and if it gets more complex we have to look into it.

Alan Lippman, Esq.: I don't understand.

Mr. Smith: Plot plan would have been proper procedure to apply for variance before starting building.

Alan Lippman, Esq.: No question had it been recognized.

Mr. Smith: Approval of the plan by the building department does not relieve the applicant. The sub divider also builder and intrinsicly knew.

John Nosek, Roger Ferris Engn.: No, some areas are different.

Alan Lippman, Esq.: Who subdivided this?

John Nosek, Roger Ferris Engn.: Mr. Callendro development.

Alan Lippman, Esq.: Look Mr. Smith, we are the builder.

Smith: Any change of ownership since subdivision?

John Nosek, Roger Ferris Eng.: Yes. See the filed map.

Alan Lippman, Esq.: Building department is responsible, we did not try to pull wool over their eyes, we made mistake and so did they. I am here for relief. You are escape valve and it is justified.

Mr. Smith: Any further comments form the Board?

Mr. Smith: I Move to close the Public Hearing at 8:12 pm; Seconded; All in favor; Motion carried.

Alan Lippman, Esq.: The 2 applications are identical.

Mr. Smith: One for each lot.

Mr. Smith: I Move to grant variances of the following Lot #1 (52-12-1.31) of 249-22-D front yard set back 35ft to 31ft; rear yard 30ft to 20ft; Seconded.

DISCUSSION:

Mr. Morgan: He did right thing in what he tried but there was miss communication.

Mr. Mattatall: It is self imposed, and not substantial change and you showed your points overall.

Ms Raffo: You could have gotten variance before and it was finished – it is there. It was not here when you were here last month.

Alan Lippman, Esq.: I think we had mistakes in communications, it should not have been done.

Ms Raffo: You kept on building even though you were in (to the ZBA) for a variance.

Alan Lippman, Esq.: We were wrong – I'll speak to the client.

VOTE:

In favor (aye):	3
Abstain:	1
Opposed (nay):	2

DECISION:

Mr. Smith: The variance is denied.

Mr. Smith: I think benefit to the community, you are on point, the new homes are nice but the self-created difficulty just over shadows everything else. He had maps, site plans and built out to building lines and now here for 2 variances. Even as houses sit there they could be reconfigured and decks on different wall if it was so configured. That is the relief. You don't need 10 foot deck. When asked for min amount of relief available – could be smaller deck. I went around and not happy with tings on the map, once town accepts you create non-conforming lot – the sub division maybe should not have been approved in the first place. Building/owner have to comply with the zoning.

Alan Lippman, Esq.: I am painfully aware.

XL CONSTRUCTION (Asher Sussman) Lot 1.32:

LOT #2: Request for a variance of 249-22-D (front yard setback) from 30ft to 30.5 ft; 2) rear yard from 30ft to 25ft; for entrance porch and rear deck with steps; Property located on Third Street (SEC 52 BL 12 LOT 1.32); Designated
R-1.

Mr. Smith: I Move to grant the following variance of 249-22-D: 1) front yard 35ft to 30ft; 2) rear 30 to 25ft; Seconded.

DISCUSSION:

(None)

VOTE:

VOTE:

In favor (aye):	3
Abstain:	1
Opposed (nay):	2

DECISION:

Mr. Smith: The variances are not granted.

SEEKAMP REALTY OF MIDDLETOWN, LLP (Perth Commercial Properties):

Applicant representative: We want to reduce the minimum lot 24-1-47.1 from 200ft to approximately 140 ft. As you are aware, the application is from law suit between lot #48 Seekamp and #47.1 owned by Perth Incs. That went into receivership. You may recall that

during 10 years ago 302 widened, they were moved to their current position. Determined it was not located on Seekamp but Perth's property. Lawsuit begun and claiming they had adverse and as part of the suit, Perth would deed portion to Seekamp which portion included drive created by DOT and old drive was closed. We believe this meets criteria for area variance. It is no affect on overall nature of the NH and Perth has road frontage before and now after settlement of 140 feet and what they need for access from the street. No change to the neighborhood – it stay the same and its not self created and created by construction of new driveway. We are trying to take mistake and make it right and allow Perth develop the land in the future with reduced road frontage.

Mr. Smith: You are talking about parcel (map) to Seekamp.

Applicant: It cuts to the driveway and then the easement.

Mr. Smith: Parcel here (looked at map) severed by the easement.

Mr. Smith: Perth does not own property in corner?

Applicant: No they do not. Not sure who does.

Mr. Smith: Any questions from the Board?

Mrs. Thompson: It makes sense.

Mr. Smith: Will this happen the next 6 months?

Applicant: Yes; we still have to go before PB for approval for lot line. It will be routine and should have accomplished in 6 months.

Mr. Smith: Don't see problem.

Mr. Mattatall: The DOT changed the driveway.

Mr. Smith: Any questions form the Board/ (no)

Mr. Smith: I Move to close the Public Hearing at 8:25 pm; Seconded; All in favor; Motion carried.

Mr. Smith: I Move to grant the following variance for (24-1-47.1) of 249-28: minimum lot width from reduction from 200ft to 118ft; Seconded.

Mr. Smith: I Move to grant a variance of 249-28-D(2)(1) for lot width reduction from 200 ft to 118ft; Seconded.

DISCUSSION:

(None)

VOTE:

In favor (aye):	5
Abstain:	1

DECISION:

Mr. Smith: The variance is granted. See the Building Department.

DAVID BRAUN (Berbro Management Co.):

Request for a variances of 249-22-D (lot width): 1) lot width from 80ft to 50ft; 2) two side yards to 24ft; 3) one side yard from 15ft to 10ft; for construction of a bi-level home; Property located at 182 Brookline Avenue (SEC 76 BL 7 LOT 10); Designated R-1.

Mr. Smith: This is continuation of a Public Hearing.

Is there anything more you want to add to this. You had bulk of PH last month.

Mr. Braun: Looks like I did not understand – what is in question - what is the problem? We only have 26 feet of house width where other properties 50 feet on Belmont and others width less than 10 and 14 on other side? In building same house as they have.

Mr. Smith: Do you have the elevation?

Mr. Braun: Regular raised ranch – basement, garage.

Mr. Smith: Basement with main and top?

Mr. Braun: No.

Mr. Smith: Any questions from the Board?

Mrs. Thompson: The bulk table here where you say total side is 20 and you have 24 on the map?

Mr. Braun: I did not go back to architect I drew what I had you said 26 feet fit on the property and give in to that and come back and that is what I will do.

Mr. Smith: Any questions from the Public?

Chet Rogers: 176 Brookline: I could not hear a thing he said.

Mr. Braun: I will build like the other houses.

Chet Rogers: (presented picture) here is his raised ranch.

Barbara Mullani, 189 Brookline Ave.

Mr. Mattatall: Is this your house.

Mr. Braun: Have never built in the Town of Wallkill.

Barbara Mullani, 189 Brookline Ave.: You may want to check that information. I suspect 3 or 4 families that are living there. My complaint is about building this house.

Mr. Smith: He did not built this (picture). We have approved other variances. I can't speak for the house or the type or exterior.

Chet Rogers: Same like before. If you don't have it for 10 years you can't go for hardship. We had to buy to 2 lots. She has been here 15 years.

Mr. Smith; When did you build?

Chet Rogers: In 1965. The code is the code. Who changed it. It could be done on hardship – you have to own for 10 years and come to the ZBA to get an okay. It is plain. I don't know, do we live by the zoning and do w hat people do.

Mr. Thompson: There is house on either side?

Chet Rogers: Do you remember the WPA? They bought the house –

Mr. Smith: US Supreme court ruled that out.

Chet Rogers: It sets to close to the property line 3 feet. The way land was surveyed, I was there when horse went through and put through survey stakes 45 feet wide allow the way through. We do these things and now say it doesn't make any difference. I now have to live with smaller – taller house.

Mr. Smith: They have to come before us and have not given in Mechanicstown any type of height variance before. We have given variances for hardship because water sewer sent in there.

Chet Rogers: Money became money to people who owned those small lots. It is the wrong way to do business. Live by the law or do away with it. I watch them dump water into the sewer lines, build on swamp, every time rains he has 4" of rain, no one checked and if you build on aquifer that is what you get. Who checks land for swamps all kinds in that area. Why build on them.

Mrs. Thompson: Someone is paying taxes on them.

Mr. Roger: its all money. Don't talk about the arabs.

Barbara Mullani, 189 Brookline Ave.: This is 3rd time before you, object along with 13 others and you have that and Mr. Mulqueen came in last month. My last piece of opinion – we don't have to build on every piece of greenery we have. Different that near east main street. You talk about homogenous its not homogeneous with that end of Brookline.

Jack Antunes: I am the present owner and have question. That house is less meeting – it was assumed it was a 2 story house. Mr. Braun applied for 2 story at the last meeting. He mentioned 2 story house.

Mr. Smith: You are the owner?

Jack Antunes: I am the owner.

Mr. Smith: Don't you talk to each other.

Jack Antunes: We have a binder.

Mr. Braun: He wanted me to back out and we are in litigation. That does not belong here at all.

Jack Antunes: Is it a 2 story or not – told you it was too high.

Mr. Smith: A regular 2 story is too high and agree with that and if grant variance it be raised or a bi-level.

Jack Antunes: Mentioned if 1 story need new application?

Mr. Smith: He is here for area variance and an undersized lot and here for side yard variance. What he builds we don't care.

Jack Antunes: You had prints.

Mr. Braun: No basement. When we came back 2nd time – regular raised ranch.

Mr. Smith: Address the Board, actually.

Mr. Smith: For or against?

Jack Antunes: Before a 2 story, now claims 1 story.

Mr. Smith: Not before us.

Jack Antunes: No hardship.

Mr. Smith: Is he here with your consent?

Jack Antunes: I signed the application.

Mr. Smith: Any questions from the public? (no)

Mr. Smith: Any questions from the Board?

Mr. Morgan: You can put a restriction.

Ms Ruffo: This is 50 feet or even if it is 50 feet.

Mr. Smith: Only engineer can make that determination.

Ms Ruffo: Its half the size and inconsistent. It is not a hardship.

Mr. Schoenberg: The owner is not here, the builder?

Mr. Smith: I just asked the man, it is not hardship.

Mr. Braun: He signed the application and we had agreement, but now what he wants to drive me out of the position.

Mr. Smith: He is not adverse to the application being here.

Mr. Schoenberg: I would like to know for my own information.

Mr. Smith: Questions…

Mr. Smith: I Move to close the Public Hearing at 8:42 pm; Seconded.

Mr. Morgan: I think there should be a restriction.

Mr. Smith: Commonly known as bi-level or raised ranch.

Mr. Mattatall: Too much for that lot and 10 feet is too small.

Mr. Smith: I Move to grant the following variance for 182 Brookline 76-7-10 249-22-D : lot width 80 to 50ft; total side yards of 24ft; one side from 15 to 10ft; for a house known as bi-level (basement and one level on top of that); Seconded.

DISCUSSION:

Ms Ruffo: The side yard is too short.

Mr. Mattatall: The floor plan should come out 1400 sq/ft..

VOTE:

In favor (aye):	2
Abstain:	1
Opposed (nay):	3

DECISION:

Mr. Smith: The variance is denied.

JOSEPH A. BROWN:

Request for a variance of 249-19-D (lot size and width): 1) lot size 2 acres to 50,860 sq/ft; width 200ft to 145ft; 3) side yard 40 to 35ft; 4) 2 side yards 100 ft to 85ft; Property located on Top Notch Road (SEC 32 BL 2 LOT 42); Designated RA.

Alan Lippman, Esq.: This is also hold open. I have maps here composites of tax maps and don't think I have enough to go around but enough you can share. I was not here when it was submitted. And a hearing was held in July of 2003 probably and it would be simple to say nothing has changed since that decision was rendered; the zoning is the same, requirements same, requests the same and if you feel necessary to go through the elements of that hearing, I suggest there are enough to justify the variance and interest to save time, if you agree with.

Mr. Smith: I have no problem with it. He does not own property on either side

Alan Lippman, Esq.: No. It lapsed because he was not ready to build. If you are content with that, I will stop.

Mr. Smith: Any questions from the Public? (no)

Mr. Smith: Any questions from the Board?

Mrs. Thompson: It was previously granted.

Mr. Smith: It is existing lot and not self created and in keeping with surrounding lots and you will put up a nice house and will enhance the neighborhood.

Mr.Smith: I Move to close the Public Hearing at 8:51 pm; Seconded; All in favor; Motion carried.

Mr. Smith: I Move to grant the following variance of 249-19: 1) lot size 2 acres to 50,860 sq/ft; width 200ft to 145ft; 3) side yard 40 to 35ft; 4) 2 side yards 100 ft to 85ft; Seconded.

DISCUSSION: (None)

VOTE:

In favor (aye):	5
Abstain:	1
Opposed (nay):	0

DECISION:

Mr. Smith: The variances are granted.

HEARING REVIEWS: JULY 12, 2004

EDWARD & GAIL BEGLE:

Ms Begle: We would like to put on an addition as the house is tiny. We are on top of each other with no storage. we are surrounded by woods and neighbor behind and to the left. They just put on an addition. The house is set back and only contact with anyone.

Ms Raffo: Yes it is.

Ms Begle: It was built in 1950 and no choice of where it sits. The septic is on opposite and no contact with septic or well.

Mrs. Thompson: Are you at the end of the lane?

Ms Begle: Yes by old railroad bed. Don't even see anyone.

Mrs. Thompson: We won't confuse you with anyone?

Ms Begle: Driveway (Bendlin) house is next to ours but set much further back. 3 houses, woods, rental, more woods, then us with the Bendlins. They just put on addition same identical as ours. It says #37 and road dead ends in our yard.

Mr. Smith: 2 rear and side yard from 40 to 21ft is also needed.

Mr. Smith: I Move to hold a Public Hearing on July 12, 2004 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Smith: Did you get a packet when you applied?

MsBegle: My husband picked up the application.

Mr. Smith: You have to do this at least 10 days prior. The PH is July 12. List of names from the Tax office down the hall from here.

Mr. Smith: It is necessary to notify everyone within 300 feet of your property. You can obtain the list of names from the Town Tax Office. The Notice of the Public Hearing will be in the Times Herald Record's *Public Notice Section* within the next two weeks. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing Date. The mailings must be sent either by certified or registered mail. Bring the proof of mailings with you to open your Public Hearing. It can't be opened without your proof of mailing.

HOME HEALTHCARE STORE (JOHN DAIMOND):

Lewis Sign: They want 2 signs for access road (where Rickles was) and facing that road not public right of way. We are over size allotment. We needed your authorization for the signs. They are owners of the building and I am here for people who will be renting.

Mr. Smith: She will have the information.

Ms Diamond: Anything else you need?

Mr. Smith: No.

Mrs. Thompson: Please get a new code book. These references are from the old book.

Mr. Mattatall: How big are signs as compared to existing?

Lewis Sign: They are larger 22 sq/ft and 24sq/ft; one on front of building is smaller (replacing pylon) and 60 sq/ft on front of the building. 2ft x 28ft right across the front. They are looking like signs there. Side sign is informational and identification sign.

Mr. Smith: The new Code number is 249-11-N. It is quite long.

Lewis Sign: Over the sign size. We are only allowed 60 and need another 46.

Mr. Smith: I Move to hold a Public Hearing on July 12, 2004 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Smith: It is necessary to notify everyone within 300 feet of your property. You can obtain the list of names from the Town Tax Office. The Notice of the Public Hearing will be in the Times Herald Record's *Public Notice Section* within the next two weeks. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing Date. The mailings must be sent either by certified or registered mail. Bring the proof of mailings with you to open your Public Hearing. It can't be opened without your proof of mailing.

WILSON:

Mrs. Thompson: When did you buy this?

Mr. Wilson: I bought it in July.. We want to extend the deck from 4x8 out another 10 feet and 10 feet wide.

Mrs. Thompson: Does this go to the utility connection?

Mr. Wilson: I believe it does.

Mr. Smith: Anyone there have deck that size?

Mr. Wilson: Since I can do it, I decided to do it myself. There are about 4 approximately that size.

Mr. Smith: I Move to hold a Public Hearing on July 12, 2004 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Smith: It is necessary to notify everyone within 300 feet of your property. You can obtain the list of names from the Town Tax Office. The Notice of the Public Hearing will be in the Times Herald Record's *Public Notice Section* within the next two weeks. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing Date. The mailings must be sent either by certified or registered mail. Bring the proof of mailings with you to open your Public Hearing. It can't be opened without your proof of mailing.

Mrs. Thompson: It will be in by the end of the week. You can get names from the Tax office.

BOWIE:

Lisa Sugarman (for Mr. Bowie):

Mrs. Thompson: interpretation to what?

Ms Sugarman: We are here at suggestion of Mr. Steenrod. He purchased it 4/2003 when he bought it there was a title search done and signed by Steenrod indicated there were 2 buildings on the lot 1900 single family 1950 single family with 3 sheds. The use of apartment above garage is not continuing and issued notice and its before Judge Freehill.

Mr. Smith: We don't have sketches on this. Only the application.

Ms Sugarman: We have copy of assessor's office documents that has a sketch with the apartment indicated. He, unfortunately for him right now, purchased it signing in the form of the

apartment with garage underneath. We got here very quickly, there were docs mailed by former owner with prior O&R bills from date of his purchase through the date of Mr. Bowie's purchase. We are appealing Mr. Steenrod's decision in its' not continuing.

Mr. Smith: The assessment rolls show garage with apartment and what else?

Ms Sugarman: Bert Crawford – 2 buildings in front that resided – right in front of housing complex.

Mrs. Thompson: Same side?

Ms Sugarman: Yes, right in front of it.

Mr. Smith: The burden is on you that it has been continuing use. I thought we would have had O&R bills. We will set hearing for July and when you come in bring in what you think is important and show un interrupted use. Bring sketch plan of where the buildings are in relation.

Mr. Bowie: We have a survey.

Ms Sugarman: We were just in court 2 weeks ago and Mr. Steenrod suggested we come here.

Mr. Smith: It is up to you.

Mr. Smith: I Move to hold a Public Hearing on July 12, 2004 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Smith: It is necessary to notify everyone within 300 feet of your property. You can obtain the list of names from the Town Tax Office. The Notice of the Public Hearing will be in the Times Herald Record's *Public Notice Section* within the next two weeks. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing Date. The mailings must be sent either by certified or registered mail. Bring the proof of mailings with you to open your Public Hearing. It can't be opened without your proof of mailing.

Ms Sugarman: That includes everyone in the housing complex. What ever it is we will do it.

JRJ HOMES:

Mrs. Thompson: Is it Ridge Avenue or Road?

Lisa Szeto, Country Scape Properties: It is Ridge Avenue is what the Town says.

Mrs. Thompson: The application says one thing; drawing something else, that is why I am asking you.

Lisa Szeto: It boarders Town of Wallkill and Mt Hope – difficult to find on the map. We purchased land thinking it was vacant and it had a trailer with squatter and have had to deal with the police and removed garbage from the site. Everyone is happy about removing that. When we went to building department they said take both sides and divide by 2 and it is short. We want to make build able lot when we remove the trailer. Told to take 564.30 by 2 and got 282.15.

Mrs. Thompson: Do you have the soils?

Ms. Weeden: When we do the survey once the trailer removed and septic located.

Mrs. Thompson: We need soils before the variance.

Lisa Szeto: Can I bring them on 7/12? When I talked to secretary it was to write to the neighbors.

Mrs. Thompson: Send it to us before.

Mr. Smith: The 'unknown' should not be there.

Lisa Szeto: The surveyor will provide topals and was with him earlier today.

Mr. Smith: We will need the soils. The only variance is depth.

Lisa Szeto: Do you see anything else?

Mr. Smith: Depends on where you put house.

Lisa Szeto: Just depth seems to be what we need. I will go and get soils to you.

Mrs. Thompson: We need 10 copies. Turn them in here attention the ZBA.

Mr. Smith: That is all you want?

Lisa Szeto: I believe… may I ask the builder?

Mr. Yago: I have not built in this town. I am interested in this lot, it has less than 18 feet for the depth but its big enough.

Mr. Smith: Providing soils are correct.

Mr. Yago: We are just coming in, we are buying if a build able lot and want to know if it's a build able lot.

Mr. Smith: Now need the lot depth.

Mr. Yago: It has 2.009 acres we need acreage.

Mr. Smith: Providing soils are correct.

Mr. Yago: We are only 18 feet short.

Mrs. Thompson: Bring in the information and we will figure it out.

Mrs. Thompson: Is it hard to find?

Lisa Szeto: Pilgrams Corner and make a road on Ridge and we have no trespassing signs. We are excited about cleaning this up.

Mr. Smith: I Move to hold a Public Hearing on July 12, 2004 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Smith: It is necessary to notify everyone within 300 feet of your property. You can obtain the list of names from the Town Tax Office. The Notice of the Public Hearing will be in the Times Herald Record's *Public Notice Section* within the next two weeks. Take that notice, copy it and mail it to everyone on the list at least 10 days prior to your scheduled Public Hearing Date. The mailings must be sent either by certified or registered mail. Bring the proof of mailings with you to open your Public Hearing. It can't be opened without your proof of mailing.

Lisa Szeto: Is there a Public Hearing after that date?

Mr. Smith: It will be voted on that night but some get carried over.

PUBLIC HEARINGS:

> CARL & KIMBERLY TYSON: Request for a variance of 1) 249-14-D (24ft truck parked in driveway) and, 2) 249-8-A (shed in front of primary residence); Property located at 48 James Clark Drive; (SEC 6 BL 2 LOT 4); Designated RA.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 8:42 pm.

Mr. Smith: I Move to open the Public Hearing at 8:43 pm; Seconded; All in favor; Motion carried.

Ms Tyson: We have photos.

Mr. Smith: You want a shed and park a trailer there on occasion.

Ms Tyson: It's a 24 foot. It is more with the extension piece. It's a 24 foot box.

Mr. Smith: It's a new subdivision, when did you buy?

Ms Tyson: Three years ago. It is not really in the front – on the side.

Mr. Smith: All sheds are in the back. Is there any chance to move in the back?

Mr. Tyson: There is a dip down there. Did you go to the back?

Mr. Smith: No not really.

Mrs. Thompson: It is flat but the swing set is where?

Ms Tyson: On the side.

Mr. Tyson: The swing set is there - cleared the area there. Can't put the shed there really.

Mr. Smith: In general, sheds are not to be in front of the house and trying to find way to pull it in back. You are here for a variance.

Ms Tyson: Before, we did not know. They told us number of feet from the property line so when we put the shed, we did not have knowledge it is not to be in front. We have shed to match house.

Mr. Smith: The truck is not something you would run all night, just time to time park it there.

Ms Tyson: Only when load on it.

Mr. Smith: Running engines at night?

Mr. Tyson: No. It is only there when there is merchandise there for Circuit City or Best Buy. Once or twice a week.

Mr. Schoenberg: When do you leave and arrive?

Mr. Tyson: 8:00a and come in 5 or 6:00p.

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

Mr. Smith: Questions from the Board?

Mrs. Thompson: The problem is with the shed.

Mr. Smith: Imagine everyone with shed in the front and how it would look. When it comes to these, we will take vote on each. No problem with the truck. I don't think it will detract and under stand its your living. The shed being there is something you put there and is called 'self created' and detract in the long run.

Mr. Mattatall: Your property is well kept and truck is not running and where you park it no on top of the neighbors. Shed in front is an issue and it can be moved.

Mr. Morgan: I see no problem with the truck, but drag the shed back a little bit.

Mrs. Thompson: Can you fill in the ditch there.

Mr. Smith: I Move to close the Public Hearing at 8:45 pm; Seconded; All in favor; Motion carried.

DISCUSSION:

(None)

Mr. Smith; I Move to grant the following variances:

1) 249-8-A-5 shed in front of the primary building (house); Seconded.

VOTE:

In favor (aye):	0
Opposed (nay):	6

DECISION:

Mr. Smith: Variance is denied.

2) 249-14-D parking truck in driveway; Seconded.

VOTE:

In favor (aye):	6
Opposed (nay):	0

DECISION:

Mr. Smith: Variance granted.

Mr. Smith: The truck has passed. See the building department about the shed. You will have to move the shed, but speak with Mr. Steenrod.

LAN ASSOCIATES, LLP. (Bernard Colletti): Request for a variance of 249-12 (off street parking); Property located at 680 Rt 211 East (SEC 41 BL 1 LOT 68.1); ; Designated MI.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 8:54 pm.

Mr. Smith: I Move to open the Public Hearing at 8:55 pm; Seconded; All in favor; Motion carried.

Michael McGovern, Architect, Lan Assoc.: We are here for a parking variance. Purpose is to reduce off-street parking. As result of previous hearing we did parking utilization study to be submitted (and so it was).

Mr. Smith: Do you have … the one on the end, is that correct?

Mr. McGovern: Yes. Fast food restaurant in existing shopping mall. The current config of facility is 7 retail spaces and large warehouse for Appliance City use. On the plan the requirement, zoning is 148 spaces. On plan original are unshaded and new are shaded on the side and in back. 83 original and adding 26. total is now 109. the variance is for 39 short required. Some points to consider important: the 25 years he has owned it, he never had the parking at full capacity.

Mrs. Thompson: Was it full capacity?

Mr. Colletti: Yes.

Mr. McGovern: The utilization study states limited use of existing based on peak and analysis on similar fast food and even when compare peak and combine study shows new would not be a problem and study bears that out.

Mr. Smith: Reconfigure the lot in the front?

Mr. McGovern: This is based on the façade in the front.

Mr. Colletti: I have to rent and is the biggest improvement.

Mr. Smith: Any questions from the Board?

Mr. Schoenberg: Similar. This is Chinese Star?

Mr. McGovern: Fast food.

Mr. Morgan: Any tables?

Mr. McGovern: Limited. Basically take out.

Mr. Morgan: How many?

Mr. Colletti: Two. If someone wants an egg roll and eat it they can.

Mr. Smith: Your line does go at a line there, where is your other boundary line?

Mr. McGovern: Past retain age pond and turns.

Mr. Smith: You can't do anything there.

Mr. Smith: Remove the existing trailer?

Mr. McGovern: Remove for fire fighting apparatus.

Mr. Smith: Putting in stripe or landscape islands?

Mr. Colletti: Stripe – it creates a problem with snow removal, water. We put in walls.

Mr. Smith: If you stripe it you have to keep it striped.

Mr. Smith: Any questions from the Public? (no)

Mr. Smith: Any questions from the Board?

Mr. Smith: It is enhancing the neighborhood and he has done very nice job and good merchant in the Town of Wallkill. It is enhancing the neighborhood.

Mr. Morgan: How many handicap?

Mr. McGovern: Five (5) designated with symbol in the front area.

Mr. Mattatall: You are decreasing parking but keeping handicap spaces?

Mr. McGovern: That is correct.

Mr. Smith: Any questions or comments from the Board? (no).

Mr. McGovern: If you look at parking analysis based on max peak loads are not high. He has spent a lot of money renovating and been here 25 years and it consistent with existing use.

Mr. Smith: It's a minor variance and consistent with existing business.

Mr. Smith: I Move to close the Public Hearing at 9:59 pm; Seconded; All in favor; Motion carried.

Mr. Schoenberg: I encourage you to look at space #30.

Mr. Smith: I move to grant the following variance of 249-12(parking spaces): From 148 to 109 spaces; to permit take eating/drinking establishment; Seconded.

DISCUSSION:

(none)

VOTE:

In favor (Aye): 6
Opposed (Nay): 0

DECISION:

Mr. Smith: The variance is granted.

ORANGE COUNTY-POUGHKEEPSIE LPP (Verizon Wireless) (12 Pt. Parking, LLC): Request for a variance of 221-7-A (1) setback for a new tower to be located 1,000 feet from a residential dwelling; Property located at 795 Rt 17M
(SEC 36 BL 2 LOT 4); Designated HC.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 10:00 pm.

Mr. Smith: I Move to open the Public Hearing at 10:01 pm; Seconded; All in favor; Motion carried.

Mr. Smith: Please present your application.

Mr. Scott Olsen, Esq.: I represent Verzion Wireless. A client is proposing a tower at LaBarge Storage and not our first proposal. At urging of town and the public, we did comprehensive study and found the LaBage property. The tower is 150 feet tall and we are here to seek variance from 221-a-7. currently you see from site plan 9 structures within 1000 feet. We were here in January with 5 structures, and granted variance at that time. At towns urging we are back for this new site.

Mr. Smith: Any questions from the Board?

Mrs. Thompson: I have no problems.

Mr. Smith: It is a good location; right where you are is business area. Again, it is one of the lesser of all evils if you will. Overall a good site.

Mr. Scott Olsen, Esq.: It is in a HC site and radio are appropriate in the zone.

Mr. Smith: Any questions from the Public?

Mrs. Thompson: Any complaints about radio frequency?

Mr. Scott Olsen, Esq.: We submitted radio frequency study to the town and are less than 1% permitted by the FCC; low powered use.

Mr. Smith: Before it is opened to the Public, I ask you to stay to the point, and for 1000 feet from the nearest dwelling. Not approval of the tower. Local Law number 5.

Mr. Smith: Any comments from the Public, please give your name.

Kyle Ferray, Keesel Road: Agree lesser of 2 evils in capital letters and would like to recommend or suggest if you give approval take away (variance granted) Keesel Road.

Mr. Smith: We will not do that. The other site has been approved and good for 6 months before they have to come back. We are here for approval – set back from 1000 feet to closest homes. Approval rests with the PB, as does the other site.

Kyle Ferray: Anything for Ferrall?

Mr. Smith: We are here for Verizon.

Mr. Smith: No one here for the tower.

Mr. Mattatall: You have different option for heights, you chose smaller.

Mr. Scott Olsen, Esq.: DPW was 105 and new has 150 because of different elevations and needed for elevation. Higher topo at the other. For the alternative is 150-foot tower.

Clark Najack, King Road: Is there any part of Town not serviced by this new location.

Mr. Scott Olsen, Esq.: This is part – this site will serve the immediate location, and another site going for approved is at Tarbell Road, this will not serve entire town, Tarbell for the northern part and they working on other areas.

Clark Najack, King Road: When I go over Goshen Turnpike I might as well throw it away. Will you cover this area?

Mr. Scott Olsen, Esq.: This is outside the application. We are here and several sites to cover the entire area.

Walt Barrett: As licensed radio teck, you say wattage is less than 1% with present or co-locations?

Mr. Scott Olsen, Esq.: That is what we are proposing on the tower now.

Walt Barrett: There will be buildings within 1000 ft concern power rating if issued variance for 1000 encroach on, will radio gear from now on, will it be issue if variance issued.

Mr. Scott Olsen, Esq.: An antenna will be 150 feet not directed down but out to horizon, emission out but some will come down. People at 1000 feet will not get significant radiation.

Walt Barrett: Understand, with new technology because of propagation, it is more of cone shape and along with new services out there, higher wattage is needed.

Mr. Scott Olsen, Esq.: Now it is FCC regulation.

Walt Barrett: You have 1000 foot they need.

Mr. Smith: Local addresses residences. (local law). The PB may be what you want.

Walt Barrett: If you allow 1000 foot ring and have new G3 services that do a lot of things and higher wattage, almost certain 1000 feet will be an issue. My only point. Will bring up to PB.

Mr. Scott Olsen, Esq.: We are less than 1%.

Walt Barrett: That does not include who you co-locate to.

Mr. Scott Olsen, Esq.: Because so high, they are exempt and are so high, 30 feet above not an issue; they are not concerned about it. When antenna that high, energy not directed down.

Mr. Barrett: You will not put antenna at 150 feet.

Mr. Scott Olsen, Esq.: 145.

Walt Barrett: It is 140 feet, separation between antenna of at least 50feet.

Verzion Representative: 1000 set back is not the FCC regulation from tower. If you drive across the country, towers in church steeples, water towers that is set up by the town. Based on RF emission and all carriers, meet RF emissions and its cumulative. You see 5 sets of antenna and show frequency and power being outputted is not exceeding cumulative of what is allowed on the antenna. As tower owner, we responsible of double-checking our towers.

Walt Barrett: I concur and am on coordination committee that is today. What happens 5 years from now?

Public: You are trusting government that says air quality was safe on 911.

Walt Barrett: Barrett: How close?

Mr. Scott Olsen, Esq.: 750 feet.

Mr. Barrett: They are businesses.

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

Mr. Smith: Mr. Smith: Any closing remarks?

Mr. Scott Olsen, Esq.: Application supports our request and tests and like board before makes, a decision make a negative declaration.

Mr. Smith: I Move to close at 10:16 pm; Seconded; All in favor; Motion carried.

Mrs. Thompson: I do not have any problem with this.

Mr. Smith: Not adversely affect the neighborhood. It's a good location.

Mr. Smith: I Move to grant the following variance:

1) 221-7-A- (1) setback from 1000 setback requirement on residences; Seconded.

DISCUSSION:

(None)

VOTE:

In favor (aye):	5
Opposed (nay):	1

DECISION:

Mr. Smith: The variance is approved.

MICHAEL RAMOS: Request for a variance of: 1) 249-19-D-1 (side yard); 2) 249-8-A-5 (accessory building in front of primary residence) for construction of a 10 x 10ft attached garage / carport; Property located at 146 Mt Joy Road; Designated RA.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 10:19 pm.

Mr. Smith: I Move to open the Public Hearing at 10:20p; Seconded; All in favor; Motion carried.

Mr. Ramos: This was approved and waited too long to hire a contractor and had to resubmit the request again.

Mr. Smith: Are you ready to build now?

Mr. Ramos: Yes.

Mr. Smith: On the map we called it a garage, but it is 10x10, please explain.

Mr. Ramos: 10x10 addition to my home a garage and only one without one and need additional space.

Mr. Smith: For storage, bikes. Last time we have requirement that architecture be in keeping with surrounding architecture of the area.

Mr. Smith: Any questions from the Board? (no)

Mr. Smith: Any questions form the public?

Mrs. Thompson: No questions, no problems.

Mr. Smith: I move to close the Public Hearing at 10:21 pm; Seconded; All in favor; Motion carried.

Mr. Smith: I Move to grant the following variance 249-D: Side yard variance for construction of a 10x10 attached garage subject to architecture be in keeping with the surrounding area; Seconded.

DISCUSSION:

(None)

VOTE:

In favor (aye):	6
Opposed (nay):	0

DECISION:

Mr. Smith: The variance is granted subject to the garage / carport's architecture be in keeping with the surrounding area architecture.

JAN AND GEORGENE FREEDMAN: Request for variance of 249-19-D 1(side yard): 40ft to 10ft; 2 side yards from 100ft to 29.6 ft; for construction of carport on east side of dwelling; Property located at 146 Mt Joy Road (SEC 60 BL 1 LOT 35.14); Designated RA.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 10:23 pm.

Mr. Smith: I move to open the Public Hearing at 10:24 pm; Seconded; All in favor; Motion carried.

Mr. Smith: Please present your application. It is running close to the property line.

Mrs. Freedman: That is why we made the application.

Mrs. Thompson: No problem with carport but would for a garage.

Mr. Smith: Any questions from the Public? (no)

Mr. Smith: Any questions from the Board?

Mr. Smith: The relief requested is minimal.

Mrs. Thompson: Similar to other houses in the area.

Mr. Smith: It will enhance the neighborhood. It is a minor addition. Garage is major addition.

Mr. Smith: I move to close the Public Hearing at 10:26 pm; Seconded; All in favor; Motion carried.

Mr. Smith: I Move to grant the following side yard variance of 249-19-D-1: from the required 40 ft to 10ft; 2 side yards 100ft to 29.6ft to add carport on east side of dwelling; Seconded.

DISCUSSION: (None)

VOTE:

In favor (aye): 6
Opposed (nay): 0

DECISION:

Mr. Smith: The variances are granted.

EMPIRE DRILLING & BLASTING: Request for a variance a use variance to operate a home business occupancy (blasting and drilling) in an RA district; Property located at 160 King Road (SEC 12 BL 1 LOT 7); Designated RA.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing notice was read at 10:28 pm.

Mr. Smith: I move to open the Public Hearing at 10:28 pm; Seconded; All in favor; Motion carried.

Shawn O'Conner, Esq., for Hollands: We are looking for interpretation of the Code for home occupation. By way of background. His name is not a misnomer. And no drilling/blasting d one on site. Not what application is seeking. To mitigate any fears, no blasting compounds on site not part of application and they come from Ringwood, NJ and returned at the end of the day. Basically it is drilling and blasting of excavating and stone for residential and highway. Park commercial building on site. He has 6: 3 pick up 1 tri-axel 1 delivery and one tractor. We may need variance for tractor-trailer as well.

Under home occupation – business not done from this site its done in the field. No clientele come on site only vehicles to go to various job sites. We gave you a site and vehicles proposed at 18.32 acres on the map as far back as possible and we adjoining property, Wallkill Estates, Inc and is additional 36 acres immediately south.

Mr. Smith: Where do they park?

Shawn O'Conner, Esq.: The 18-acre parcel – all the way in back where it takes a right-hand corner to minimize impact. In terms of home, we have two non-employees they pick up vehicles and do not live on the site. The home occupation says no family, but they come to pick up vehicles and go to locations all over the counties wherever he has his business.

In terms of home occupation does not address this type of business. If not permitted to park, it creates hardship but no other reasonable return and develop as residential. He wants to use it for his immediate family and not develop at this time. Character of the NH parking commercial vehicles for the business behind the house and poll in the front and parking '18.32 acres' on the map. He owns 54 total acres. At least impact to south is minimal and understand further south has earth moving equipment which is accessory and no clients visit the site and little increased if any traffic.

Regarding letter and spirit is allows special permitted use, and RA allows farm equipment while not farm, it is similar in size and shape and accessory in RA and not deviate from the code. None of vehicles used on site. Regarding hard ship, the current law would cause- parking is not

permitted in RA unless 25 feet, it is permitted in RA but part of business use. That is same thing Mr. Tyson told you tonight. He used it in his business as well. Prohibiting of vehicles in RA is okay as long as under 25 feet. Not deviate from laws enacted.

Number of people are concerned. 3-4 months ago had minor diesel spill and did not know and it was a leak and DEC was involved, clean up and EPA and no one anted the leak and it took the DEC to tell us.

Mr. Smith: How many square feet earth removed?

Mr. Holland: There was pipe under the tank we did not know about. They dug up whole ditch probably 8 yards.

Shawn O'Conner, Esq., We did not know about it and clean up done.

Mrs. Holland: Clean up is done until they can get one more water test, monitored by DEC and insurance mediation people.

Mrs. Thompson: We can still smell it.

Mr. Holland: On top diesel tank – 300.

Mr. Mattatall: What is the underground pipe?

Mr. Holland: It was underneath not connected.

Mr. Mattatall: How big?

Mr. Holland: It is 300 and it is no longer there.

Mrs. Holland: Dirt is not there.

Mrs. Thompson: The Frog Hallow Enterprises what is it?

Mrs. Holland: It is in my name. It is corporation that the land in, previously it was in corporation by previous owner. No business but put in a corporation.

Mr. Smith: Why didn't she sign it?

Shawn O'Conner, Esq., Listing said it was Goshen.

Mrs. Thompson: It was not signed.

Shawn O'Conner, Esq.,: I mailed it; it was Goshen and did as I was told.

Mrs. Thompson: I looked at info assessor to neighbor 36 acres, and it belongs to someone else?

Shawn O'Conner, Esq.,: It owned by her?
Mrs. Holland: It is mine.

Mrs. Thompson: It says Williams.

Mrs. Holland: It was changed last year, in July.

Mrs. Thompson: Name not changed in Tax Office.

Shawn O'Conner, Esq.: What is the name?

Mrs. Holland: Frog Hollow Enterprises.

Mr. Schoenberg: How many vehicles were there 3 years ago?

Mrs. Holland: Not there then.

Mr. Holland: I had 7 when we got it.

Mr. Schoenberg: Number of vehicles changes over period of time?

Mr. Smith: 1380 feet back parked?

Shawn O'Conner, Esq.: Yes. 1400 feet at least.

Mr. Holland: All woodland.

Mr. Mattatall; It does not fall anywhere – A-4 not blasting in the house. You referenced Tyson – it's a singular vehicle that leaves minimal impact. If you have more vehicles more of an impact. Last month asked about bunkers, and it was negative.

Shawn O'Conner, Esq.: For explosives. There are no explosives on site.

Mr. Smith: Were there ever explosives on site?

Mr. Holland: Yes. None at this time.

Shawn O'Conner, Esq.: None as of May 10.

Mr. Holland: They are all stored in Ringwood, NJ.

Shawn O'Conner, Esq.: Tyson case he was parking vehicle in front of premises, this is 1400 feet back from the road so the ability to see different from 24 feet in the front.

Mr. Matatall: It is not front yard but the front line on the house. It's a singular vehicle.

Mr. Smith: When explosives on site, they where stored?

Mr. Holland: In magazines back here (drawing).

Walt Barrett: One on the left side of the road.

Mr. Holland: All permits.

Mr. Smith: There was question if they stored in Wallkill or Crawford.

Shawn O'Conner, Esq.: Yes, the rear is in the Town of Crawford.

Mrs. Thompson: Why that far back for dynamite?

Mr. Holland: Scale of distance. Really not issue of this, that has…

Mr. Smith: I understand you have had the business for many years….

Mr. Holland: This man can vouch for me.

Mr. Smith: There was hedging if was Crawford or Wallkill.

Shawn O'Conner, Esq.: To our detriment it is Wallkill.

Mrs. Thompson: Can you understand the questions; this map is 22 years old.

Shawn O'Conner, Esq.: Assuming we are successful, need full site plan for the PB to get site plan approval. Spend it now, spend it later.

Mrs. Thompson: The buildings could have been added to this ancient map we have.

Mr. Smith: Any questions from the Board?

Mr. Schoenberg: I don't understand a fleet and one vehicle overnight in Tyson case.

Shawn O'Conner, Esq.: In the RA zone less than 24 feet is permitted; only distinction is tractor that may exceed 24 feet.

Mr. Smith: Is change of use of the land here. To permit home occupation. Change of use is different from area or anything involving parking. That is what is before us.

Shawn O'Conner, Esq.: RA is permitting home occupation, can we vary use to be home occupation.

Shawn O'Conner, Esq.: Change of use for home occupation, which is special use in RA.

Mr. Smith: Any further comments from the Public?

Clark Najeck, King Road: Explanation of terminology on a 'Use Variance'.

Mr. Smith: Use variance and Area. Area variances have easier less to prove and to ask for, lower standard. Use variance is very strict and by design difficult to get. Certain standards must be met.

Clark Najeck: As far as the number of trucks, I am not sure of number, the 25 foot is a tractor trailer and triax and other trucks: box truck in back – it bothers me where he has equipment parked, if leaves off trees it may as well be parked in my back yard.

Styles Najeck, 170 King Road: Stone wall "irregular wall' on the map.

Mr. Smith: Trucks are between the "w" and the "3".

Styles Najeck: I have petition signed by everyone on the street (entered into the record). Also people from Crawford have signed it. I don't remember them being here 2 years, more like last Winter or Spring - like a year and a quarter, not sure when they occupied the house. When the leaves fell off we took 3 pictures, not exactly synch, we saw their trailers.

They had: excavator, trailer, mats for blasting, 2 trucks, air drill, 3 site trailers. This is the oil spill photos and started behind tanks out from behind mailbox down ditch and to neighbors water spill. At the time he said it was not his transmission fuel, and walked him back to the mailbox to where it was coming from. We still have some pads around their house.

This is his house in front, 3 trucks in back, road goes from behind here (looking at drawing/pictures); tanks in back, dirt they dug out, pictures of the leaking tanks, here are the houses and none have home business and none have diesel fuel and trucks, they start 6 or 7 in the morning, and diesel smell fumes over front yard. We lived there 17 years. Even if ls looks more distant, our house is here, if you look at where he has..as much as it is feet, it is not a lot of feet.

Clark Najeck: This weekend was cleaning up weekend, could see tractor trailer parked in back supposedly.

Marsha Hadderson, Scotchtown Road: On Scotchtown Collabar Road, we abut their property. We got info from the Najecks and others and we came out to express our views. We are at back we have not had impact of trucks but proposed 300 road that was put back there where trucks are parking and we are concerned about the extremity of bunkers for explosives back to the property line. Don't know if permits were issued nor where the explosives are or that they were there. I am concerned about environmental impact of this many diesel fueled trucks in a RA district. And that they want to mutate regulations put in for farmers for what I view as heavily industrial equipment. It seems like abuse of regulations that are in there.

I support use of private property within the code but asking for use is appropriate for use. Imposing hardship on neighbors in the area is too much. Noise pollution, particulate pollutions,

things going on they are not getting permits and things are going up they are not getting permits for. What was the search warrant issued for explosives for?

Walt Barrett: On 4/23 we found 2 bunkers with in excess of 50 lbs and blasting caps in other. The trucks they speak of and there was nothing in the trucks. Basically we had the man move explosives in violation of Town code; bunkers still there and as part of on-going process, tow has gotten right of search of any time – can be snap search granted by owner. To date no explosives there. There were excessive amount stored, no permits issued, but no permit for caps, bunkers or explosives.

Bill Hanners, Scotchtown Road: My concerns are varied. They present parking of trucks 1400 feet back as positive thing. People there are surrounded by environmentally happy areas, woods, hay cut, wild animals, potential high value property. Parking trucks 1400 feet back is closer to use right in middle of this space. Some of the neighbors permit hunting. Another concern comes up is whole nation is involved in a war with terrorism. Having bunkers in back without guards – now public knowledge, kids can hang out there, did not say it to any before. Other issue that this is home business, employees come to this place – this is not their stuff – they are not one using it. Farmers are doing farming themselves – when work…I heard him say blasting work done from this place – it is, people come get trucks and go off.

Mr. Smith: We are aware of that.

Mary Jane Petlands, King Road: I have lived there for 27 years in and RA area and want to keep it that way. Encourage the Board to not give variance. Concern about devaluation of property and walk dog every day and trucks that go by and one truck – huge giant 18 wheeler. Encourage to keep the zoning the way it is.

Mrs. Thompson: How do you know it is their?

Mary Jane Petlands: It goes in there.

David Petland, King Road: I am opposed to this change, residential the way it is, having huge trucks and detract from our property. Toxic waste spill got in to our ground well and tested water and ran down hill.

Lisa Sugarman: 250 King Road: Opposed to this. Remember couple of years ago for use variance for landscape repair of tractor saws, M&D Mower, it was denied because of failure to establish home business exception. You are aware of necessity and hardship create if it wasn't. parking of trucks under laws are not for business which to just park trucks. Walking up road the day of the spill, saw the substance going down ditch towards the pond that the Sigmonds have, property next to Najeck and I'm next to Petland. The spill was denied by the applicants initially and only explosives removed because of search warrant.

Buses from Valley Central and Pine Bush go down there. It is not a place for tractor trailers. Everyone on the road signed petition. We are all opposed to that there.

Andy Kujawski, King Road (across street): My concern has been expressed but if you ggrant the variance it sets precedence to what constitutes home business. Beauty parlor in basement is home business, trailoring, counseling service, that could be considered a home business. If I park all construction equipment on the property its not home business. If you look at that type of thing setting dangerous precedence. You already made one tonight, with shed in front of house. I understand difference. Don't make bigger one.

Mr. Smith: Any questions from the Board?

Mr. Holland: I go out of there with tri axel and don't exceed 20 MPH and the truck does not idle and am there 2 minutes and don't rev up to annoy neighbors. Who ever comes down there fast is not ours or our pick ups. The big one is mine and my son and my son-in-law takes the others.

Shawn O'Conner, Esq.: The photos show various trucks and not the proposed new location and they are talking about 1400 feet back. The purpose is to mitigate that.

Mr. Smith: So not seen from the road; why not there?

Mrs. Holland: These were taken a while ago.

Mr. Holland: Parked back there and the southeast side is ours, what is bordering - they have to walk over to ours to see it.

(Public): When you went there, Mrs. Thompson, could you see my house?

Mrs. Thomson: Yes, and smell fumes.

Mr. Kujawski: It has been along side until a week ago.

Brenda Kujawski, 164 King Road: The long axel is along side the stone wall not 100 feet from the road since they moved in. Their men start at 5:45 every morning, pull out 6:00 am parking vehicles and take these out of there. We are in a residential area and have lived there for 27 years and don't want to see area devalued because of this. Very nice, keep nice home, and construction business does not belong there.

Mrs. Najeck: Comment, this is because they have had a diesel spill and called my husband, he said to call police, and when Mr. Holland came by, he stopped and I was trying to explain it was not diesel, he said it was transmission fluid and he doen't use diesel. I said to him that I would have come to you sooner and saw all the trucks and road built over the Summer, and he said he said he could move the trucks back and that he had 55 acres, but let me remind you, what is good for the goose is good for the gander. I live next door, but that scared me.

Shawn O'Conner, Esq.: I understand concern for the level of blasting compound and they can check at any time by the Town of Wallkill and they are not stored. They want to run a business as they have since 1948 and to continue his livelihood and allow vehicles for his business to have site at this property at beginning and end of the day.

Mrs. Thompson: Looking at the use variance requirements (reviewed by the code book). I would oppose the use variance.

Mr. Smith: I Move to close the Public Hearing at 11:17 pm; Seconded; All in favor; Motion carried.

Mr. Smith: The application before us is for a change in use to permit home occupancy or basically run drilling and blasting business on the property. A use variance by definition is hard to obtain and is made to be that way. There are 4 points to address and failure on any one says we should reject the application:

First: can't realize reasonable return – no evidence submitted for alternative use for reasonable return.

Second: unique – I don't think it does in that area.

Third: not alter essential character – we have had testimony to change of use, it is clear from the neighbors, character is impacted by the present use of the property.

Fourth - not self created- clearly the property was purchased and the hardship is self-created in that owners used property for blasting.

From these 4 points it is clear in my mind that is fails 3 of 4 and the law says if it fails one that it should be rejected. Clearly it does not support this.

Mr. Smith: Any comments from the Board?

Mr. Mattatall: when we go with a use variance, we go with a decision – it is very tight and there responsibility to follow this.

1) realize reasonable return – have to show financial proof; you have run a business not on this property.

2) unique – not unique to that piece of property, This is not a building situation, Town has not changed the entrance way or unique.

3) variance not alter the neighborhood – RA by definition – things are done on that property, even if mining it is done on the property. Home occupation – this does not fit – basically on the property small operation. Beauty salon with 1 chair is the intent.

4) not self crated - you said you have run it for over 20 years some place else - you can do it elsewhere. If you have a problem here you brought it upon your self. You can get monitory for your property.

Mr. Smith: I would like to ad that under home occupation – not more than one half of the ground floor for business and here we have accessory buildings and it does not fit the definition.

Mr. Morgan: You can't hire help for home occupation and this has 2 employees.

Mr. Schoenberg : This does not justify granting the variance.

Mr. Smith: I Move to grant the following change of use in an RA district to run a home occupation (blasting and drilling business); Seconded.

DISCUSSION:

(None)

VOTE:

In favor (aye):	0
Abstain:	1
Opposed (nay):	5

DECISION:

Mr. Smith: The variance is denied.

Mr. Smith: You have been in business for some time, you may want to review application and make amendments to it, there has to be alternative. I feel bad in doing something to a person's business.

Mr. Holland: I will have a piece of property in 3 weeks to find some place to park it.

Mr. Smith: You should be in touch with the Town and have your attorney involved.

CORRESPONDENCE:

None at this time.

MEETING CLOSE:

Mr. Smith: There being no further business to be presented to the Board; I Move to close the Meeting at 11:23pm; Seconded; All in favor; Motion carried.

TSB:jcd

TOWN OF WALLKILL
ZONING BOARD OF APPEALS
DECISION SHEET
JUNE 14, 2004

DUSO PROPERTIES (Stan Stolz):

Request for a variance of: 1)249-20-D (lot width) on Lot #5 from 200 ft to 120.89 ft; 2) interpretation of 249-20-D (soils formula) 3.25 acres to: #1 1.37, #2 1.68, #3 1.75, and #4 1.89 ; Property located at the east side of M&M Road (approx. 3000ft south of Rt 17M (SEC14 BL 1 LOT 103.2 and 104.13); Designated R-2.

DECISION: Variances denied

XL CONSTRUCTION (Asher Sussman):
Lot 1.31

LOT # 1: Request for a variance of 249-22-D (front yard setback) from 35ft to 31ft; 2) rear yard from 30ft to 20ft; for entrance porch and rear deck with steps; Property located on Third Street (SEC 52 BL 12 LOT 1.31); Designated R-1.

DECISION: Variances denied

XL CONSTRUCTION (Asher Sussman):
Lot 1.32

LOT #2: Request for a variance of 249-22-D (front yard setback) from 30ft to 30.5 ft; 2) rear yard from 30ft to 25ft; for entrance porch and rear deck with steps; Property located on Third Street (SEC 52 BL 12 LOT 1.32); Designated R-1.

DECISION: Variances denied

SEEKAMP REALTY OF MIDDLETOWN, LLP.
(Perth Commercial Properties)

Request for a variance of 249-28-D(2)(1) lot width from 200 to 118 ft; Property located at the southeast side of Rt 302 (west of State Rt 17) (SEC 24 BL 1 LOT 47.1); Designated PID.

DECISION: Variance granted

DAVID BRAUN (Berbo Mgt. Corp.)

Request for a variances of 249-22-D (lot width): 1) lot width from 80ft to 50ft; 2) two side yards to 24ft; 3) one side yard from 15ft to 10ft; for construction of a bi-level home; Property located at 182 Brookline Avenue (SEC 76 BL 7 LOT 10); Designated R-1.

DECISION: Variances denied

JOSEPH A. BROWN:

Request for a variance of 249-19-D (lot size and width): 1) lot size 2 acres to 50,860 sq/ft; width 200ft to 145ft; 3) side yard 40 to 35ft; 4) 2 side yards 100 ft to 85ft; Property located on Top Notch Road (SEC 32 BL 2 LOT 42); Designated RA.

DECISION: Variances granted

CARL & KIMBERLY TYSON

Request for a variance of: 1) 249-14-D (24ft truck parked in driveway) and, 2) 249-8-A (shed in front of primary residence); Property located at 48 James Clark Drive
(SEC 6 BL 2 LOT 4); Designated RA.

DECISION: 1) Variance granted.
2) Variance denied

LAN ASSOC., LLP. (Bernard Colletti)

Request for a variance of 249-12 (off street parking) parking spaces from 148 to 109 for eating/drinking establishment;
Property located at 680 Rt 211 East
(SEC 41 BL 1 LOT 68.1); Designated MI.

DECISION: Variance granted

ORANGE COUNTY – POUGHKEEPSIE , LLP .
(Verizon Wireless)

Request for a variance of 221-7-A (1) setback for a new tower to be located 1,000 feet from a residential dwelling;
Property located at 795 Rt 17M (SEC 36 BL 2 LOT 4);
Designated HC.

DECISION: Variance granted

JAN & GEORGENE FREEDMAN

Request for variance of 249-19-D 1(side yard): 40ft to 10ft; 2 side yards from 100ft to 29.6 ft; for construction of carport on east side of dwelling;
Property located at 146 Mt Joy Road (SEC 60 BL 1 LOT 35.14); Designated RA.

DECISION: Variance granted

EMPIRE DRILLING & BLASTING

Request for a use variance to operate a home business occupancy (blasting and drilling) in an RA district; Property located at 160 King Road (SEC 12 BL 1 LOT 7); Designated RA.

DECISION: Variance denied

MICHAEL RAMOS

Request for a variance of: 249-22(D) side yard setback from 15' to 12'; front yard setback 35' to 7'7" for 10 Abington Mews

DECISION: Variance granted
Subject to architecture be in keeping with the surrounding area.