

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, November 9, 2021
Via Zoom**

MEMBERS PRESENT: Arthur Katz, Chairman
Richard Berger
Martin Kivell
Robin Luchins, Ad Hoc
Jacob Simonovits, Ad Hoc

MEMBERS ABSENT: Scott Meier (Recused Himself from the RWE Solar Dev. Application)
Sheldon Mayer

PRESENT: Scott Ugell, Village Attorney (For RWE Solar Application only)
Louis Zummo, Building Inspector
Suzanne Carley, P&Z Secretary
Dan Kraushaar, Deputy Village Attorney (Recused himself
From the RWE Solar Development Application)

The meeting was called to order at 7:35 pm by Chairman Katz which was followed by the pledge of allegiance and roll call. All in favor motion carried. Not everyone had an opportunity to review the minutes so they will be approved at the December meeting. Chairman Katz made a motion to appoint ad hoc member Robin Luchins and ad hoc Member Jacob Simonovits voting members for the first application.

Chairman Katz read the public hearing meeting notice into the record. Application of **RWE Solar Development LLC** for a Battery Energy Storage System (BESS) in the Village of Airmont. The project is needed as the O&R electric grid that serves the Village has reached capacity and no longer meets local energy demands, especially during peak times. The project will supplement the O&R transformer by releasing energy during peak demand times and recharging/storing itself when demand is low. The project will require a Special Permit as per Article III Section 210-20 and a variance from requirements of Article IV Section 210-28 for underground, surface or overhead utilities for developmental coverage 5% required; 49% proposed for installation of the BESS containers, gravel pad & access drives as set forth in 210 Attachment 10 Table 7 of the NS Zoning District Bulk Requirements. The property is located on the south side of Route 59 approximately 55 feet west of New County Road. The lot is designated as Section 56.09 Block 2 and Lot 20 on the Town of Ramapo Tax Map. The property is located in the NS zoning district and is comprised of 1.52 acres. The street address is 375 Route 59 Airmont, NY10952.

Joon Park the Developer from RWE for the project shared his screen. Thanked the Board to address the comments and concerns at previous meeting, He advised that their intention is to address the questions and concerns from the previous meeting and introduced the team. RWE is the developer of the project, and they are one of the largest; O&R is the utility, Energy safety response group bring the Fire and Safety expertise and Stantec is the Environmental Permitting expert. He turned it over to Barbara Wagner from Stantec who explained that the Battery Energy System is needed to support the electrical grid stability in the Village of Airmont. Project is located in the NS Zone at the 375 Route 59. The zoning surrounding the project is NS, PI to the west and to the south residential R-25The Village determined that BESS is a utility use and reviewed the site plan through a Special Permit use through the Planning Board and they have appeared twice in front of them. The Planning Board referred the application to the ZBA for proposed development coverage where 5% is required and they are proposing one single bulk requirement variance of 49%. It was noted that the existing pub on the site has 31% developmental coverage. Existing coverage is 31%.

Lisabeth Ruiz Project Manager from O& R explained why the project is need that came up at the last meeting and at a local workshop with the residents. O&R serves the electricity at all times and the forecast is that the circuits and the demand will exceed the capacity and continue to increase, require more power, higher temperatures due to climate change and higher electric usage and electrification. They reviewed the graph provided. 95% of the red are Village of Airmont and 28% of load the blue are also the Village of Airmont, Substation equipment is also near capacity and a failure in the substation will affect the Village.

Reviewed and evaluated over 45 locations to meet the need of the grid. The slide is self-exclamatory, and they had to meet site, availability for lease and the construction activity access standpoint. After site evaluation process 375 Route 59 meets all the criteria and is a suitable location.

Marty Kivell stated that if you looked at 40-45 locations then how do we know that the due diligence in the search of 45 locations in contrast to a residential zone was done when this abuts to a residential zone. Joon explained the majority of the sites were not available for lease and size was the next big factor. Worked with multiple landowners. Had a through process and wanted to have multiple sites. In this case this particular site we didn't have the luxury of many options.

Mary Kivell inquired as to whether or not the Village or any other sites that were in a non-residential site near homes. Joon explained that the site is in a commercial zone, and they allowed to have this type of project to build. The applicant's attorney Rob Panasci did note that he did submit the site selection analysis with the materials that points out a multiple of sites. There were over 140 sites that were reviewed with O&R to look at the best needs. The site is a good location because it is serving 2 lines and is a really good site for this project as they can address a capacity concern over the two lines.

Marty Kivell inquired as to what percentage of the energy is going to unincorporated Ramapo. Elisabeth explained that in reviewing the analysis before them - 95% in red circuit will serve Airmont and in 28% in blue will service the Village of Airmont.

Richard Berger noted that when discussing the particular 45 candidate locations and then qualifying them, it seems that there really wasn't a suitable location pinpointed which appears misleading to the public. How could only a few out of 45 potential sites not qualify? Not sure that the consensus is a happy one on this particular location. The request for the variance being near a residential area is not a good candidate in his eyes.

Rob Panasci, the applicants explained that in the site section not seeking a use variance. The site is in a commercial location with residential behind it, but we are not requesting a use variance only an area variance. The use as this use is a permitted use and is allowed. They are not seeking a use variance. The Building Inspector determined it is an allowable use.

Chairman Katz noted that he understands that it is an allowable use that abuts a residential area and a major throughfare. Arthur Katz asked to hear about the safety. Paul Rodgers the applicants Fire & Safety expert returned from NYC Fire Department spoke and worked on these battery systems. He understood that they had concerns and assured that they are following the rules & national standard and current NY State Codes. The NY State adopted an International Code with permission to release the Fire Codes, but it is not released as of yet. All are tested and listed to reduce the risk of failure. He explained how the batteries are racked, contained listed and tested. He showed a slide presentation and showed the protection systems for smoke, heat, Exhaust Ventilation, pulls out and if building pulls it out. One of the members inquired what does it do with the gas and where it is vented, and he responded that it was to the exterior of the enclosure to the open air.

Scott Ugell noted that the Chairmen inquired as to what gases are being emitted. What type of gases would be accumulating? In order to get that they would need to do analysis and there is no analysis on what the gases are to be emitted. Paul advised that an analysis of smoke and gas is not captured. It was asked by the ZBA what about gases that are flammable? He advised that no data is available however that some have analyzed hydrocarbons. Paul Rodgers responded that he doesn't believe a permit exists to his knowledge to release fumes into the air. Chairman Katz noted that they don't know if they have a permit. Paul advised a permit is not needed.

Applicant's attorney noted that the Clear Air permit is issued by the DEC. They went through the EAF and listed all necessary requirements. There is no permit that is needed by the DEC. They are not exhausting fumes or gases on a continual basis only in an unlikely event. He explained that it was decided by the Planning Board to get a Battery expert on the project (Sparc Consulting) which they did to provide further analysis and review the project.

Chairman Katz asked that if don't let gas build up and vent out you will have an accumulation of gas. He asked if the DEC ruled on this and if they put anything in writing. Rob Panasci explained that they submitted an EAF and it goes to all involved agencies. There is no requirement to get a Clean Air Act and no air permit is needed from the United States EPA or the DEC. Chairman Katz noted that he had concerns that the fumes could explode. It was explained that in a normal operation this would not occur.

Scott Ugell noted that there is no standard for the community. The project is 140ft away from the resident's homes and nothing addresses the safety and concern of our residents. This is our number one concern which is the same question the Chairman inquired about. Rob Panasci noted that neither of them as attorneys know more than the experts in the field. The Village retained technical expert and the Fire Department Know more expert in field and Fire Department expert in the field.

Applicant's Attorney noted the Village has an expert, Sparc Consulting, and there is a standard that needs to be followed. They have gone above and beyond and will continue to answer questions. We are meeting the standards for an area variance and a public utility. We worked very hard with Sparc, Paul Rodgers and the Fire District to ensure that the issues are addressed. He noted that the Fire Department and the Villages expert have provided their approval. Paul Rodgers explained that they are exceeding the requirements from a safety & standpoint and go up from a National standard.

Chairman Katz asked if there was any warning system or procedures to protect people nearby that are 140 ft. Paul explained that there are audio and visual warnings way in advance of any noticeable failure. He indicated that that the Fire Department will be trained as well. Not required to have an evacuation procedure but would work with the Village on one. If you look at how an alarm system works, there is nothing that exists for surrounding people. Chairman Katz noted that he heard that nothing exists about a standard to protect the community within 140ft of the project. Paul Rodgers noted that they had a question-and-answer period with the residents as they were concerned about the safety. The residents were provided the same presentation that is being reviewed this evening.

Mr. Bianco from RWE an engineer spoke that they comply with codes and standards that have been written thus far from a safety standpoint. The impact for BESS standards is much different than the measures for a nuclear power plant.

Scott Ugell said that those codes that are being written by experts really have no standards then and they are doing a terrible job. Applicant's attorney noted neither Scott nor he as the attorneys are experts. He noted that we have an expert that has been retained by the Village that has given its blessing. To say that the standards are insufficient is almost arbitrary. Scott stated that he doesn't agree, the expert failed. Just because the Village obtained a report we are not bound by it as the report does not address the safety and concerns of the residents. Mr. Panasci noted that he was saying things are that are inconsistent with Sparc, the Fire Department and the experts in the field. Scott said no, his job is to have a hearing and to figure out if there are any inadequacies. He is trying to obtain if there are items that are not addressed.

Applicant's attorney indicated that there is a standard to be followed by the ZBA and the applicant and its experts have been trying to go above and beyond. They are meeting the legal standard area variance and public utility requirements. They worked with the incumbent, Sparc consulting and the Fire Department. They have done things never done before and have gone above and beyond. They put sprinklers directly into the enclosure themselves as a safety measure. They will continue to answer questions.

Paul Rodgers noted that after many discussions with the Fire Department and they did many things like the sprinklers and ways to get water on the interior and feels it's a good thing to get water in any fire that should get in there and to suppress any smoke that could get in the enclosure itself. Sparc hired by the Village to ensure the installation meets code for Battery Storage systems and there was no objection for any installation on this.

Chairman Katz asked if there were any updated reports from Sparc. It was noted that the report they had submitted was for the Planning Board and the items that had not been addressed as of

yet. The applicant's attorney noted that items not submitted are Building conditions, not planning and zoning concerns. The outstanding items are from a design standpoint. Sparc is on the meeting if there are any questions and Steve from Sparc noted that there are no corrections to their report or any additional comments at this juncture. Chairman Katz noted that they are asking them to make a decision now before the additional information is provided.

Paul Rodgers noted there is a fence around the location with the Fire Department connections on the exterior of the fence if there is a dangerous situation to keep the Fire Service of o the areas.

Dwight Harringer from Stantec was at the last meeting and there are five considerations for their variance request that he will review:

- 1) Does it change the character of the neighborhood – no it will be better reduced traffic minimal, one pick-up truck per month. It will be a quitter use with new units that are lower, a new attractive looking fence around the project and a buffer.
- 2) Can benefit be accomplished by some other method - No the batteries need to be placed by the energy load. Otherwise, the power lines will need to be increased. Goal is to get where the energy load is and will be.
- 3) Is the area variance s substantial – No, as half the site will remain undeveloped, and it will be enhanced by the removal of the parking lot (80%) and most of the pavement.
- 4) Effect on environment conditions -the big parking lot provides a lot of run-off and is doing now. Better infiltration of rainwater and the landscape buffer will look very nice.
- 5) Was the need for the variance self-created – no this is the proper utility zoning as recommended by the Village.

Asking that the request for the one variance be considered and then advance to the Planning Board and any other issues be discussed at the PB Meeting

Benefits of the project much quieter, reduced pavement and enhanced landscaping. Enhanced local and regional power. Improving the grid efficiency have less use of peak power plants the ones that are providing pollution.

Robin Luchins, voting member of the zoning board for this evening. Asked a question as a real estate agent about power lines and potential buyers having a concern for living near them. How does this compare to something like that in terms of safety standpoint for wanting or not wanting to live near a battery storage facility. Asking in terms of safety. Dwight noted that this is a question for the PB but feels that it is an impact that it would be better. If he was asked if he would live next to it, he indicated that he would not mind.

Marty Kivell made motion to re-open the continued public hearing which was seconded by Robin Luchins. All in favor motion carried.

Danielle Meehan – 14 Ackerman Avenue asked if any of their facilities ever had an accident with a battery focus. The answer was no from the applicant. She asked if the BESS facility differed from that of the one in Illinois just had an accident/explosion. Over 3,000 people had to evacuate due to the potential fumes. What is protocol if there is a potential fire? 10,000-15,000

cars passing a day on this major through fare of Route 59. What are the potential affects to the road i.e., would it have to be shut down? I am focusing on the traffic. Dwight Harringer shared the screen and showed that there is space, and they may not necessarily need to close the road. Not mandatory that every event will close down the road. Applicant responded that in the event of an accident it would be limited, it would not affect the entire system. Worst case scenario it would be confined to one location. There is one enclosure to the other one and there is a sprinkler in one the boxes. Are there any evacuation plans? If they did need to evacuate, they would assist the Village with a plan.

Chairman Katz – as a follow up to the retired NYC Fireman would mor firefighters be cognizant of the build up of the traffic? Applicants’ representative responded that once on the scene and it is stabilized, they have to open traffic hypothetically similar to that of a car fire. They have very safe systems, above the standards it’s all a perception of risk. They have a lot of precautions.

Etsy – property owner that abuts the project. The meeting was informative but still has concerns. She noted that Joon has only been involved in the project since September. There is another property further down with a wooded area, so I don’t know why the one with the Zoning procedures for these types of projects were just written in 2020. There are grants that could be offered to the Village. A lot of codes developed after the instances of accidents happening. Not notified of the meeting. Chairman advised all the notifications were posted properly. P&Z Clerk noted that it was published on the Village website and an email blast was sent out and at the last meeting it was noted that the date of 11/9 was chosen due to the holiday on 11/11. It was also stated at the meeting the only notification would be the website and email blast for the record. Resident feels that this is not an interest to the community only for O&R.

Ralph Bracco – 30 New County Road noted that he is strongly against the project. He met with the fire department, and they are really not in favor of it. There is a disagreement between what is being said about them being in favor of it vs. them trying to work with them. Project is too close to the residents. Streets will absolutely be blocked if there is a fire there is no doubt about it. Also believe an application for a battery storage facility on Carlton Road and Forshay Road in the Town of Ramapo was submitted and both applications were rejected. There is one in Pomona and it is not surrounding the residents. Project is too big and is not going to work. People in the community want to be safe and the property is on Route 59. O7R has a big piece of property half a mile away or so. Perhaps they should put it down there. Please do not vote for this.

Martin Kivell made a motion to close the public hearing, which was seconded by Jacob Simonovits, all in favor motion carried.

Marty Kivell made a motion to decline the application for the variance as per Article III Section 210-20 and a variance from requirements of Article IV Section 210-28 for underground, surface or overhead utilizes for developmental coverage 5% required; 49% proposed as requested. Jacob Simonovits seconded the motion.

Discussion amongst the ZBA in order to make a motion on the application. Discussed that it could prove to be an undesirable change to the neighborhood if something were to explode; could the action be done without a variance and if they look at renting in an alternate location it could be

achieved; is the variance substantial 5% to 49% is substantial and could have an adverse effect if something were to explode and could depress the property values, it is self created- if they have looked at 45-47 other locations they don't have to rent this one for the overall benefit to O&R. It's a cost benefit analysis and the ZBA has to comply and look at the concern for the health safety and welfare as provided in §210-158 of Airmont's Zoning Code. From a health and safety standpoint, the application failed miserably.

The roll call for this vote was as follows:

Richard Berger – Yes in favor of the motion to deny the application. Rejected approving the application based on the evidence presented and the health and safety of the community. Did not feel the size of the lot is appropriate or that this was good location choice for this application.

Marty Kivell – Yes in favor of the motion to deny the application. No to the application based on all the comments discussed. If the project was away from the neighbors and not so close to them, he may look at this in a different light. The change to the character of the community is enormous and for the concerns of the health, safety and welfare of our residents.

Jacob Simonovits – Yes in favor of the motion to deny the application based on the five factors and consistent with the other ZBA comments and the neighbors' concerns.

Robin Luchins – Yes in favor of the motion to deny based on all the reasons previously stated.

Chairman Katz – No to deny the application and yes in favor of the motion to deny for all the reasons previously stated. Also due to the tremendous amount of neighborhood interest in denying the application. Also agree with the colleague's remarks.

The application was denied 5 to 0. Motion carries.

Scott Ugell noted it was in the best interest to protect the residents and the community.

Public Hearing on the Application of **Suez Water New York Inc. – Tallman Well #26** to permit construction, maintenance and use of a new 1,012.50 SF treatment building to house the proposed treatment requiring a variance from the requirements of Article VI Section 210-42 of Airmont's Zoning Code for separation distance between two buildings. The required bulk dimension is 15 ft., and the proposed bulk requirements are 4.63 ft., 8.23 ft. and 8.38 ft. The property is located on the east side of DeBaun Avenue +/- 476 feet east of DeBaun Avenue. The lot is designated as Section 55.12, Block 1 and Lot 52 on the Town of Ramapo Tax Map. The property is located in the Neighborhood Shopping (NS) zoning district and is comprised of .772 acres. The street address is 239 Route 59 Suffern, NY 10901.

ZBA Member Scott Meier joined into the meeting after recusing himself from the last application. Chairman Katz appointed Robin Luchins as a voting member for the remainder of the evening. Deputy Attorney for the Village Dan Kraushaur also joined in the meeting and was in attendance for the remainder of the evening on the next two applications as he also needed to recuse himself from the prior application.

John Kirkpatrick Attorney and former city Planner introduced himself on behalf of the applicant Suez, a public water utility. He explained that they are seeking a variance for the minimum required distanced between two buildings. The property address is Route 59 however the actual site is quite a distance from route 59. It is a freestanding site. It is an existing facility for water supply looking to add another treatment facility. Trying to minimize the wetlands disturbance and the amount of fill and soil to be disturbed. Maria Stephanova is in attendance from Suez and Erin Albine from Suburban Engineering. The proposed project is zoning compliant and meets all criteria for the zone however a variance from the requirements of Article VI section 210-42 for distance between principal buildings is being requested. This relief is being requested to avoid any negative impact to the surrounding wetlands and to minimize the amount of fill required. He explained the parcel is small and is land locked.

Erin Albine, Engineer from Suburban Engineering was sworn in by Chairman Katz and provided another overview of the project for Suez Water New York Inc. which is a land locked parcel and is accessed by an access easement through lot 54 to the West of the site on South DeBaun. The parcel is behind the Town of Ramapo via an access easement from S. DeBaun and is located in the NS zone which allows for public utilities. The existing site contains high voltage overhead wires which are under the ownership of O&R through an existing easement. The current facility operates a single water production well treatment facility as part of their distribution network. It currently houses the existing well, Tallman well #26 along with well treatment operations (in compliance with the NY State Dept. of Health regulations (NYSDOH to deliver reliable and safe potable drinking water to their customers. The recent water quality sampling events are specifically targeted at the emerging contaminant Per- Polyfluoroalkyl substances known as PFAS, mandated by the NYSDOH in compliance with the EPA regulations. The detected levels resulted in regulated levels above the recently adopted drinking water standards. They are trying to comply with NYSDOH requirements and provide safe and reliable drinking water to the customer base. In order to do so, the installation of a new treatment process will be required under a deferral agreement with the NYSDOH for proper implementation of the treatment by 8/2022.

The water system improvements are required to meet the necessary NYSDOH requirements and to provide safe and reliable drinking water to the SWNY customer base. Through investigations of the site and surrounding area, the location of the proposed building is situated such that to allow for proper connections to the existing well treatment building as well as to minimize the zoning and environmental impacts of the site. The proposed use of the site does not change from the existing use. He explained that the wetlands are on all sides and there is a tributary to Montebello. It is a very restricted site with not much open land to expand. Requesting variances from the Village of Airmont Zoning Code Article VI Section § 210-42 for separation distance between two buildings as described in the plan. It is located in the NS Zone.

	Required	Provided
Separation distance between two buildings	15 ft.	4.63 ft.; 8.23 ft.; 8.38 ft.

It's balancing act to consider the benefit vs. healthy and safety. Suez has to do the water treatment and there is no detriment to health benefits and welfare. It is actually a benefit.

There is no undesirable change or detriment. There is no other means. If the building is moved further back, then additional fill will be required, and it will intrude into the wetlands. The variance is not substantial, it's as small as it can possibly be as it is a limited area and an isolated site. The building addition needs to be added and has been proposed in the most minimal manner. It is not self-created as it was ordered by the Health Department to put in via Consent Decree. It is the minimum variance required for the buildings to be maintained in order to add the new treatment facility.

Chairman Katz made a motion to open the public hearing which was seconded by Marty Kivell. All in favor motion carries. No one from the public commented. Scott Meier made a motion to close the public hearing which was seconded by Martin Kivell. All in favor motion carried. Chairman Katz noted that this is a Type II Action not requiring any further review for SEQRA.

Marty Kivell made a motion to approve the variances on the application of Suez Tallman Well # 26 239 Route 59 for separation distance between two buildings due to the positioning of the buildings for the following variances: 10.37 ft, 6.77 ft. and 6.62 ft. Scott Meier seconded the motion. The Building Inspector confirmed the calculations as being correct. Marty Kivell noted that the application approved subject to the conditions that were discussed:

- Applicant must comply with all comments in the GML dated October 14, 2021.
- Applicant must comply with all comments in the letter made by RC Sewer District No. 1 dated October 14, 2021.
- Applicant must comply with comments in the email from the DOT dated October 18, 2021.
- Applicant must comply with all comments in the letter made by Town of Ramapo Department of Public Works dated September 20, 2021.
- Applicant must comply with all comments in the letter made by Tallman Fire Department dated July 9, 2021.
- In the event that further variances are required they are to return to the Village of Airmont Zoning Board to seek that relief.
- Payment of all professional fees.

Roll Call Vote:

Scott Meier – vote yes to approve as this is required by NY State Health Department. It is an isolated property and I have no issues with the request.

Robin Luchins – vote yes to approve it is not impacting anything other than the need to comply with the State requirements.

Martin Kivell – Vote yes to approve the application as it doesn't change to the character of the area, it is not a substantial variance, is not near a residential area, and the impact is limited.

Richard Berger – vote yes approve and sees no issues with the request as it is for the benefit to the community.

Chairman Katz – yes in favor for and approve the request as there is no negative impact and it will be a benefit.

Variance approved unanimously, 5 Yes to 0 No.

Public Hearing on the Application of owner **Israel Wiesenfeld** for a variance from Article 5 Section 210-15 Table 2: R-40 of Airmont's Zoning Code for developmental coverage with a required bulk dimension of 20% and a proposed bulk dimension of 37%, for a single-family residence to build a spa house accessory structure. The property is located on the west side of Church Road approximately 390 feet north of Smith Hill Road. The lot is designated as Section 61.07, Block 2 and Lot 17 on the Town of Ramapo Tax Map. The property is located in the R-40 zoning district and is comprised of 1.36 acres. The street address is 42 Church Road Airmont, NY 10952.

Kevin Conway attorney for the applicant. Noted that the property is a large lot, 60,000 sf requirements are 40,000sf and it is a flag lot. Applicant is looking to add a 1602 sf detached spa structure. The first floor 914 sf first floor and 688 sf and inside the structure would be a small pool and hot tub. The requested size of the spa house for the FAR and developmental coverage. The existing conditions are fully compliant for the bulk table. Looking for the additional structure to enjoy for the family.

Dan asked about the two variances since the application only noted one. – Kevin clarified that they are only requesting one variance for development coverage that he mis-spoke. Inside the structure will be a pool and a small hot tub. Requested the size of the spa house for the development coverage on a fully compliant parcel. The use of the spa house is for the enjoyment of the family. It would be located behind the single-family residence. It is indoors and is contained within the building there should be no detrimental noise to immediate neighbors. Site is more than large enough to accommodate it. Provided sketches of the elevations and interior dimensions. Chairman Katz asked how much smaller it could be made so that you would not need variances. Kevin noted that with the increased floor space is what is driving the variances regardless of if it's just a first or first or second floor. Either way they will need a variance for anything they put as an accessory structure.

Lou Zummo did not agree and could not do the calculations. Problem is both buildings are on one lot. It's not a pool it's a mikvah. The original drawing had a second floor with a kitchen and

bedrooms which was denied and then they re-submitted it for a building permit with the accessory structure noted as a mikvah. You can't have two structures on one lot. Can't determine how much smaller they could go to have the amenities that they would like to have.

First floor or second floor is based on developmental coverage not FAR. The ZBA inquired if they could make it smaller. They also asked if the developmental coverage included the basketball court which it did.

Marty Kivell had questions on the accessories. Will the spa building be connected to the main house? Answer was no – it is an accessory structure. But the Building Inspector treating as to was in regards to square footage. It's in the Building Inspector's interpretation as well. Mr. Kivell also inquired if this is totally for private use.

Kevin Conway noted that the spa is 100% for private use and we will live with it in order to get it granted. He indicated that it was strictly for immediately family with an open public doorway. The doorway to the accessory structure is not a negative, Mr. Conway indicated that they would live with the condition that it is not open to the public and will be for personal use only. Not an open public doorway, not connected to the single-family residence yet doorway to the structure not meant for public at large as opposed to family,

Martin Kivell asked to review the size of the spa house and the pool. The first floor is proposed to be 914 sf and the second floor is 688 sf. He would like the dimensions of the pool. The architect was not present to provide this information. Kevin Conway noted that it would be provided at the next meeting.

Dan Kraushaar existing mikvah in at the new proposed to be pool a is it to be used a mikvah and issue were public or private. Kevin Conway. Don't believe that is one in the existing house. And the information that I have wis to add a small pool and hot tub with jacuzzi. My understanding is that it is not for the public. I understand the Board is asking for the dimensions of the pool, but he did not have them.

Chairman Katz inquired as to why they are saying it is an accessory structure in the yard. Lou Zummo explained that the mikvah is not in the building and that you have to go through the applicant's yard to get to it. He also stated that the structures are close to one another.

Kevin Conway stated that the applicant advised that they want to put in a hot tub, a jacuzzi and a small pool in a spa house close to the existing structure even if it were to be a mikvah. He indicated that they would provide plans and details from the architect to present. The Building Inspector again noted that the original plans that were submitted and received said "mikvah" and listed it as a mikvah. Now it is listed as a spa poll house. Martin Kivell asked that if it were a mikvah are there any requirement from the municipality that we need to be concerned with? Building Inspector indicated that it didn't matter to him if it were a pool/spa/mikvah, but he is going by what was originally submitted to him for a building permit which he denied and then was re-submitted for the ZBA calling it something different.

The applicant needs to determine if both developmental coverage and FAR are required. Lou Zummo indicated there is a designation between private and commercial mikvahs.

Marty Kivell inquired as to whether a building was taken down as he did not see a structure. The Building Inspector noted that the foundation is down for the new house and a permit was granted.

Dan Kraushaar noted that they need to verify whether or not one or two variances are required, and if it is one variance which one – FAR or Developmental Coverage. Depending on the outcome this application may need to be re-advertised, re-noticed and amended to reflect any changes. The current application was duly advertised, and the public is waiting to speak on it. If there are changes and different relief is being sought by the applicant, then the changes need to be dealt with at that time.

Chairman Katz indicated that he would like the public hearing opened to allow the public to speak. If this application is re-noticed for another public hearing and adjusted for additional variances, they will have an opportunity to speak again.

Marty Kivell made a motion to open the public hearing which was seconded by Scott Meier on the one variance. All in favor, motion carried.

Suzanne Rodriguez 43 Church Road sworn in and stated that she had concerns with the application for the impact on water and the impact on the sewers. She asked if the ZBA considered the impact on the well system, as some of the neighbors have wells and some don't. She also noted that she had concerns on both the public and private traffic and the impact to the neighborhood.

Danielle Meehan 18 Ackerman Avenue sworn in. She asked if the basketball court is considered impervious service and was advised that yes it does count. She indicated that bad water issues already existed in the area. There have been several sewer spills close to this location which are draining into the Saddle River tributary. Concerned with the drainage, adding more impervious surfaces and problems with the water. She indicated that this needs to be studied.

Susanne Nadell-Scaccio 13 Van Gogh sworn in. She indicated that her property abuts with 42 Church Rd. and that there already existing problems with flooding every time it rains and now it's lake in her backyard. There is a high-water table across all the neighbors' yards. This application negatively impacts her property. She is very concerned with the impervious coverage and concerned with the potential traffic to the mikvah whether it be private or public. She spoke with the owner of 42 Church Rd who is lovely, and he assured her that this project will be for private use only. However, a basketball court is proposed to go in with a driveway extended to it. She also has another neighbor that has a basketball court but does not have a driveway extending into it. She is wondering why a driveway needs to go into the basketball court and is concerned that this could become a parking lot when it was noted that the mikvah was for private use only. Mr. Conway noted that it is not meant as a parking lot. It is not unusual he actually has a basketball court that extends to a driveway. Can't worry what it may become that is what the Code Enforcement Officer is there for. Not here for what could happen.

Susanne inquired as to how this is going to be addressed when the applicant is almost doubling the amount of impervious surface. The project is only going to exacerbate the problem. Mr. Conway noted that there is no indication that this property is causing her water issues. Susanne

noted that she now has flooding issues now that construction has started and since all the trees were removed and concrete was put down. There is no place for the water to go. This project is only going to exacerbate that the problem. She has been living in this house for 22 years and did not have a problem in her yard until the construction began. Concerned that the problem could get worse especially since she abuts this property. Mr. Conway noted that the house is already existing. Susanne stated that the existing house is more forward to Church Road and is not a 11,000sf house. A good portion of the property has the foundation and concrete work further back. This problem never existed until the construction took place and she has resided there for 22 years.

Dan indicated that he amends his prior advice a whether this is to be continued or if has to be re-advertised in present form or if it needs additional variances public will still have an opportunity to speak.

Arthur Katz said he will leave the public hearing open. The P&Z Clerk note that if there are additional variances no GML is required but agencies need to comment on the additional variances. The applicant will need to have its professionals review and possibly re-submit as we don't know if that is going to happen.

Marty Kivell made a motion to continue the public hearing for 42 Church Road. If a new submission is required and if additional changes are made to the requested application, it may need a new GML or agency comments. This was seconded by Scott Meier. All in favor, motion carried.

Marty Kivell made a motion to adjourn the meeting at 10:50pm which was seconded by Scott Meier. All in favor meeting ended.