ZONING BOARD OF APPEALS

MEETING – JULY 27, 2017

(Time Noted – 7:03 PM)

Mr. Manley: Good evening, I’d like to call the meeting of the Zoning Board of Appeals to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted relief under the Code. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please place them on silent or turn them off and when speaking, speak directly into the microphones as it is being recorded. Roll call please.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

COUNCILMAN SCOTT MANLEY

Pledge of Allegiance to the Flag led by Jennifer Mogavero

(Time Noted – 7:05 PM)

ZBA MEETING – JULY 27, 2017 (Time Noted – 7:05 PM)

JENNIFER & GEORGE MOGAVERO 32 PADDOCK PLACE, NBGH

(57-5-12) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a 12 x 12 pool deck and connect it to the rear house deck on the residence (corner lot Paddock Place and Stirrup Drive).

Mr. Manley: The first application before the Board this evening is Jennifer and George Mogavero, 32 Paddock Place in Newburgh, seeking an area variance for the rear yard setback to build a 12 x 12 pool deck and connect it to the rear house deck on the residence (corner lot Paddock Place and Stirrup Drive). Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Yes, they were, the Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, July 19th and The Orange County Post on Friday, July 21st. This applicant sent out sixty-seven letters. All the mailings, publications and postings were in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening, if you could step forward and state your name for the record?

Ms. Mogavero: Good evening gentlemen, my name is Jennifer Mogavero.

Mr. Mogavero: Good evening ladies and gentlemen, George Mogavero.

Mr. Manley: Okay if you could just explain to the Board briefly what it is that you are seeking and the Board will then ask any questions that it may have regarding the application.

Ms. Mogavero: So we currently have a deck established in the back of the house that is totally breaking down and half falling apart so we though why not put a pool deck and attach it. So we would be requesting a deck that would attach from the house straight to the pool.

Mr. Levin: Is that going to be elevated for the pool?

Ms. Mogavero: Yes, it will be.

Mr. Levin: So it would be the pool height.

Ms. Mogavero: Yes sir.

Mr. Mogavero: Yes.

Mr. Manley: And you would be replacing the deck that is currently on the house presently and then connecting this deck to the new deck on the back of the house?

Ms. Mogavero: Yes sir.

Mr. Mogavero: It’s really not even a deck, it’s just like two by fours almost on the ground.

Mr. Manley: Okay.

Mr. Mogavero: Like a platform.

Mr. Bell: So that’s not going to be raised up the level of where the first steps coming out of the...out of the door is now or it’s going to be...?

Ms. Mogavero: Yes.

Mr. Bell: ...it’s going to be completely on the ground as I see it in the picture?

Ms. Mogavero: It will be redone. I apologize. When you first step out it will come up and you’ll be level with the house instead of going down. I’m a disabled Veteran and I have a lot of back problems so it’s easier for me...

Mr. Bell: I am too.

Ms. Mogavero: ...oh, thank you for your service.

Mr. Bell: Yours too.

Ms. Mogavero: It’s easier for me to just walk out than go down the steps so we’re just going to make it like three steps to get up to the pool, straight in.

Mr. Bell: Okay, now what’s the height...so what will be the height of that...that first deck on the ground. So what would it be about a foot...?

Ms. Mogavero: It’s approximately four or five feet.

Mr. Mogavero: Four...four feet.

Mr. Bell: Okay, I’m sorry...

Mr. Mogavero: The height?

Ms. Mogavero: I think it’s around four...when you step out from the house straight on...

Mr. Bell: When you step out of the house on to it, right.

Ms. Mogavero: It’s around three to four feet.

Mr. Bell: I guess my only question...the reason why I asked that question I was just wondering you know, is there a requirement for a fence to be put around the pool now that the pool is not five feet off the ground without having safety measures around it? It’s safe for a kid to come out on the...

Ms. Mogavero: We have a fence and an alarm.

Mr. Bell: But I mean like coming out of the house to the pool area now it would be more likely to where they...a child could come out and go right into the pool, is there something that’s going to be...chained linked...?

Ms. Mogavero: Oh yes, I apologize; there will be a small gate entrance into...yeah, up to the pool, yes. Sorry I should have said that.

Mr. Bell: Sorry, I should have made that more clear.

Ms. Mogavero: No it’s okay, we have a very little niece and that’s something that’s going to be in place.

Mr. Bell: Okay, okay that’s my...

Mr. McKelvey: As far as the property, kids getting in on the property to the pool it’s fenced in all the way around.

Mr. Mogavero: Correct.

Ms. Mogavero: Yes, it is.

Mr. Bell: Okay.

Mr. Manley: Are there any more questions from the Board Members at all?

No response.

Mr. Manley: At this point, I’ll open up the Public Hearing to anybody in the audience that has any questions relating to this application. If you do please raise your hand and we’ll acknowledge you and bring you forward.

No response.  
  
Mr. Manley: Hearing none, I’ll come back to the Board for one last round of questions.

No response.

Mr. Manley: Hearing none, I’ll ask for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Bell: Second.

Mr. Manley: I have a motion and a second. Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed. The Board will vote at the end of the meeting with regard to this application.

Ms. Mogavero: Thank you.

Mr. Mogavero: Thank you.

Mr. Manley: Thank you.

(Time Noted - 7:10 PM)

ZBA MEETING – JULY 27, 2017 (Resumption for decision: 7:11 PM)

JENNIFER & GEORGE MOGAVERO 32 PADDOCK PLACE, NBGH

(57-5-12) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a 12 x 12 pool deck and connect it to the rear house deck on the residence (corner lot Paddock Place and Stirrup Drive).

Mr. Manley: At this point the Board has two other Reserved Decisions which will be voted on. Is there any need for any of the Board Members to meet with Counsel? If not I would say we probably could move forward and go through our agenda items unless there’s a need. Counsel do you have anything to update the Board with regard to any outstanding litigation? Nothing that...?

Mr. Donovan: There’s no update. Well I just as a matter of course you know there was the litigation of Troon Properties for an Article 78, that has been responded to so it’s up to the Judge to decide, which will take a couple of months and I’ll report back at that time.

Mr. Manley: Okay so hearing no reason to adjourn to confer I’ll move to the first item this evening which is the application of George and Jennifer Mogavero of 32 Paddock Place in Newburgh seeking an area variance for the rear yard setback to build a 12 x 12 pool deck and connect it to the rear house deck on the residence It is a corner lot Paddock Place and Stirrup Drive. It’s a Type II Action under SEQR. Do I have discussion with regard to the first item which under the area variance criteria test is whether the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Levin: I don’t think so.

Mr. Manley: The next is whether or not the granting of the variance will result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: No.

Mr. Maher: No.

Mr. Scalzo: Not at all.

Mr. Bell: No.

Mr. Manley: Whether or not the request if granted is substantial in nature?

Mr. McKelvey: No, I don’t think so.

Mr. Levin: No.

Mr. Manley: The next test is whether or not the request will have adverse physical or environmental effects? Is there discussion on that?

Mr. Bell: No.

Mr. Maher: No.

Mr. McKelvey: No, none at all.

Mr. Manley: And last is whether or not the alleged difficulty is self-created? It is relevant but one that’s not determinative.

Mr. Bell: Yes.

Mr. Manley: Based on that do we have a motion from the Board?

(Inaudible)

Mr. Maher: I’ll second John’s motion.

Mr. Levin: That was a unanimous motion.

Ms. Gennarelli: John was the first?

Mr. Manley: John was the first; Mike would be the second...

Ms. Gennarelli: Okay.

Mr. Manley: ...and roll call vote.

Ms. Gennarelli: Okay, roll call:

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is granted.

Mr. Donovan: We declared it to be a Type II action?

Mr. Manley: Yes, we did.

Ms. Mogavero: Thank you all, good night.

Mr. Mogavero: Thank you.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:13 PM)

ZBA MEETING – JULY 27, 2017 (Resumption for decision: 7:13 PM)

JOHN ABRAMS 370 LAKESIDE ROAD, NBGH

(28-1-19) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory structures, the maximum height, the maximum lot surface coverage and the maximum allowed (4) four vehicle storage to build an accessory building (56 x 60 x 24).

Mr. Manley: The next item is a Reserved Decision from the June 22nd, 2017meeting. It is the application of John Abrams, 370 Lakeside Road in Newburgh seeking area variances for the maximum allowed square footage of accessory structures; the maximum height, the maximum lot surface coverage and the minimum (maximum) allowed (4) four vehicle storage to build an accessory building 56 feet by 60 feet by 24. Type II Action under SEQR. And the Board will now go through the balancing test for an area variance. The first is whether the benefit can be achieved by other means feasible to the applicant. Does the Board have any comments with regard to that first item?

No response.

Mr. Manley: The next item that the Board needs to consider in weighing it’s decision is whether there would be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Maher: It...it is large but I...the neighbor did state they had no issues with the a...the size of the building.

Mr. Manley: The third item is whether the request is substantial in nature. Is there any discussion with regard to that?

Mr. McKelvey: It’s large.

Mr. Bell: It’s large.

Mr. Scalzo: It is very tall.

Mr. McKelvey: Tall.

Mr. Donovan: So one of the things I would just...when we talk about this from time to time and it’s not necessarily just a mathematical calculation it’s the overall effect of the variance so the Board can take that into consideration as well that it may be substantial from a mathematical computation it is important but it’s not the only consideration in the determination of substantiality.

Mr. Manley: I would add that the applicant was asked if there was an ability to reduce the size of the garage at all and that was something that was not at this time possible.

Mr. McKelvey: We also asked him if he was going to remove the garage.

Mr. Manley: Correct, there is other structures that are currently on there.

Mr. McKelvey: He told us it was to keep his pool equipment but he could have put the pool equipment in the new building.

Mr. Manley: The next item for the Board’s consideration is whether request will have adverse physical or environmental effects. Is there any discussion on that?

No response.

Mr. Manley: And the last is whether or not the alleged difficulty is self-created? Again, relevant but not determinative.

Mr. Bell: It is self-created.

Mr. Manley: At this point, do we have a motion from the Board?

No response.

Mr. Manley: Do we have a motion?

Mr. Bell: I'll make a motion for approval.

Mr. Manley: We have a motion for approval from Mr. Bell. Do we have a second?

Mr. Maher: I'll second it.

Mr. Manley: We have a second by Mr. Maher, roll call vote.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: No

Michael Maher: Yes

John McKelvey: No

Darrin Scalzo: No

James Manley: No

Mr. Manley: The motion failed. The request has been denied.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:18 PM)

ZBA MEETING – JULY 27, 2017 (Resumption for decision: 7:18 PM)

ROBERT WEBB-ADVANCED PARKVIEW STREET S, NBGH

MODULARS LLC. (52-15-11.2) R-1 ZONE

Applicant is seeking area variances for the minimum lot area, minimum lot width, minimum lot depth, minimum front yard setback, minimum one side yard setback, minimum combined side yards setback, maximum lot building coverage and the maximum lot surface coverage to construct a new single-family dwelling.

Mr. Manley: The next item this evening that the Board is going to consider is the Reserved Decision of Robert Webb, Advanced Modulars LLC. of Parkview Street South, Newburgh seeking area variances for the minimum lot area, minimum lot width, minimum lot depth, minimum front yard setback, minimum one side yard setback, minimum combined side yards setback, maximum lot building coverage and the maximum lot surface coverage to construct a new single-family dwelling. This is a Type II Action under SEQR. It’s also been referred to the County for Local Determination. Again we’ll start the process of going through the area variance criteria balancing test. Mr. Maher is recusing himself.

Ms. Gennarelli: He recused and left.

Mr. Manley: So at this point, the Board has had an opportunity to review the application and hear the testimony of the applicant. The first item to consider is whether the benefit can be achieved by other means feasible to the applicant. Is there any discussion from the Board with relation to that?

Mr. Scalzo: I don’t believe they can. It’s a postage stamp lot. I think he’s reduced the size as much as possible.

Mr. Levin: I agree with that.

Mr. Manley: And the lot is grandfathered...I mean it’s from way back and I mean getting into another discussion with regard to you know, the character of the neighborhood there are other homes that have similar size lots within that immediate area.

Mr. McKelvey: Yeah.

Mr. Manley: I don’t know if the Board wants to now comment on the second which is creating an undesirable change in the neighborhood character or detriment to the nearby properties? What’s the Boards thoughts?

Mr. McKelvey: There’s properties that are the size...the same size...

Mr. Levin: I don’t think it will I think it will improve the neighborhood.

Mr. McKelvey: Yeah.

Mr. Bell: Yes.

Mr. Manley: The request being substantial in nature, keep in mind as Counsel mentioned before it’s not necessarily the overall size, the mathematical calculation in comparison to the other houses you know, is it substantial? I mean we’re not looking at a two-story home. We’re not looking at you know, it...it does fit the lot.

Mr. Scalzo: I agree.

Mr. McKelvey: Yeah.

Mr. Levin: Yes.

Mr. Bell: Yes.

Mr. Manley: The next is whether the request will have any adverse physical or environmental effects?

Mr. McKelvey: I don’t think so.

Mr. Levin: I don’t think so. We went through that and we didn’t come up with anything.

Mr. Manley: And I would agree there was I guess two items, one was an issue or question with regard that one of the neighbors had about the a...septic...

Mr. Bell: Septic.

Mr. Scalzo: Correct.

Mr. Manley: ...and also the runoff going in the back. I think that the applicant did address those concerns.

Mr. Bell: Yeah.

Mr. Manley: The only other concern that came up was the wells that were on the property and they were going to fill them with cement.

Mr. Scalzo: Decommission, yes.

Mr. Bell: Close them up.

Mr. Manley: That might be a question for Code. Abandoned wells, does Code if they’re identified...if they’re hooked up to Town water and they’re identified as being old a...casings and a...is there a process in place that Code Compliance has to insure that those get filled up?

Mr. Canfield: Yeah, at the last meeting Mr. Brown who represented the applicant discussed that. That the well was to be secured to AWWA American Water Works Association standards and I believe Charlie was going to check and see that that had happened.

Mr. Manley: Would you like us to or do you need us to make that a condition of approval?

Mr. Canfield: It would hurt. It’s...it should be standard operating procedure, it is required but yes it would be like a belt and suspender...

Mr. Brown: At...at...

Mr. Canfield: ... (Inaudible).

Mr. Brown: ...at this time they’re not a...filled a...my client has agreed to do that so we could make that a condition of the C.O. or...or whatever.

Mr. Manley: Okay. I think just for safety purposes insuring that...

Mr. Brown: Yup, I agree.

Mr. Manley: ...you know we don’t have a child fall in.

Mr. Brown: Well we could also...we’ll cut it under...below grad and so it won’t be a tripping hazard either.

Mr. Scalzo: Hey Charlie, you’re saying wells we’re talking about more than one?

Mr. Brown: The one on our property I think and one on the adjoining property...

Mr. Scalzo: Do...

Mr. Brown: ...if I remember right. We looked at so many things since we started this so...

Mr. Scalzo: Do we have the authority to force them to fill or decommission someone else’s well?

Mr. Brown: I believe the Town does. It’s in the Town Code that the wells have to be taken care of.

Mr. Donovan: I don’t know if we can compel a different property owner. We can compel...I mean, the well needs to abandoned in accordance with the proper standards...

Mr. Scalzo: Correct.

Mr. Donovan: ...and if it’s discovered that it hasn’t been then you know, Jerry I’m not even sure if it’s the Town or it’s the County Health Department would have jurisdiction over that.

Mr. Canfield: It is the Health Department however; if there is a second abandoned well couldn’t...I shouldn’t call it a second well if it’s on a separate piece of parcel...property then it’s a separate enforcement action. It’s un-relative to this application and yes, the Code Enforcement Office can take steps and measures to insure that that other well does get secured...properly.

Mr. Manley: Does the applicant own that piece of property or no?

Mr. Brown: Next door? No but he has agreed if...if the old home owner will let him then...then he will.

Mr. Donovan: Yeah, I mean we can’t make it a condition of the approval because he can’t trespass on the neighbor’s property.

Mr. Manley: Right

Mr. Canfield: I assumed when I spoke that your applicant did not own that adjacent well on the adjacent property.

Mr. Brown: No they don’t...now that I’m thinking about it we don’t have a well on our property.

Mr. Scalzo: That’s...I...yeah...right...

Mr. Brown: Right.

Mr. Scalzo: I didn’t recall and it doesn’t show on the map.

Mr. Brown: Okay.

Mr. Manley: Okay. So at this point the last is whether the alleged difficulty is self-created? It is relevant but not determinative. Are there any other...?

Mr. Scalzo: The only other option would be to not build it.

Mr. Manley: Right. Are there any other comments?

No Response.

Mr. Levin: I'll make a motion for approval.

Mr. Manley: We have a motion from Mr. Levin.

Mr. Bell: Second.

Mr. Manley: Second from Mr. Bell.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried. The requested variance is approved.

Mr. Brown: Thank you.

Mr. McKelvey: Send Mike back in.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER - RECUSED

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:24 PM)

ZBA MEETING – JULY 27, 2017

END OF MEETING (Time Noted – 7:24 PM)

Mr. Manley: At this point we’re just waiting for our other Board Member Mr. Maher. Okay, at this point Mr. Maher has returned to the meeting. Has everyone had an opportunity to review the minutes? There is one correction to the minutes. And that would be on the last page, page 4 and it actually has to do with the Robert Webb, Advanced Modulars, LLC. We had in the minutes it says; I have a motion from Mr. Scalzo, a second from Mr. McKelvey, roll call please...Mr. Maher did not vote yes, he abstained from the vote.

Ms. Gennarelli: Yes, he recused.

Mr. Manley: And we just need to make sure that’s corrected. Thank you Mr. Canfield for the heads up on that. The other announcement is just a...I don’t know if everybody... we’re going to get you copies of these if you don’t have them already but the Town is looking to make some changes and amend through Local Law a couple of the zoning for...one would be over by Morris Avenue and Route 9W, it looks like they want to go from Agricultural/Residential to R-3, the other...and that’s in the area of the Overlook Farms and the other is zoning text change to allow for indoor amusement establishments to be permitted in the a...looks like in the IB zone.

Mr. McKelvey: We all have copies Jim.

Mr. Manley: So if everybody has copies if you could if you have any comments on it, any questions, anything that you want to bring up if you could please email Betty at the Zoning Board Office and in this way that can be put together and sent to the Town Board if there’s any comments. Having no other business this evening before the Board I would hope, do we have a motion...?

Ms. Gennarelli: Did you vote on the minutes?

Mr. Manley: We’re going to do that right now. Do we have a motion to approve the minutes as amended?

Mr. McKelvey: I'll make that motion.

Mr. Scalzo: I’ll second.

Mr. Manley: Motion from Mr. McKelvey, second from Mr. Scalzo, all those in favor?

Aye - All

Mr. Manley: Opposed?

No response.

Mr. Manley: Motion carried. At this point I look for a motion to adjourn?

Mr. McKelvey: I’ll make that motion.

Mr. Manley: We have a motion from Mr....

Mr. Levin: I’ll second it.

Mr. Manley: ...McKelvey, second from Mr. Levin. All in favor?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is closed. We will resume next month.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:30 PM)