

ZONING BOARD OF APPEALS
Town of Lewiston 1375 Ridge Road
Lewiston, New York 14092
Thursday – May 9, 2024

Agenda- 547 Oak Run Drive Demizo (A), 826 Upper Mountain Road 830 Moyer Road Kuun (B), Presidents Park Washington Drive 5/4 Development Corp. (C), Lower River Road/ Wolf Run Phillips/VanDusen (D)

Present: Conti, Heuck, Machelor, Warnick, Sandonato

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

Machelor: I would like the board to read the minutes of our meeting April 11 and ask if there is anything that need to be changed?

Heuck: I don't think there are any changes. So, I move to approve.

A motion to approve the minutes of April 11, 2024, was made by Heuck, seconded by Conti and carried.

Machelor: Motion made in seconded. All in favor say AYE.

Members: AYE.

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. With that I would like to open the public hearing for a variance request of Edward/ Marianne Demizo 547 Oak Run Drive. Anyone here? Come up to the microphone whichever either one of you or both of you. State your name and address.

Edward Demizo 547 Oak Run Drive Lewiston New York.

Machelor: Ok what would you like do?

Demizo: We are going to have a generator put on the side of the house.

Machelor: Ok. And what about that causes you to want a variance?

Demizo: The variance because I think it is just shy like a foot and a half or something like that.

Machelor: Yeah. Reducing the required set back from 13 ½ feet to 10 ½ feet essentially.

Conti: On the other side of your house was it possible to put it on the other side of the house at all?

Demizo: No.

Conti: No.

Demizo: The gas and electric is on one side of the house. I would have to go trench though everything. Though the house with a gas pipe to the other side.

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Conti: Ok.

Demizo: And my neighbor's got one on the same side where I am putting mine.

Machelor: So, you will both be there together.

Heuck: Married.

Machelor: You can't complain about each other right. Question?

Conti: Nope.

Machelor: Questions? How far is the you know there's rules about how far the generator has to be from you building and how far it has to be from windows and all that.

Demizo: 5 foot.

Machelor: Has all that been taken care of?

Demizo: Yes.

Machelor: Ok. Because it is... it doesn't show on your site plan.

Demizo: Well...where the generator is going?

Machelor: Yeah, it just says... just a pencil thing.

Demizo: Yeah. I...to be honest with you when we called here and the first guy says yeah you can put it there and then they said you needed a hearing so we came back for the hearing. So, I... like I said.

Machelor: Ok.

Conti: But your contractors already gone though that and said it... you're putting it so far from windows and everything else.

Demizo: The contractors the one that told us you gotta get a variance. So...

Machelor: So, if you get a variance Tim will give you your permit.

Demizo: Correct.

Machelor: Ok. Alright. Gary questions?

Heuck: None.

Machelor: Who will entertain a motion?

Conti: You gotta ask if anyone wants to talk.

Machelor: Oh, alright is there anyone else here that would like to speak to this issue? Alright I will close the public hearing.

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Conti: You can have a seat.

Machelor: You can have a seat ok. Close the public hearing.

Conti: I would like to make a motion based on the board's discussion the Zoning Board of Appeals determines that the benefit of the variance to the applicant out weighs any detriment to health, safety and welfare of the community. That the variance request is the minimum necessary and the variance be granted.

Machelor: Anyone second.

Warnick/Heuck: Second.

Machelor: Ok the motion has been made in the seconded any further questions from the Board? Hearing none I will call the question. All those in favor say AYE.

Members: AYE.

Machelor: Lisa will you poll the board.

Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Henry Sandonato: AYE, David Warnick: AYE.

Machelor: Thank you! You are approved.

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Machelor: I would like to open the public hearing variance request Thomas Kuun 826 Upper Mountain Road and 830 Moyer Road. Who is here to represent Mr. Kuun? Yes Sir.

Conti: Come on up to the microphone.

Machelor: Come on up.

Conti: State your name and your address.

Thomas Kuun.

Machelor: Ok we have your addresses ok. So let me get your paperwork out. Of course, Mr. Kuun I am aware that you here last year about this thing and we talked about your gate. So, the gate is there it was approved after the fact and now the blue line on here you have. You have two things on here one of them is a highlighted area where you ask for 5 feet and then a second one is a highlighted area where you are asking for 6 feet.

Kuun: Yes sir.

Conti: Why don't you have him explain what he is wanting first.

Machelor: Yeah, ok go ahead and explain what you want to do.

Kuun: So, the gates that we approved that I got the approval from you guys obviously is a 5 and half foot gate. And...

Conti: Height wise?

Kuun: Height wise.

Conti: It was like 7 feet.

Kuun: Right. I wanted to just have something that kind of ecstasically fits the gates. And not go down to a 4 foot. And because of the project we have approximately 20 cars stopping and car driving through. That's why I said I needed the gates on there you know. So, it's defiantly number one with the fencing it would ecstasically go around the property in the front. That matches the gates, I think it will be a benefit.

Conti: If you remember correctly when we had that meeting, we have the minutes from that meeting we explained to you that we will give you the approval for these gates.

Kuun: Sure.

Conti: But the fence will not be it will be a 4-foot fence up until the point where it can turn into 6 foot going towards the backyard. That was the understanding we had that last meeting.

Kuun: I understand that but that is why I am asking you if you can just up that a little bit just to make that ecstasically. Because it's going to look.

Conti: But we understood that right.

Kuun: Right.

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Conti: So, if that was the understanding back then.

Kuun: Right. So, to me it's like if I am going to put a 4-foot fence you can stand over the fence literally.

Conti: If somebody really wants to get in, they will get in.

Heuck: It doesn't matter.

Conti: Doesn't matter the size. I mean that's my opinion.

Machelor: We had this other thing too. What we did when we approved your gate which is at some level over 7 feet tall right. The reason we approved it in part is because it was already there.

Kuun: Right.

Machelor: So, you know giving you the benefit of the doubt that you didn't know any better we tried to make you understand that at that time even though we did that, that can't be tagged on to a higher-level fence than is permitted.

Kuun: Yeah.

Machelor: At the other sides at the sides.

Kuun: I mean I am just saying to you that how it's going to look from an ascetic point of view.

Conti: But you knew that. You knew that I got the minutes here. You knew that going back 2 years ago year and half two years whenever approximately June I think of 22. But we explained that to you, you know you can have higher fence I mean higher gate but your fence still going to be 4 foot, you said you were ok with that.

Kuun: I am ok with it but it's not going to look good. I am willing to put it up I am just saying let's do the right thing here.

Conti: Well, that's what we did the last time for ya. Understanding that we weren't the fence is the fence is going to be 4 foot at that point you said it didn't matter that it would be ok with you. And now it's changed.

Kuun: Well, you know things change.

Machelor: I think your admitting this to yourself too that one of the reasons that you want to do this is really not security it's for people who want to view your property.

Kuun: It's not that it's definitely a deterrent because the fence is not there. But you know I mean I know it's a high traveled area because you have reservoir people come there walk on the reservoir and right now you know because of the improvements it's everybody there.

Machelor: Well Mr. Kuun they will get bored with that as time goes on. There's not criminals driving around in front of your place there's plenty of places to get in.

Kuun: My wife thinks it's a safety issue so...

Machelor: It's really a vision and that's one of the reasons that the code is written that way. Because you know when its 6 feet high and you're in a car that's it. You're not going see it the only people who are going to see it are

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7 feet people. And we can't have that everybody putting up a 6-foot fence all the way around their property wouldn't work here. Ok. Dave questions?

Warnick: Nope.

Machelor: Gary?

Heuck: No, no questions.

Machelor: Alright let's ask if there is anybody else in the audience that would like to speak to this issue.

Kuun: Sure.

Machelor: Is there anyone that wants to speak to this issue? Ok. Hearing none I will close the public hearing anybody would like to make a motion?

Heuck: Based upon the previous meeting that we had with Mr. Kuun back in 22 based on the fact that in the record ok we had on file that he was informed and advised that of the 4-foot code that the town adheres by. We did give him a break because it was ... factor on his dates I would therefore make the motion to disapprove his variance request.

Serianni: Before you make that motion, I would suggest that you just make the findings of the 5 criteria as well. I would not suggest that you make your motion solely on... but also base your motion on the responses that were provided to you in the application and the conversations we just had. So go over your criteria which include the benefits whether the benefit can be sought by alternative methods whether there would be an undesirable change in the character of the neighborhood environmental impact self-created.

Machelor: Alright.

Conti: Hold on Gary is going to do it.

Heuck: I am? Thank you! Number 1 underneath the different type of test we do for it to be granted we consider all of the factors. Whether it would be an undesirable change would be produced in character of the neighborhood or a detriment to nearby properties it would be a yes factor saying that it would not in conformity with other properties in the neighborhood. Number 2 whether the benefits sought by the applicant can be achieved by a feasible alternative to the variance no. You would have to comply with code established by the town underneath zoning code 360-194 which states 4-foot-high fence and this would suffacts for your particular needs. Number 3 whether the requested variance is substantial yes, it is it is substantial increase from the code of 4 feet to either 5 or 6 feet. Number 4 would the variance have an adverse impact on the physical or environmental conditions in the neighborhood probably not but then again, we've already had three out of four that are negative. Whether the alleged difficulty was self-created yes you self-created this yourself ok by putting those gates up. And therefore, I don't see where the board could put that forward and say you could have a variance request for it. So being that the benefit to the applicant does not outweigh the detriment to the neighborhood or community and therefor the variance request should be denied.

Machelor: Thank you Gary. Do we have a second?

Warnick: I will second that.

Machelor: Ok we have a motion that's been made in the seconded. Any further comments from the board? I'd like to call the question all those in favor say AYE.

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Members: AYE.

Machelor: Opposed hearing none Lisa would you poll the board.

Wisniewski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Henry Sandonato: AYE, David Warnick: AYE.

Machelor: I am sorry Mr. Kuun we are denying your request.

Kuun: Alright thanks a lot.

Machelor: Your welcome.

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Machelor: Next one is variance request.

Conti: Just let people know we are changing 3 and 4.

Machelor: Oh yeah. We are going to put the board of appeals list.

Conti: Agenda.

Machelor: On the agenda and we're going to take item E David and Jenna VanDusen Phillips Lower River Road first and hear the 5 4 development Corp last. In the interest of moving things along. So...

Jenna VanDusen Phillips and my husband David and I are asking for this variance.

Conti: Just explain.

VanDusen Phillips: Ok. So, we bought our property on WolfRun I think it's filed under Lower River. It's actually Wolf Run, and we want to put a single-family home this property and we are just asking that we can be in line with the rest of our neighbors to keep the essential of the neighborhood. So, we are asking to build our home 80 feet from the center of the road. Currently how our property kind of fits there is a small parcel of land that the town owns that is between our land and the road. So, it pushes us further back per code. It would probably be 115 feet instead and we wanted to be in line with our neighbors which are about 80 feet.

Conti: From the center of Wolf?

Machelor: This piece of property you're attempting to buy it?

VanDusen: I already purchased the land December of 2023.

Conti: I think he is referring to that...

VanDusen: So, we attempted. Yeah, the little triangle piece that the town owns. So, we were in the process of trying to buy that from the town and we were basically advised from my attorney and as well as the town attorney to apply for a variance instead because it was going to be more time prohibited to purchase that parcel of land.

Conti: So, you are still looking at to purchase it if we approve this tonight, you're still looking to purchase that piece of land?

VanDusen: Umm not necessarily I mean we could, I guess. I guess it just depends on future plans and things but right now we just want to build our single-family home.

Conti: Start building.

VanDusen: And just start building as soon as possible.

Machelor: Your proposed house is really very close to that town property.

VanDusen: It's within 10 feet it's 10 feet off of our property line right now per code it's usually 35 feet but that 10 feet allows us to be 80 feet back approximately from the center of the road.

Machelor: I don't see any possible development for that property so...In other words it would be a simpler case if you already owned that property.

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Roemer: Then we wouldn't need a variance.

Warnick: Then they wouldn't need a variance.

Machelor: Then you wouldn't need a variance right.

Roemer: There's no other use for that land anyways it's landlocked.

Machelor: Right.

Conti: Where would you put your driveway?

Roemer: The survey that made that happen was done before the road went in.

Machelor: That's true.

Roemer: And they gave it I think enough room to make sure the road had a curve that they wanted. Now that the roads in the survey probably not in error but it didn't need to be that wide.

Heuck: Wasn't there an easement or access through Wolfgang's property on River Road to access that part where you are at your lot where you bought?

VanDusen: Yeah.

Roemer: But it wasn't wide enough.

Machelor: Right.

Roemer: So, there was some surveys done some purchases her originally over 4 acres now it's less than 4 acres because she had to give up some of that she didn't but the previous owners did in order to make the WolfRun development work. Once again to make it work, they surveyed it like this and I think that sliver of land just kind of... Town owns it Town mows it. It's a burden on the town really to take care of it.

Machelor: Yeah.

Conti: Town.

Heuck: So where is your driveway?

Conti: That's what I was going to say. Your driveway would cut right across that property?

Roemer: If you look at the drawing that Norm had that's the proposed driveway. Were probably going to be it's going to be bigger and you know. We want to get the house in and then determine exactly where the driveways going to come across because we've investigated bringing the sewer across. Because the sewer is on the other side of the road. One of the stipulations was that when we do bring it across the town does not want the cleanout for the sewer to be in the driveway. So, all those things are going to be sorted out after we get the foundation in then we know exactly where what we are planning because we want the sewer to come down a certain area of the house and all those types of things. So that's...

Conti: So, then you're probably going to need that piece of land for your driveway and other stuff too, right?

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Roemer: Well, we can still put a driveway on Town property it's not... We have to be able to get to our house.

Machelor: Well, that's right you can put the driveway there that's true.

VanDusen: Yeah.

Roemer: We don't need the driveway we don't need the property to put a driveway in and we're not asking for the property to put the house in we just want to be within 10 feet of that useless property so that we are in line with rest of the houses in the neighborhood they are all 80 feet off the center line. That's where she wants to be. So that's where we want to be.

Machelor: Alright thank you! Public meetings open. Is there anyone else that would like to speak to this issue.

Russo: I would.

Machelor: Yes sir. State your name and address please.

Todd Russo 4311 Lower River Road. I am directly in front of them so my property backs up to their property. And I think it's senseless that the right a way doesn't follow the curvature of the road and it goes out to a giant triangle. Which makes no sense what so ever there's no gas on that side the electric goes underneath the sidewalk which I already had marked off myself. So why aren't you giving these people the property just to have? I watch this guy come every week and he's cutting the grass. Who's paying for that? So, give them the variance.

Conti: And we kind of agree with the fact that the town should just automatically give this property to them. We have a Town Board Member here along with it that's kind of in agreement.

Russo: I mean it's ridiculous.

Jacoby: I know.

Russo: I can't even believe that we are here.

Machelor: Well, the rules are the rules. And we have to look at them.

Russo: I understand the rules are the rules. I built a subdivision I built... I was a great foreman. The curvature of the road is in the right a way.

Conti: Right.

Russo: And its usually 35 feet 33 feet off centerline. Which is ridiculous that...

Machelor: Yeah, we know. Yes sir. Alright anyone else want to speak to this matter?

Andy Niver: Yes please.

Machelor: Come on up.

Conti: State your name and your address.

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Andy Niver 4295 Wolfrun Drive. I am sure they are going to be wonderful neighbors. I don't have a concern with their variance with the back of the road. But I do have a concern about the water in that property and how their house may affect how that water is runs off whether it drains appropriately. It's essentially a swamp for most of the year and the last thing I want is my basement flooded because its now sloped all the way down and all that waters going. That's my only concern. I don't know if that's going to be addressed in the variance here but I just thought I would say something.

Conti: No. that's fine and that's a concern and they know it and that would be something to deal with Tim Masters our building inspector. But this particular variance it's strictly the frontage that's all we can deal with at this point.

Niver: No problem.

Machelor: Ok well thank you! Thank you for coming. Anyone else? Yes ma'am.

Virgina Parks 4303 Lower River Road. Wolf Run use to be the easement of my driveway. So... I wish I could see a plan so I could understand what the variance is if someone could explain what the goal is.

Machelor: You want to come up and see.

Parks: Yes, if I may.

Roemer: The other thing I would say I did go out and put a cone on the property where the corner of the house would be.

Conti: Ok.

Machelor: This the Towns property.

Roemer: You can see the cone from the road and that would be the northeast corner of the house.

Machelor: What they want to do. They are asking for a variance measured in a different way so that they can be 80 feet from the center of the road. That's what this is all about.

Parks: Ok so it's not being closer to the sidewalk or closer to the road.

Warnick: No. They just want to be in line with other houses so that their' s isn't set further back.

Machelor: So, all the houses are set back the same distance from the road. And the road is kind of odd. Because of what they did. And so, they say when they did this road, they didn't have any of this we didn't know what was going to happen. So now this.

Parks: Thank you for explaining that to me.

Machelor: Your welcome. Ok so any further comments? I would like to close the public hearing. And ask the board if they have any further questions? Motions?

Conti: I would like to make a motion based on the boards discussion and listening to the other people speak the zoning board of appeals determines that the benefit of the variance outweighs any detriment to health, safety and welfare of the community that the variance request is the minimum necessary and the variance be granted.

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Machelor: Second?

Warnick: Second that.

Machelor: Dave seconds it alright motion made in the seconded and further comment from the board? Hearing none I will call the question. All those in favor say AYE.

Members: AYE.

Machelor: Lisa poll the board.

Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, David Warnick: AYE, Henry Sandonato: AYE.

Machelor: Thank you! Approved.

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Machelor: Ok now we are going to deal with variance request 5/4 Development Corporation Presidents Park Washington Drive.

Jeff Palumbo: Thank you! Board members I am Jeff Palumbo from the law firm I represent the petitioner. I would like to discuss with this evening Mr. Chairman if you have no objections I would like to sit.

Conti: Just wherever bring it just bring the mic Thank you!

Palumbo: It just doesn't seem like its working I will talk loud.

Conti: It's on its recording.

Heuck: It's recording.

Machelor: It's recording that's why just slide it.

Palumbo: Ok thank you!

Machelor: Thank you sir.

Conti: Just make sure you speak up too I know people in the back can't hear you.

Palumbo: Will do. I am Jeff Palumbo as I indicated I represent the petitioner Five four development corporation. Who have owned the property since approximately 1983. The property is located on Washington Drive and measures approximately 22 and 1/2 acres. Zoned R2 with the designation of planned unit development. So currently the status of the property is an approved multifamily housing site plan for a 168 units and why are we here today? The request today is for a area variance to allow increase in the number of units to 228 units. The code currently allows 8 units per acre which would be a 180 units and as I indicated we are approved to date for 168 units so in assents what we're looking for is an increase from what's allowable at 180 units to the requested 228 units. And I am sure you know this but just for the record itself what this is not is it's not a rezoning obviously this is the Zoning Board of appeals. And we're not here for a use variance. Which is important because the fact that it's an area variance means that we are not required to show like competent financial evidence that we cannot realize a reasonable rate of deterrent for any of the uses in the current district. The standard as you have probably stated this evening in the other hearings is the benefit to the applicant versus the potential detriment to health safety and welfare of the neighborhood or community. We are asking from 8 units to 10 units and I will review with you what we have placed in our application. What we set forth in our application relative to each of the factors that you discussed earlier this evening. So again, question really solely comes down to benefit versus detriment. What's the benefit to the applicant? What's the potential detriment should you grant this variance? The benefit is that we laid out in our application the increase in the number of units changes the dynamic of the plan from what was presented in terms of mixture of the units. One bedroom or two bedroom. By increasing that number, it allows us an additional building that we would add on to the site plan. Which would allow for a better combination, a more efficient combination of one two-bedroom units. So, what does that do? In turn that results in an increase in cash flow to relieve the off set that we have been faced with in the increases of the higher interest rate and the debt service. That's what this is all about. The more units the more we are able to financially spread the cost of the units on number of units. So that's the benefit to the applicant. In a very simple setting. So, what's the detriment? What's the potential detriment to the health, safety and welfare of the neighborhood? Number 1 we usually talk about traffic. Traffic could be a potential benefit. In this case we have the DOT that's already signed off on an additional 42 units. We attached that email from Kevin Herbet from DOT that indicates that they have no significant concern impact as a result of the increase.

Conti: But it would be 60 units? 60 additional units, correct?

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Palumbo: From?

Conti: It's been approved at 168 to 228 is 60.

Palumbo: Right. I was going to finish that because his email doesn't address the additional units.

Conti: But you just said 42 that's why my question.

Palumbo: 48 42 yeah. Then we go to 52 then we had a conversation with him, my client has that they would not have a problem with the increase to 228 and if you need something in writing from Kevin, he will be happy to do that. Number 2 what we normally potentially talk about detriment in value between the 180 units really which is what it is that's allowed and the 228. So, the variance again is not from what was originally approved the variance is from 180 228. There was never any evolution in value shown for the units that were approved and I would suggest to you that there certainly no evidence before you today that the increase in units would leave to a devolution in value of any adjunct property. The third potential detriment would be the loss of green space. So, what we would be doing here is adding one more building so the green space will be reduced. But we would still be far in excess of what the code allowed in terms of the green space. So those are three of the main potential detriments that we usually talk about when we deal with area variances. If we go into the factors themselves. The first one is whether an undesirable change would be produced in the character of the neighborhood or detriment to the near by properties? And again, as I stated it's critical and important to note the property is currently zoned for multifamily units this is not a use variance, it's not a rezoning. We don't have those strict requirements for a use variance or a change of zoning. The code actually allows us as I indicated several times 180 units the applicant is approved for 168. So, the increase to 228 I don't think we can make the determination that, that increase results in a substantial change of the character of the neighborhood. Again, when we talk about the change in the character, what is the change? Compare the traffic, green space all those things I have mentioned. The second factor is whether the benefit sought by the applicant can be achieved by some method feasible to the applicant to pursue other than an area variance? And as we set forth in the application, the key word there is what is feasible? There has to be a feasible alternative available that gives the applicant the benefit that they are seeking and that's to provide the diversity of units and to spread those costs over the additional units that were requesting. There is no other way to do that. Given the cost of the construction, the financing, the materials, there's no other way for the applicant to recoup those costs. We've had a market study that was prepared in advance that indicates that the demand exists for the increase in the number units in what we are proposing. The third is whether or not the variance request itself is substantial. In the courts in New York, we face this issue many times and it concluded its not strictly a mathematical formula. In this case we're at about 26% increase. So is that a substantial increase just looking at the numbers I don't know maybe, maybe not. But that's not the formula anyway. The formula is what is the impact as a result of that 26. Not just the number itself we know its at 26% increase great but what's the impact of having 26% increase? No traffic problems no ammunition value no real loss of green space as we are still in excess of the required amount. So, I don't believe that it can be concluded that the area variance is substantial. Fourth one is whether the proposed variance will have an adverse effect or impact physical or environmental conditions in the neighborhood or district. And keep in mind that the negative declaration under the New York State environmental quality review act has already been issued on the development for the original site plan. That concluded that the proposal would not have a significant impact on the environment. So, after considering all the potential impacts throughout that process a negative declaration was issued under SEQRA that indicated that the project would not have significant impacts over all significant impacts that's dated December 12, 2022 and a copy of that was attached to the application.

Conti: And that was for the 168, correct?

Palumbo: That was for 168 correct. We also have submitted a revised application that adds the additional units. The SEQRA form was amended and was submitted with this application. So, what are the potential adverse effects or impacts upon the physical and environmental conditions of the neighborhood? Typically, that would be the

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road in control sewer water demand water pressure supply, and again there's no indication that there are any issues with the increase from what was approved to what is being requested. And finally, typically the most difficult question to answer whether or not the alleged difficulty was self-created? Which is a consideration only it use to be at one point and time in the law that if you had a self-created hardship you were denied. That is not the law anymore as you know you stated this evening. It's a consideration that the board must consider just like the other 4 factors that we discussed. So, in this case is the difficulty is the alleged difficulty self-created? And when you look at what we've indicated in the application setting forth the different laws that were in effect throughout the period of time that our has owned the property. At one time there was multiple dwelling density of 6 units per acre the key thing is that 1987 local law number 4 allowed multiple dwelling density at 10 units per acre. Which is what we are asking for at one point in time that's what the law allowed and our client owned the property at that time. That was subsequently changed to allow multiple dwellings that law was repealed and ultimately, we are where we are which is the 8 units per acre. So, the fact that the property was owned and at one time we had 10 units per acre that's now been changed that means the difficulty in the number of units per acre was not self-created. So, I think we have gone through pretty toughly, we have the site plan attached the area that of course is involved here and we would submit to you that back to the original discussion the benefit to the applicant outweighs any potential detriment therefore we request that the variance be granted. I would be happy to answer any questions my clients are here.

Machelor: Alright. Board? Questions?

Conti: The one site plan that you gave us here you mentioned this only has 7 building your going to be going so your adding 3 more buildings on to this?

Palumbo: We will have a total of 8 buildings.

Conti: So how are you doing that then?

Palumbo: Joe come on up and you can talk about how you are going to distribute them.

Joe Giusiana: 5/4 development. The original site plan. What I am showing now. That was the 7 buildings this is now the 8th building that we proposed so we basically kind of moved the rec center if you will to the east side of the road and then added that additional building in the place where the original rec center was.

Conti: So, this is going to be 30 and you added 6 units to this to make it a 30.

Giusiana: Right.

Conti: So, it's 36 units more.

Giusiana: We were still I mean that's what we are showing right now were still working around whether it's going to be 24 or whether it's going to be 28. So, this is very preliminary just to see if it would work obviously contingent upon approval of the area variance. What we are trying to do the big thing when we meet with both the planning board and the town board, the planning board especially was concerned about the amount of green space and the amount of road. Originally, we had it a rectangular configuration.

Conti: But the density is way over at this point. With 228.

Giusiana: Yeah, its 40 what is it 180 is what's allowed 160 has been approved so what is that 48 units more. Then what is currently allowed but the zone. My point was we were trying to develop a plan that is respective of the amount of green space the code requires 25 percent of the site is the minimum. This particular site plan when you do the evaluation is about 68 percent green space. So, we are doing everything we can to meet and excessively

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town requirement for green space that's the idea for this horse shoe and then trying to cluster everything around the horse shoe.

Conti: So, what's the percentage of green space on this particular...

Giusiana: 68 percent.

Conti: 68 percent of green space.

Giusiana: Yes. And again, this is a preliminary plan my expectation is were going to eliminate some of these garages we are still massaging the site. It will be the green space is going to grow rather than be reduced. Keep in mind that the green space minimum is 25 percent we are at 68 percent so if it goes to 65 percent or 72 percent were still far in excessive of green space requirement. And the other thing though again is that Mr. Palumbo stated when we originally purchased the property it was zoned 10 units per acre. So, what we are coming back with is really we're not really asking for anything more than what the original zoning was.

Conti: So, you added another drainage area.

Giusiana: Right.

Heuck: And this right here this is new. Where he had this right here.

Conti: Right.

Heuck: The community center

Members talking

Giusiana: And again, the size of the drainage pond here the size of the drainage pond there that's more represented an illustration rather than it's definitely the equivalent area what's shown on the drawing. That has to be worked out once we get to the hydraulics calculations and then what the site dictates.

Conti: That's something to do with Planning board.

Giusiana: It's a total representation of what we would like to achieve. And the other thing that significant as Mr. Palumbo stated the reason for the additional units it's to really help, when you look at the cost of the infrastructure you look at the cost of the new inflow and infiltration requirements that Town has its additional fees the engineering associated with those additional in flow infiltration calculations. What we are trying to do is obviously distribute that cost on a per unit basis over more units so therefore that burden becomes less to the total project.

Machelor: Ok thank you! Alright.

Giusiana: Do you need that copy for your... No ok

Machelor: I got a series of questions. One of the questions starts with the financial aspects of this plan. As you stated it earlier. The financial aspects of it are sometimes required. But they are not in this case. And it's not up to us to determine whether you got a good business plan, a fairly good business plan, a very good business plan we can't judge all that. All we can do is work with code. Code says X and you're here in order to change that code for you. And whether or not its financially feasible to do 168 versus 220 we can't judge that. So, we are just going to set that aside. We're not concerned about the... his financial ratifications any more than we would be concerned

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after its done. How much money he makes so... So, we can't deal with that. As far as the law is concerned, we have to deal with today's law not yesterday's law. We can't talk about whether it should have been this way or not the reason that now people are they want space, and that means if only 8 units per acre or whatever it is, is allowed to go to 25 percent above that and make it 10 is substantial. It's substantial to the people that will live there and it's also substantial to the neighbors. And the reason why the code is written so that when you have a piece of property and you live on it you could expect the neighbors near you are going to be treated like you were. And that no surprises are going to come up about density. The density problem is all kinds of problems and you know the DOT when they do this study, they do assume things that are not necessarily true in the traffic study. They take today's traffic study and try to put it on what's going to happen in future when the place is fully developed. They don't know so they don't say no they just say well we will have to see what happens. So, we can't rely on what the DOT says about density they don't live here. It's not their code. We could go on. The charter of the neighborhood I can't say the neighborhood is better or worse for having more units or less units. But the reason that there is a code violation in density is because people don't want to have that density of people, that density of car that density of everything. Asking for 25 percent more is a lot. As far as the environment is concerned, we obviously we want to look at that and see about drainage and all the rest of that stuff. But we are not here for a green space. This is not the planning board we're not trying to design your property for you. It's just we have to deal only with what you came here for and what you came here for was essentially an increase in the density of the project. More people, more buildings, more everything. Ok. I will be quiet and let somebody else talk.

Conti: Obviously there is going to be an increase traffic. You're adding you're going from 168 I understand that the plan is up to 228 168 is going to add a lot more traffic to begin with right but that's all ok that's part of your building it and everything else there. Going to 228 is going to increase that traffic that much more. What's the average 1.5 basically everyone is going to have 2 car per family you're going to have 2 people living in a house so that's going to be 228 times 1 and half let's say on average so that's additional traffic, additional noise, both car both people these are all considerations we have to look at. Green space is all part of density so we will look at that along with it but the density is the big part and it is a 26 percent increase and that is quite substantial on it.

Machelor: The self-created nature of the thing is obvious to me that if you had an approval for 168 or whatever it was.

Conti: 168.

Machelor: 168 and you decided that for financial reasons which you admitted yourselves that's not going to work. We're going to have to increase the number of buildings which obviously is an expense but then you get more revenue. So, you did create it by coming here and saying g can I undo what I have already been approved for? And add to it?

Palumbo: That's not self-creation.

Machelor: Well, we didn't create it I mean you brought this to us and said I want to do X instead of Y. Right?

Palumbo: That's not self-created.

Conti: You can still build it the way it is. The way it's been approved. You can still build it. So, it is self-created.

Palumbo: It's not and I will address it at the end.

Conti: That's your opinion.

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Machelor: Well, if you want to, I'd like to...the public hearings open and I am going to ask your neighbors if they would like to speak to this.

Palumbo: Sure.

Machelor: Alright. Yes sir.

Conti: Come to the mic.

Machelor: Come to the mic and state your name and address.

So, my name is Clay Miller I live at 4557 Creek Road. Which is basically Creek and Jefferson. I live right there. So, there's a few things that I wanted like to address. Studies are grand and studies are great to my everyday job I get studies done all the time for things, and what I've learned is there's the study there's a self-interested study then there's reality of it. As this project has lavished and I've looked at for sale signs for a long time. The area around this development has changed substantially. There's been a development on Creek those now I call them robo houses. So, Creek itself is a much busier place than it was in 1983. It's a much busier place than it was 10 years ago. Living on Jefferson it has become a variable drag racing street. You have people going to Blairville there's literally a fight at 2 in the morning Saturday night. There were 3 state trooper and 3 Lewiston police officers. Basically, essentially road rage of a neighbor having enough of people speeding down the road. I see it every single day. The density point is I think well taken but as has been stated. As again as the project had lavished the people in the surrounding areas shouldn't be burdened for somebody to make their business plan or business objective. And that's essentially what's happening here. I am in the construction business I run a lumber company everything's gone up our prices have gone up. Because they work this properties been sitting since 1985 why are people around us having to increase traffic. If you try to make a right onto Creek Road from 7:30 in the morning to 8. You're laughing I sit there taking my kids to pre-K every single day. You can't get out. You can't add one more car to that traffic flow. So, in terms to the DOT study, it might have been done at 6 at night it might have been done on the weekend I am not sure. But there's a big disconnect between what's bring presented and the reality of the ground. And the last one I would make as before we were starting the comment was made by the applicant, I haven't heard many neighbors complaining about it. The letter I got had 13 people on here that don't live in the neighborhood. Their people that own properties that live in Youngstown, North Tonawanda and everywhere else so that's why there's not an outcry. With what is on the table happens to a traditional neighborhood. Where people like myself own a home. There would be a line out the door. We shouldn't take the lack of people here or lack of neighbors being concerned for anything other than the density issue. There are so many rental units so close together and it's not my money but all of them are well available. A lot of these new projects in close proximity are not at compacity. So, if the argument is to add density to get to financial stand point there's not a need for it. Once you build something you can't take it back. So, I'll shut up. I apricate the opportunity but again the reality on the ground I can tell you as you eluted to with your chuckle its drastically different. I am not even necessarily opposed to the property or the development that ship has kind of sailed but there's no reason for that part of Lewiston to add more units. Thank you!

Machelor: Thank you! Anyone else like to speak? Yes sir.

How you guys doing?

Machelor: Good.

My name is David Montante. I live at 1597 Youngstown Lockport Road in Youngstown. I am here on behalf of the 3-F club also as citizen of the Town of Porter and a previous citizen of the Town property owner of the Town of Lewiston. I really, really don't want to see this built for several reasons. One the traffic issue and you need to park

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a vehicle out there or just set up a camera on a tri pod from 6:30 or 6:00am to 9 am and see what's going on. It is a drag strip its out of control. It's amazing that there hasn't been and school bus accidents or kids getting hit. It's crazy it really is. And also, today I went for a little drive around I went to numerous apartment complexes in the Village and there are empty apartments everywhere. The Village...has empty apartments Claidonos property has many empty apartments Ridgeview has one and Washington Drive is open to leases now. They have multiple empty apartments there. Si I see no reason to build this. So now on behalf of 3-F club if it is built it encroaches on the 3-F clubs' property and its going to render a very large piece of our property unusable for what we are using it for and what we have been using it for, for the last 75 or 80 years it's probably longer than that I don't have the numbers. We can't will not be able to discharge a fire are within 500 feet of these buildings and its going to really hurt us there. We have a pheasant program we have other kinds of conservation programs there. We don't want to be jammed in a corner like that and have a problem. I hope that you will consider that. But other than that, any other things as I have mentioned these apartment complexes when they are tight like this they seem to create or invite riff raff. For a lack of other words. And I don't want to offend people.

Palumbo: You just did.

Montante: Well, I am sorry but that's what shows up there. And I have lived here my whole life and I know what's going on in those other apartment complexes. I dated a woman that lived in there for almost a year and it was circus every weekend. And if you talk to the Lewiston Cops, I am sure they can fill your head full of stuff. I appreciate you guys giving consideration to stop this project.

Conti: Well ok but just understand the fact that were not looking to stop or give a stop or go to this project he's looking to go from 168 which has already been approved so he can build that right now today up to 180 units. The only thing that we are able to do is stop the go from 180 to 228 we can't stop the project from being built.

Montante: Would we ask or demand that there be a shield built in the back to stop bird shot from hitting those buildings?

Machelor: Well, that would be like the planning board.

Conti: That would be planning board that's not for us. The only thing that we are here for tonight...

Giusiana: Our building those building are probably 600 feet to the property line so this fella should come back with the correct facts. Were far in access 500 foot minimal.

Talking

Machelor: One person at a time. If you would he's speaking.

Talking

Machelor: I don't want you going back and forth.

Montante: We did look at the drawings at the 3-f club.

Machelor: Ok

Montante: I think someone here has them on their phone.

Machelor: Well, again...

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Conti: We have them here.

Machelor: Before this goes on you can go to the Planning board and express your concerns about that and see what they can do to litigate that for you.

Montante: Thank you very much.

Machelor: Thank you! Anyone else like to speak.

Conti: Hold on sec Mr. Giusiana wanna come up to the microphone. So, we can address that one part.

Giusiana: Fine. Joe Giusiana just to address the issue of 500 feet. I couldn't give you the exact dimension but I know we are more than 600 feet from our property line to the back of the first building that you see. The furthest most easterly building.

Conti: Ok.

Giusiana: So, we are not encroaching on...specific hardship for that.

Heuck: Thank you for the input.

Serianni: Can I jump in here and clarify couple things.

Conti: Sure.

Serianni: The request for bonus density you would none the less still have to modify your site plan. Is that correct?

Palumbo: Wait we are not asking for bonus density. We're asking for a variance from what the ordinance ... 8 units per acre. It's not a bonus density question.

Conti: Well sure it is.

Serianni: I confused the language because this request has been presented to the Planning Board before for bonus density. Which the relief is essentially the same thing. Right

Palumbo: Exactly.

Giusiana: Informally.

Serianni: Informally. Which also leads me into the second question which is that the Planning Board does have the authority to grant this relief with in conjunction with your application process for a site plan. So why be at the Zoning Board today? As apposed to going though the Planning Board process? Why ask for a variance when you can go through the Planning Board?

Palumbo: I can answer that.

Serianni: Ok.

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Palumbo: So, it was brought up with the Planning Board the issue of bonus density because there is one line in the ordinance that speak to it. The problem with the bonus density issue is there's no criteria to guild the Planning Board whether to grant the bonus density. There are no factors like there are here with an area variance. You do A, B, C and D. There's nothing. So, the Planning Board by the way only makes a recommendation to the Town Board, it's the Town Board who has the ultimate decision has basically said to us there's pretendant we haven't allowed this in the past except for maybe couple of minor two unit increases and therefore we don't see this happening. So rather than go that route when we have a Planning Board telling us it isn't going to happen, I made the recommendation that we go with an area variance because there are specific criteria that we can discuss and determine whether it's appropriate or not. That's why we are here.

Members talking

Giusiana: Just like to clarify we had discussions with the Planning Board nothing has been presented to the formally for this bonus density issue. It's been informal meetings with them. So, the request has not been made formally to them.

Machelor: Mr. Giusiana I assume when you say you have informal meetings it couldn't have been with a full board it would have been one person at a time two people at a time.

Giusiana: No, it was with a full board.

Serianni: I can tell that it was essentially listed on the agenda as an informal discussion so essentially Mr. Giusiana would come in and say I'm mulling this idea over and I would like to see what the Planning Board, What the Planning board feels on X, Y and Z topic if I were to make a modification to my PUP.

Machelor: Ok

Serianni: That's what he did. He did not present a formal application to actually make a modification.

Machelor: Ok.

Serianni: But it was during a regular board meeting.

Giusiana: And the objective there was to try to get some definition to bonus density. As Mr. Palumbo said there is just one line. Help me to understand what that is and so that was the informal question.

Machelor: Ok. Thank you!

Gentleman in audience: May I ask a question. Is the development are you guys actually developing it or is the need for this because there is an outside investor that's come to you and said that the only way to make this feasible for sale.

Machelor: I can't hear you so please come up here.

Gentleman: I guess my question which just came up is

Conti: Just come up to the microphone so it goes on record please.

Machelor: Because then it records.

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Gentleman: The more I hear I guess my question is, do you guys actually plan on developing the property or is the added density because someone else is trying to purchase the property. Because that was the intention the last time, we were here for the for-sale sign. They said they were hoping to sell the property so if the intention here is for someone else to develop the property and increase the density, I think that get back to the self-made issue. We should have to pay.

Palumbo: First of all, that isn't a relevant question at all. The relevant is that we are here as the applicant asking for the variance it has nothing to do with whether they are selling the project or not selling the project.

Gentleman: I think you just answered the question.

Palumbo: I didn't answer the question because its and irrelevant question.

Machelor: Yes sir. Anyone else would like to speak to this?

Heuck: Go ahead.

My names Tim Gunther I live 4540 Porter Center Road Lewiston. I am also here representing the 3-F Club 904 Swann Road I am the 3-F president. Were just showing concern for such a large increase in the project. Already the project is going to displace some wild life which has already been displaced by the golf course across the street. Also, this property development is at one far corner of our riffle range which we have had instances in the past with the development. We were accused of ballistic damage to garage doors or things like that where ballistic canopies on our outdoor range to make sure that there were no future issues. This is just some concerns that we have traffic is always an issue, you know that. This is a pretty large increase the project alone is a good increase for Creek Road over there residents over there. I just don't see the need for the 26 percent on top of that.

Machelor: Ok Thank you! Anyone else? Yes, sir come on up.

My name is Domic Massaro I live on Jason Court in Lewiston New York. I am the owner of legacy of Lewiston apartments down the street on Creek, I also own Historical Square Apartments in the Village and Ridgeview in Lewiston. I just want to speak to I'm here to speak in support of the applicant. On the basis of there is a need for multi-family units within the Town. And I can tell you is that what was expressed tonight that we have one vacancy out of 350 units at our apartments. And some people might think I am foolish to come up here and speak in favor of this project I mean we are in direct competition with what we are doing. But there is a need in the Town for these types of developments. We are similar situation are family is with property that we also own in the Town and that we bought it when certain rules were in effect, I understand that you have to act on the rules are in effect at this particular time. However, the fact of the matter is, is that there is a definite need. The issues concerning traffic can be handled with a traffic study, if there is issues making right hand turn off of Creek Road that can be handled with traffic lights Department of Transportation does those analysis everyday of the week and that's how that should be done. I can't speak for anything that's been raised regarding the 3-F club other than I believe it's been stated that they are outside the limits of that. I just wanted to get my point across that I would be in favor for considering the applicants request because there is a need in the Town. Thank you very much.

Machelor: Yes sir. Thank you! Anyone else?

John Murnyack: Ridge Road. Beautiful presentation but this is a con job to the board this is all about money, and making more money. You know the code is in place to be enforced accordingly so that these kind of developments we don't over crowd property. Ok, now Mr. Massaro has a proposal that for apartments that I have been involve with at meeting ok. A decision to grant this for these people than that puts him at a much better position to get what he wants. So that's why he's in favor alright. Let me just point out one thing ok about a year ago the Town Board kicked off complete code review to update the code her in the Town of Lewiston. You guys these

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developers everybody's working with a code that's 12, 13, 14 years old right now. It should be updated. Now they haven't moved very fast on this but I have gone to meetings Town Board meetings and brought up that issue Counselman Jacoby can answer to that ok. These people what they want this type of density change should come before Town Board and encourage them to move on updating the code and if the Town Board that agrees and we update that section of the code they might be able to get what they want instead of forcing you guys to make this decision for the Town. Ok. I'm against putting more apartments in down in that area, you talk to the police chief he can tell you how many times his officers are called to the Woods of Blairsville for instance that are going on there. Now you're going to put in 158 or more units right next door. What do you think going to happen? Type of people that we get, you know renters in this town there are a good people that need an apartment that maybe have a home in Florida and they come up here they want a place to be in the summer time and I am sure Domonic has a lot of those type of people but you know the majority of renters don't have any skin in the game. We that have stakes in the Town because we own property it's more meaningful for us. Ok for a renter it isn't so I am not in favor of this and I encourage the Board to not give in to what they want. Ok. The Town code is what the Town code is don't force the Zoning Board to make a decision that the Town Board should be making for across the whole Town to update the code for increase density. If the Town Board decides that then it makes your job easier, they don't have to come to you for a decision. So please deny this tonight and we can move on. Thank you!

Machelor: Yes sir. Anyone else? Yes, sir you can speak if you like.

Palumbo: So going back to the chairman's original comments about the financial aspects and the fact that you are going to set that aside it's not required. As I indicated your right its not required for us to show like financial documentation that we can't realize a reasonable rate of return. But it's absolutely relevant because the Board must consider the benefit to the applicant. And the benefit to the applicant here is to provide adversity of housing increase the number of units to spread the cost of over those increased number of units. Thats absolutely relevant and it's the benefit that the Board has to consider. So, you can't say were going to set that aside. And as far as dealing with today's law again we've heard that from several people we have to deal with today's law. Ok we have to deal with today's law regarding the number of units but we don't have to deal with today's law regarding the law for the Zoning Board of appeals, that's why the Zoning Board of appeals is here. They want us this last gentleman wants us to go to the Town Board and ask them to amend the code. So, everybody that wants and 8-foot fence instead of a 6-foot fence should go to the Town Board and ask them to increase the code. I mean it's crazy. That's not how this works.

Conti: But that's not exactly what he was saying. Let me clarify that. He was saying that the Town Board was looking to change some of the zoning codes. So, he's saying that they the Town Board should get on their horse and get it done to help clarify where the town wants to go. They're not saying to go for every variance. And by explaining every little bit of the code what were suppose to do us kind of makes us look real stupid up here. I just wanted to let you know that. That's my feeling you are constantly sitting here saying that, this is what you need to do and this is what you're supposed to do we have been up here for many years and we understand that. So constantly derating the fact that we don't know what we are doing kind of doesn't help matters.

Palumbo: I never derated anybody I never said you didn't know what you are doing. In fact, I said just the opposite several times. That you said properly wasn't what the factors were so. But what you just said I am sorry is not accurate.

Conti: Well...

Machelor: Well, I will address your financial friend. The issue in simple words is this we can't consider financial issues at this board. We can't figure out whether you're charging too much or too little or how much you're going to spend or anything. It's not in front of us the only thing that in front of us is density. That's it. The only at the end of the day here its going to be yes for the density or no for the density. It's not going to be yes maybe its financially better for you we don't have to consider the benefit to the applicant.

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Palumbo: You don't have to consider the benefit to the applicant?

Serianni: Norm let me make sure that you don't misstep here. The standard is whether the benefit to the applicant outweighs the detriment to the surrounding properties. That is the legal standard that you must evaluate. Now those are based on those 5 prongs that you will have to go through and do findings on and then that's the ultimate standard. So that's the argument that's being presented. But yes, at its core you do need to consider that.

Machelor: How would we know if he's going to benefit without financial information?

Serianni: Well...

Machelor: Well, he could say I don't feel quite right at 168 I'd feel a lot better at 220.

Serianni: He does not need to demonstrate competent financial information in order for you to make your decision.

Machelor: Right.

Serianni: They are making it an argument that the project is not financially viable without this relief. And that goes towards the benefit. But it is not necessary for you to make that decision. Now let me be clear just because it is not necessary doesn't mean that it's not relevant. Ok.

Machelor: Ok. Mr. Palumbo.

Palumbo: Yeah, going back to some of the other comments the chairman made. With respect to the DOT study, you indicated they assume things that aren't true, they don't know. Those were your words not mine. They just say what happens. Well, the DOT is in charge they're the ones that make that determination and we deal with the DOT in every project and if they feel the project is likely to have a significant impact, we do a traffic study. They did not feel that this way and they have indicated the increase up to the minus 10 the 42 32 was not significant. So, I mean just to dismiss them out of hand that's what we have. There's no other evidence to indicate that there is a traffic problem. All we have for evidence is the DOT, that's it. And in terms of the charter of the neighborhood we can't say its good or bad people don't want that much. Well, I am sorry people don't want anything for the most part. I have been doing this for 40 years the next time somebody comes and tell us it's a great project in their backyard it would be a first. So, the question that goes back to the standard the law the density and as you indicated is the question. So, what's the detriment in having the density? I still haven't heard. Still haven't heard. Its not green space, it's not traffic, it's not divination in value what's the problem?

Machelor: With more density with 25 percent more density than you already have.

Palumbo: That's a number that's just a number what's the impact here.

Everyone talking

Machelor: You got another number?

Palumbo: No. We all understand that it's 25 percent. What we're failing I'm failing to show to you obviously is what's the impact. What's the detriment for having the increase of 25 percent its not traffic, its not divination in value its not loss of green space it has to be something for you to deny this.

Heuck: Try safety.

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Palumbo: What's the safety problem?

Heuck: Safety is the amount of traffic that you are increasing around that neighborhood, children, adults, people walking their dogs whatever. It's still safety, cars intermingling with people.

Machelor: Noise.

Heuck: You know what can happen with people and car.

Palumbo: Your....

Heuck: That's just one. Noise is another factor.

Palumbo: Your throwing...

Heuck: No wait a minute. I'm speaking please don't interrupt me.

Palumbo: I thought you were done.

Heuck: Thank you! So anyway Mr. Palumbo there's a noise factor too. That is a part of the charter of the neighborhood. We have to take a look at all ok type of factors that come into play. So, I mean I just you know showing you a couple different things ok that can be a detriment ok to the neighborhood.

Palumbo: Ok. Thank can be.

Heuck: Absolutely that's what we are working on these can be's.

Palumbo: The increase are you done I don't want to interrupt.

Heuck: Yes, go ahead.

Palumbo: The increase from 200 to 228 that's what we are talking about. The noise factor not the noise from the other 168 it's just the noise from the 200 to the 228 that's creating the problem here.

Conti: The 168 to the 228.

Palumbo: No, its... that's not the standard.

Conti: But what was approved was 168.

Palumbo: I understand that.

Conti: So, we are going from 168 which was approved to 228. That's what these numbers show.

Palumbo: That's not what's in front of you. What's in front of you is an increase from 200 to 228.

Conti: No. From 180 to 228.

Machelor: Where did you get the 200 from.

Palumbo: Your right 228 I apologize.

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Conti: And that's just saying what the actual density allows on that piece of property is 180.

Heuck: Not what was approved. What was approved was 168.

Palumbo: No that's the variance, the variance is the increase from 180.

Heuck: No, it's from 168.

Palumbo: No, it's not.

Serianni: No, it's from 180.

Heuck: Why does it say 168 in our...

Serianni: Their existing PUD site plan has been approved for 168 if they need to make... If they submit a modification they can be approved for more. But the code prohibits them from going beyond 180.

Heuck: Right absolutely.

Serianni: So, they are asking for that relief to go higher to 180.

Heuck: From 180 to 228.

Serianni: Correct.

Palumbo: I'm done.

Gentleman: I just have one other thing it just seems like this increase.

Conti: Can you just come to the microphone.

Gentleman: I just feel that this increase is financially based it seems like to me. And if that's the problem why can't this project be scaled back? This increase is need to make it financially viable scale the project back save money then the units that you have can provide because you scaled the project back. Just one point.

Machelor: Thank you! Dave

Warnick: No.

Machelor: Anybody else? Anybody else want to speak? Mr. Palumbo do you want to have a final.

Palumbo: No, I am all set. Thank you!

Machelor: Ok. Alright I will close the public hearing.

Palumbo: Thank you again for letting me sit.

Machelor: Ok. Close the public hearing and ask the board to consider what they would like us to do.

Serianni: If you make a motion please make your findings.

ZBA- 05-2024 (D)

Conti: I would like to make a motion to Table this until the next meeting to make a final determination. Leave the meeting open?

Serianni: So, if you leave the hearing open you will have to provide a new notice or you can close the public hearing but you will be required to make a decision within, I believe 60 days.

Conti: Make a motion to close the public hearing and come up with a decision within 60 days.

Warnick: I will second it.

Machelor: You will.

Warnick: Yes.

Machelor: Ok we have a motion that's made in the seconded to close the public hearing and make a decision within 60 days.

Conti: Yes.

Machelor: Any questions here from the board.

Heuck: No.

Machelor: I will call the question then. All those in favor say AYE.

Members: AYE.

Machelor: Opposed? Poll the Board.

Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Henry Sandonato: AYE, David Warnick: AYE.

Machelor: Thank you!

Talking

Conti: Oh yeah you have to close the meeting.

Machelor: Motion to adjourn.

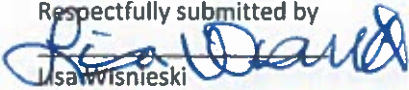
Conti: I will make a motion to adjourn

Heuck: Second.

Machelor: All those in favor say AYE.

Members: AYE.

Respectfully submitted by



Lisa Wisniewski
Building Dept Clerk



Norman Machelor
Chairman