ZONING BOARD OF APPEALS

MEETING – AUGUST 24, 2017

(Time Noted – 7:04 PM)

Mr. Manley: I’d like to call the meeting of the ZBA 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 put them on silent or turn them off and when speaking, speak directly into the microphone as it is being recorded. Ms. Gennarelli the roll please.

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by John David Masten

(Time Noted – 7:05 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – 7:05 PM)

FRANCIS SERRA 27 MEADOW STREET, NBGH

(80-7-6.2) R-3 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck (12 x 12) on the residence.

Mr. Manley: The first application before the Board this evening is Francis Serra, 27 Meadow Street in Newburgh, seeking an area variance for the rear yard setback to build a rear deck (12 x 12) on the residence. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Okay, yes, the Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, August 16th and The Orange County Post on Friday, August 18th. This applicant sent out forty-seven letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Mr. Serra, if you could just give the Board a brief synopsis of exactly what you’re looking to do?

Mr. Serra: Would it be okay if my wife Elizabeth spoke? She is the architect who did...

Mr. Manley: Certainly.

Mr. Serra: ...the plans.

Mr. Manley: Absolutely.

Ms. Serra: Good evening. I’m Elizabeth Serra, we just wanted to have a rear deck, it’s 12 x 12, I designed it and it reaches the rear yard setback by approximately eight feet so that’s why we need the variance and it shares a property line with the back of Papa John’s, the Smoke Shop and whatever on North Plank Road so it’s not like anybody would see it anyway. It’s just a simple deck. What we have there now was something that was to satisfy the C. of O. when they built the house and it’s just a 3 x 3.

Mr. Manley: Pretty hard to grill out there, right?

Ms. Serra: Very and it’s rotting.

Mr. Manley: Okay, just so the Board knows and it should be in your packet but there is a Notice from the Orange County Department of Planning, which is required because it’s within five hundred feet of NYS Route 32. The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that intermunicipal or county-wide impacts would result if the Board finds that granting relief is warranted in this matter. The County recommendation is Local Determination. At this point do any of the Board Members have any questions for the applicant?

Mr. Maher: Just to clarify one thing, a...on the handwritten, on the actually a plot plan it shows...it shows a handwritten (31) thirty-one feet. So thirty-one is what you...what you need?

Ms. Serra: Thirty-one is to what’s existing if the deck to rear yard...?

Mr. Donovan: Well I...I think it’s (31) thirty-one Mike. I think someone went to the closest angle...

Mr. Maher: Right, that’s what I wanted to clarify...I just wanted to make sure we give you need ultimately in the end a...so thirty-one feet is what the request would be for you to put a 12 x 12 in the back of the house.

Ms. Serra: Yes.

Mr. Maher: Okay.

Mr. Manley: Are there any other questions at all for the Board for the applicant?

No response.

Mr. Manley: If not, at this point I’ll open up the Public Hearing to anyone in the public that has any comments related to this application.

No response.

Mr. Manley: Hearing no requests for comments on this application I’ll return to the Board to ask a motion to close the Public Hearing.

Mr. Scalzo: I’ll make a motion to close the Public Hearing.

Mr. Masten: I’ll second it.

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

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed. The Board will deliberate at the end of the meeting and a...reach a decision tonight.

Mr. Serra: Do we have to stay for that?

Mr. Manley: You’re welcome to stay to find out what happens or you can go, it’s up to you.

Mr. Serra: Will we be notified?

Mr. Manley: You will be if you call the Zoning Board Office tomorrow.

Ms. Gennarelli: You can call the Office.

Mr. Manley: They will definitely let you know.

Mr. Serra: Okay, thank you.

Mr. Manley: You’re welcome.

(Time Noted - 7:09 PM)

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ZBA MEETING – AUGUST 24, 2017 (Resumption for decision: 8:56 PM)

FRANCIS SERRA 27 MEADOW STREET, NBGH

(80-7-6.2) R-3 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck (12 x 12) on the residence.

Mr. Manley: The Board is ready to resume its meeting this evening. We’re going to go through each of the applications this evening and the Board will attempt to render a decision this evening. The first application before the Board this evening is the application of Francis Serra, 27 Meadow Street, Newburgh, request an area variance for the rear yard setback to build a rear deck 12 x 12 on the residence. Type II Action under SEQR. Do we have discussion on the application? Again remembering that the area variance criteria has five criteria that the Board has to consider. Just going through the five criteria very quickly and the Board can discuss them whether the benefit can be achieved by other means feasible to the applicant, undesirable change in the neighborhood character or detriment to nearby properties, whether the request is substantial, whether the request will have any adverse physical or environmental effects, whether the alleged difficulty is self-created. Do we have discussion on the application?

Mr. McKelvey: Well it’s...it’s a small porch.

Mr. Maher: (Inaudible)

Mr. Scalzo: Yeah, and it’s not going to (Inaudible) any and no eyesore by any means to anyone around.

Mr. Bell: Probably a big improvement.

Mr. Manley: Does the Board wish to make a motion?

Mr. McKelvey: I'll make a motion we approve.

Mr. Bell: I'll second the motion.

Mr. Manley: I have a motion from McKelvey and a second from Mr. Bell, roll call please.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

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

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:58 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – 7:09 PM)

JACQUELINE REID 744 GARDNERTOWN ROAD, NBGH

(47-1-108) R-1 ZONE

Applicant is seeking an area variance for the side yard setback to build a garage addition (28 x 30) on to the side of the existing residence.

Mr. Manley: The next applicant this evening before the Zoning Board is the application of Jacqueline Reid, 744 Gardnertown Road, Newburgh, seeking an area variance for the side yard setback to build a garage addition (28 x 30) on to the side of the existing residence. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Yes, this applicant sent out forty-three letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Reid: Good evening.

Mr. Manley: Could you take some time to explain to the Board exactly what you’re trying to achieve and how you came about that decision?

Ms. Gennarelli: And just introduce yourself for the record?

Mr. Reid: My name is Thomas Reid, the wife of Jacq...the husband of Jacqueline Reid. We want to put a two-car garage to the existing garage that’s there making the existing garage a storage area for now, we might do something later in the future as putting a ramp into it for our...my mother-in-law, her mother who lives with us now for twelve years. A...and also to utilize a...cause it’s a very challenging piece of property you can see that there was a lot of wetlands there, we’re...we’re stuck in the corner so there’s some area that I would like to use for a backyard also instead of a driveway so by putting the garage a...perpendicular to the...to the existing garage now that’ll create more backyard and a...that’s what I’d like to achieve.

Mr. Manley: So the existing garage door that exists presently you’re going to remove that, you’re going to...

Mr. Reid: Remove that, yes.

Mr. Manley: ...stud that out...

Mr. Reid: Correct and put a door in.

Mr. Manley: ...and then you’re going to have a door that’s going to enter that garage area?

Mr. Reid: Correct.

Mr. Manley: Could you go into a little more detail as to what that area will be used for? You said it would be storage area but specifically...because it doesn’t look like you’re going to have...the only way that you’re going to be able to get in there is through a...three doors. It looks like a side door...

Mr. Reid: The side door now that’s in the garage now...

Mr. Manley: Correct.

Mr. Reid: ...okay? That enters the...the house that’s the area that we’re going to...it goes down two steps. My mother-in-law is using a walker now so by putting in this garage she can park, come through the door, up the ramp and enter the house without having to use an umbrella and...

Mr. McKelvey: Are you going to have electric in the garage?

Mr. Reid: There’s electric now. In the new garage?

Mr. McKelvey: In the new one.

Mr. Reid: Yeah, yeah, we’re going to have a few outlets, yeah.

Mr. McKelvey: Okay.

Mr. Bell: So I see on the application here, on the drawing I’m sorry, on the drawing that you said about a storage but down here it mentions about a workshop. Are you trying, are you going do a combination of both in there? Are you trying to...?

Mr. Reid: No.

Mr. Bell: No?

Mr. Reid: I have a...a warehouse and a...where I have my workshop so...

Mr. Bell: Oh, okay.

Mr. Reid: ...no, it’s not going to double as a workshop. I think the architect just put that down there.

Mr. Bell: Okay, okay.

Mr. Reid: Right now we have some cabinets in there now that’s utilized as a...as a storage anyway.

Mr. Maher: The house is located on a corner lot obviously...

Mr. Reid: Yes.

Mr. Maher: ...making it difficult to do much with it there.

Mr. Reid: It...it was a challenge. You know the developer that I bought it off of gave it to me for a song and a dance because he couldn’t you know, he couldn’t sell it.

Mr. Maher: Right.

Mr. Manley: So it’s going to leave you only four feet to the property line, correct?

Mr. Reid: Right, correct. I came up with those numbers because of the two car garage plus another door.

Mr. Maher: What’s directly to the left of it? When you’re looking at your house to the left is there a house there or...?

Mr. Reid: Well that’s the a...the a...homeowner there...that’s Gillespie Drive and he has three homes off of that plus there’s an additional home that he owns off of Lakeside and there’s a garage and behind the garage there’s all this a...I don’t know building material...they put a fence around it to kind of hide it or to protect kids from walking through the a...building material.

Mr. McKelvey: What’s directly behind your house?

Mr. Reid: There’s a...a...I believe one of the houses on...on Jodi Drive, it kind of...it’s kind of a pizza pie shape and that’s what’s coming in back of our house so he has a stream that goes through his so he...he’s off of Jodi, he’s not going to develop going further.

Mr. Donovan: So...so I think the Board is looking to get a feel and they’ve all done site visits so they’re familiar with the area but in terms of improvements to the...to the property as shown now as formerly of Roessel and then to the north Koudounas where...where are the...any homes on those lots relative to the garage you’re proposing? How close is the nearest improvement...on another lot, ten feet over the line, fifty feet over the line, a hundred feet over the line?

Mr. Reid: Oh, no a...there’s a garage off of Gillespie that’s probably a hundred feet from the line and his fencing that he just put in maybe another...maybe fifty, sixty feet.

Mr. Manley: Now it’s not possible to reconfigure the garage as such to instead of you know, the two car garage that you’re putting on you’re losing a one-car...a one-car garage now or is it a two-car that you have now?

Mr. Reid: No, it’s one-car

Mr. Manley: So, if you were to add on to the left of the one-car garage and instead of perpendicular do it right next to it and put another...

Mr. Reid: I thought of that too but I’m going to lose backyard and create more driveway space. I...I would lose a lot of square footage to driveway space versus utilizing it for more of a backyard.

Mr. Manley: But the tradeoff would be you’d be eliminating potentially a variance, right?

Mr. Reid: No, I...I would still be here; I would still come within that I think the backyard...

Board Members (Inaudible)

Mr. Bell: ...would still need the rear yard setback.

Mr. Scalzo: I struggle with the four foot offset because if you were to do maintenance on your garage and you’re probably going to have an overhang, a one, two foot overhang? So really with the overhang you’re not going to get a ladder on that side without putting it on your neighbor’s property. Accessory buildings are five foot minimum off the side yard which (Inaudible).

Mr. Reid: Right.

Mr. Scalzo: And as I look at your layout the garage proposed will be slightly skewed to the property line. So your nearest offset is four feet but if you were to push that garage back fifteen feet you may have five right there. If you see where I’m going with that.

Mr. Reid: Okay.

Mr. Scalzo: And because it’s attached to the house I really can’t...or we can’t treat it as an accessory building because it’s part of the structure but as I say, my concern is for maintenance purposes at a later time, it’s difficult to get around.

Mr. Reid: Or if we make it one foot less.

Mr. Scalzo: Well that’s an accessory structure (Inaudible)...

Mr. Reid: Okay.

Mr. Maher: But there’s always a give and take I mean obviously the...

Mr. Reid: Yeah.

Mr. Scalzo: I’m not telling you that’s what you need to...I’m just...that’s the way I’m thinking.

Mr. Manley: Does the Board have any other questions for the applicant?

No response.

Mr. Manley: Does the applicant have anything further for the Board that you wished to present?

Mr. Reid: No.

Mr. Manley: At this point, I’d like to open the Public Hearing to members of the public. If there’s anybody here from the public that has any comments?

Mr. Bell: I do have, I’m sorry, I have one.

Mr. Manley: Sure.

Mr. Bell: You mentioned that’s a single car garage, that’s not a...that’s not a double car garage already, existing? No?

Mr. Reid: No. It’s an eleven foot door. My wife uses it so I give her enough room. No, two cars would not fit in there, no, no.

Mr. Bell: Just a oversized because I know I looked at it from the...okay, not a problem.

Mr. Manley: At this point, if there’s anybody here from the public regarding this application you just raise your hand and we’ll call on you to step forward. Yes sir? You can come forward and just state your name for the record...and your comments.

(Inaudible)

Ms. Gennarelli: You have to come to the microphone please, so that we can get it on the record, thank you.

Mr. Koudounas: I’m the neighbor behind George Koudounas.

Mr. Manley: Yes sir.

Mr. Koudounas: I’d just want to know the...the size, the dimensions and how high his garage is going to be.

Mr. Manley: It is twenty-eight feet by thirty feet and it looks like it’s proposed to be just a one-story.

Mr. Koudounas: How high?

Mr. Manley: A...

Mr. Maher: Probably about, looking at it probably about sixteen feet or so, sixteen or eighteen feet, less than the house existing.

Mr. Koudounas: Eighteen? Eighteen feet?

Mr. Maher: Yeah, I’m just looking here, okay, so I got eight...I don’t see an actual elevation that’s stated...

Mr. Donovan: Does Mr. Reid know, do you know how tall it’s going to be?

Mr. Maher: ...with the sizes on it...

Mr. Reid: I don’t know the exact but it’s not going...

Ms. Gennarelli: Can you come...I’m sorry, can you come to the mic, please?

Mr. Reid: It’s going to be either equal or less than the existing garage. There’s going to be no storage above it. It’s just going to be an open raft.

Mr. Manley: And what’s the height of the current garage?

Mr. Reid: I would say sixteen...you know, sixteen, seventeen feet.

Mr. Maher: Yeah based on the elevation I would say in that area sixteen...sixteen, seventeen feet. But again there is no height restriction if attached to the house though.

Mr. Bell: No.

Mr. Donovan: Well only what the house restriction is right? Whatever...

Mr. Maher: Thirty-five would be the house restriction.

Mr. Donovan: Thirty-five.

Mr. Koudounas: When we say sixteen feet...means the roof or the...

Mr. Maher: The peak...the peak of the roof.

Mr. Koudounas: The peak of the roof.

Mr. Maher: So the side wall looks to be a normal eight or nine foot sidewall and then the peak of the roof... If you want to take a look at it you’re welcome to.

Mr. Manley: Here’s a...this is a rendering of the a...the addition.

Mr. Maher: It’s a normal garage; it appears to be a normal garage of normal...normal height.

Mr. Koudounas: So it will be a total of over a thousand square feet garage space, all together?

Mr. Maher: In actuality it will...

Mr. Manley: Just under a thousand.

Mr. Koudounas: With the existing...

Mr. Maher: Well there’s no...the existing garage goes away. There is no access from a car...

Mr. Koudounas: What is preventing this from being a workshop down the road?

Mr. Maher: Workshop in what manner?

Mr. Koudounas: I don’t know. I...just noise or light, late at night...just...I don’t know.

Mr. Manley: Well that type of operation isn’t permitted in a residential zone so if...if somebody decides to put a workshop and open up a business in their house...

Mr. Koudounas: No business but like the one on...on Lakeside, the garage which is very close a...I don’t know... (Inaudible) Drive. There is a garage with twenty year lease there, it’s rented, so sometimes they spray paint there at night so that’s where I’m coming from. I just want to know what it’s going to be used for.

Mr. Manley: Right, if that were to happen and something like that were to take place it would not be permitted. You’d have to contact the Town and you know, and contact the Code Compliance. I mean, this Board, I mean we can obviously put restrictions on things but we don’t have the power to enforce. That’s up to the Code Compliance Department in the Building Department if there’s a use that’s happening in the property that’s not permitted. So to an answer your question there’s no way to prevent that from happening if that’s what somebody’s intent is. You know, this Board can...can say that you can’t do it but if somebody does it anyway there’s...there’s no way to prevent that.

Mr. McKelvey: He did state that it wasn’t going to be a workshop.

Mr. Manley: Correct.

Mr. Donovan: So...so let’s clarify this, so...so a private workshop if bought a piece of furniture and he was going to refinish the furniture in that garage he could do that. He can’t run a commercial business or commercial enterprise out of his house in a residential district. So I mean, you know one man’s workshop is another man’s hobby room.

Mr. Koudounas: So this would be only four feet from the...and with the overhang it would be couple of feet?

Mr. Maher: Well for intents and purposes four foot was what the request is. The overhang doesn’t come in to play in this particular case it’s based on the foundation.

Mr. Koudounas: Okay.

Mr. Manley: For the record, just so the Board knows, are you in opposition of granting of the variance or are you a...acceptable with the variance?

Mr. Koudounas: (Inaudible)

Mr. Donovan: George, I’ve got to ask you to...because everything is getting recorded so...

Mr. Koudounas: If it’s just a residential you know, two-car garage I don’t have any, you know, I’m not objecting to it. But I don’t like it being so close to the property line a...because you know I have trees there and they didn’t cut and clear push into it so I’m just, you know, I’m not too happy with being so close.

Mr. Manley: Okay.

Mr. Koudounas: Thank you.

Mr. Manley: Thank you. Is there anyone else here this evening from the public that has any comments regarding this application?

No response.

Mr. Manley: If none, I would return back to the Board for any final questions or comments.

Mr. McKelvey: He did say he has a business with a workshop, right?

Mr. Bell: Yes, he did.

Mr. Reid: Yes, I do, it’s located on 4 Pierpont Road in Newburgh across from Harry Fortunis and I have an office on 17K.

Mr. McKelvey: Thank you.

Mr. Reid: When I come home I don’t want to work.

Mr. McKelvey: Okay.

Mr. Manley: If the Board doesn’t have any further questions I’d look for a close the Public Hearing.

Mr. McKelvey: I’ll make a motion that motion.

Mr. Bell: I’ll second.

Mr. Manley: I have a motion and second, roll call please.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: At this point the Public Hearing is closed. The Board will consider the testimony this evening and take a vote later this evening.

(Time Noted - 7:27 PM)

ZBA MEETING – AUGUST 24, 2017 (Resumption for decision: 8:58 PM)

JACQUELINE REID 744 GARDNERTOWN ROAD, NBGH

(47-1-108) R-1 ZONE

Applicant is seeking an area variance for the side yard setback to build a garage addition (28 x 30) on to the side of the existing residence.

Mr. Manley: The next application the Board is Hearing this evening is the variance request of Jacqueline Reid, 744 Gardnertown Road, Newburgh, requesting an area variance for the side yard setback to build a garage addition 28 x 30 on to the rear side...on to the side of the existing residence. Type II Action under SEQR. Again keeping in mind the five criteria for the area variance, whether the benefit can be achieved by other means feasible to the applicant, whether or not there will be an undesirable change in the neighborhood character or detriment to nearby properties, whether the request is substantial, whether the request will have any adverse physical or environmental effects, whether the alleged difficulty is self-created. Do we have discussion?

Mr. Scalzo: As I mentioned earlier, the...the four foot offset a...I...I can imagine coming home, you got something in your pickup truck, you park in front of the garage now you’ve got to walk around the garage, let’s say you’ve got a wheelbarrow it’s tight...it’s just tight. If it were a foot more, you know that...that would be a little bit more palatable at least to me now.

Mr. Manley: The only other thing would be the...you know, the concern of the neighbor which was to insure that we just put in there that no business...you know I’d probably want to make sure that we reiterate anything about the business. And that was just one concern of the neighbor. The applicant has testified that when he comes home he doesn’t want to do any more work so his likelihood of operating a business is unlikely.

Mr. McKelvey: Well he stated he wasn’t going run...wasn’t going to run one there.

Mr. Maher: Following up on...on Darrin’s statement as far as the size goes...as far as the side yard goes obviously it...it is a small side yard. My concern would be that the neighbor did have concerns as far as trees being damaged or cut down whether or not that occurred, I’m not sure but a concern I would have is during the building process if in fact the Board approves it would be that of insuring that there is no encroachment on the neighbor’s property. So obviously that four foot is difficult to attain with bring machinery around the...around the edge of it and building it alone so I would...I would suggest caution is used if the Board approves that the...that the neighbor’s property is not encroached upon during...during the construction process.

Mr. Scalzo: Without driving around the house I don’t know how you would do that.

Mr. Maher: Well obviously there needs to be you know, that care taken if in fact there...there’s a forward movement.

Mr. Manley: Unless of course the neighbor doesn’t have an issue with it. Any other...?

Mr. McKelvey: He also stated he needed a ramp for his mother-in-law I think it was? She’s got a walker.

Mr. Manley: Right, I think the ramp was going to be inside...the old...

Mr. Bell: It was going to be inside...inside.

Mr. Manley: Do we have a motion from the Board at all with regard to this application?

Mr. Maher: I'll make a motion we approve with the conditions we discussed.

Mr. Bell: I'll second.

Mr. Manley: So that would be a motion to approve based on a...making sure that it’s noted in the decision that the neighbor should refrain...the applicant should refrain from encroaching on the...

Mr. McKelvey: Neighbor’s property.

Mr. Maher: Correct, the neighbor did discuss that on his statement so I would like to insure that...that’s honored.

Mr. Manley: (Inaudible) ...and that no business is to be conducted.

Mr. Maher: Correct.

Mr. Manley: We have a motion from Mr. Maher to approve, a second from Mr. Bell, could we have the roll call please?

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: No

James Manley: Yes

Mr. Manley: The motion is approved and the variance is granted.

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:02 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – 7:27 PM)

MARIA RIKER-GARDNER 23 ESTATE BOULEVARD, NBGH

(103-5-9) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck (16 x 22) on the residence. Corner lot Estate Boulevard and Ambassador Lane.

Mr. Manley: The next application before the Board this evening is the application of Maria Riker-Gardner, 23 Estate Blvd in Newburgh requesting an area variance for the rear yard setback to build a rear deck (16 x 22) on the residence. Corner lot is Estate Boulevard and Ambassador Lane. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Yes, one second, yes this applicant sent out seventy-two letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening if you could introduce yourself for the record, please?

Ms. Riker-Gardner: Good evening my name is Maria Gardner, the maiden name is what the property is under which is Riker. My brother had...

Ms. Gennarelli: Maria, you could take it (the mic) off if you would like.

Ms. Riker-Gardner: Okay, I’m just the shortest one here...

Mr. Donovan: Or you could grow taller that’s...

Ms. Riker-Gardner: So my grandmother had bought had bought the property in the late ‘80’s and I have since taken ownership of that property. The deck is...is falling apart, it’s always been there ever since she bought the home, it’s been exactly that same footprint. The only thing now is it’s rotting away so I had no idea it was not ever legally permitted to begin with. I went through all the proper channels just like any improvements I do for this home and in doing that I found out that it was never legal. So I just want to do things right and a...you know, everything right by the Town.

Mr. Manley: Well now that’s a breath of fresh air. Usually people come to us for forgiveness.

Ms. Riker-Gardner: No, I don’t, my grandmother has put me through a lot things that I’ve had to ask for forgiveness so...

Mr. Manley: So the reason you are here this evening is a...you went to replace the deck, you went to the Building Department to inquire. They advised you that there was no Building Permit on file that the deck was never, you know, there was never a Permit taken out...

Ms. Riker-Gardner: Right.

Mr. Manley: ...so obviously you still have to go through with replacement of the decks so you’re coming here this evening to seek a variance in order to replace the deck that really isn’t there so to speak.

Mr. McKelvey: And it’s going to be the same size, right?

Ms. Riker-Gardner: It’s going to be exactly the same thing that’s there.

Mr. Manley: Okay, and obviously there’s been no complaints from your neighbors?

Ms. Riker-Gardner: No, not at all. For the most part the neighborhood doesn’t really change. I’ve been in that house almost thirty years. The newest neighbors we have maybe moved in about two years ago but before that it was a...a couple gosh...I think that they were there forty, forty-five years. So the...the neighborhood doesn’t turn a lot.

Mr. McKelvey: And even with the setback there’s a...you have a fence, six foot fence there.

Ms. Riker-Gardner: Right, yes.

Mr. Manley: Could you share with the Board are there other a...houses in your proximity to yours that have similar decks on the rear of their homes currently?

Ms. Riker-Gardner: I mean it’s hard to tell I...I think mine is so obvious because I am a corner lot. You...you can’t really necessarily look into someone’s backyard with the closeness of the houses so...

Mr. Manley: But driving around the Meadow Hill area in that general vicinity do you notice other decks that are in the neighborhood on other homes similar to the one that you have?

Ms. Riker-Gardner: Yeah, sure, sure.

Mr. Manley: Okay. Does the Board have any questions?

Mr. Bell: No.

Mr. Manley: At this point, the Board doesn’t seem to have any questions I’ll turn to members of the public that are here this evening. Is there anybody here this evening with regard to this application that would like to comment?

No response.

Mr. Manley: Going once...twice, three times. Does the Board wish to make a motion to close the Public Hearing?

Mr. Scalzo: I’ll make a motion to close the Public Hearing.

Mr. Maher: Second.

Mr. Manley: I have a motion and a second, roll call please.

Ms. Gennarelli: Who was the second, Mike?

Mr. Manley: That would be Darrin.

Inaudible.

Ms. Gennarelli: You were the...?

Mr. Manley: Was it? The other way around?

Mr. Donovan: You even sound alike.

Ms. Gennarelli: I got it now, alright. Okay, roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed. The Board will consider the testimony this evening and render a decision later this evening. Thank you.

(Time Noted - 7:31 PM)

ZBA MEETING – AUGUST 24, 2017 (Resumption for decision: 9:02 PM)

MARIA RIKER-GARDNER 23 ESTATE BOULEVARD, NBGH

(103-5-9) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck (16 x 22) on the residence. Corner lot Estate Boulevard and Ambassador Lane.

Mr. Manley: The next application this Board this evening is the application of Maria Riker-Gardner, 23 Estate Boulevard, Newburgh requesting an area variance for the rear yard setback to build a rear deck 16 x 22 on the residence. Corner lot Estate Boulevard and Ambassador Lane. Type II Action under SEQR. The Board also needs to consider with this application the balancing test which is whether the benefit can be achieved by other means feasible to the applicant, undesirable change in the neighborhood character or detriment to nearby properties, whether the request is substantial, whether the request will have any adverse physical or environmental effects, whether the alleged difficulty is self-created. Knowing those criteria do we have discussion on this application?

Mr. McKelvey: Nothing is going to change because they’re just going to replace the deck the way it is, build it the same way.

Mr. Manley: Correct, and this time the new owner is...is doing it the correct way.

Mr. Bell: Yes, doing it the correct way.

Mr. Manley: The applicant also indicated there are other decks in the neighborhood that are similar to that.

Mr. McKelvey: We’ve probably approved some.

Mr. Maher: There was a...no opposition voiced.

Mr. McKelvey:

Mr. Manley: Do we have a motion on this application?

Mr. McKelvey: I'll make a motion we approve.

Mr. Masten: I'll second it.

Mr. Manley: We have a motion from Mr. McKelvey and we have a second from Mr. Masten, roll call please.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

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

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:04 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – 7:31 PM)

AUTUMN SKY DEVELOPMENT, INC. 254 ROUTE 17K, NBGH

(86-1-86) I/B ZONE

Applicant is seeking an Interpretation of Article XVI - Adult-Oriented Businesses Section - 185-67 Definitions - Massage Establishment.

**THE SAME COMBINED MINUTES USED FOR BOTH APPLICATIONS**

Mr. Manley: The next item before the Board this evening is application of Autumn Sky Development, Inc. at 254 Route 17K in Newburgh, here for two variances, one is for actually a...an Interpretation of Article XVI - Adult-Oriented Businesses Section - 185-67 Definitions - of a Massage Establishment. The second is a variance seeking relief from the requirements of Article XVI Section 185-75 (A) entitled “Termination and Amortization of non-conforming Adult-Oriented Businesses” pursuant to the procedures set forth in Article XVI, Sections 185-75 (C) and 185-75 (D) so as to be allowed to continue the non-conforming Adult-Oriented Business on the premises identified above for an additional period not to exceed three (3) years. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Yes for the Interpretation case and then secondly for the extension variance they sent out for each sixteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening, could you introduce yourself for the record please?

Mr. Cappello: My name is John Cappello, I’m an attorney with Jacobowitz and Gubitz and I’m here on behalf of Autumn Sky Development and I have the principal Steve Michalski a...here with me also in case you have any questions for him.

Mr. Manley: Thank you, good evening.

Mr. Cappello: Good evening a...we’re here tonight a...

Mr. Manley: May I just interrupt you for just...

Mr. Cappello: Sure.

Mr. Manley: ...one second to just bring you up-to-date with a matter that this Board wants to make aware to you. There’s a couple of things, one is the County we contacted them today, the Department of Planning to see if they had for us their a...decision as to whether it’s local determination and...and unfortunately they have not a...they have up to thirty days to provide us a copy of that a...we can hear everything in its entirety this evening. Unfortunately on the second item, not the interpretation, but the other variance we would need to a...hold that over till next month till we get that. Would you like to proceed this evening with your presentation or would you like the Board to hold everything over until next month? That’s your call.

Mr. Cappello: Actually I...I think it will be helpful. We’ll...we will proceed and then if there’s any questions or any supplements that you may want we can provide it while we wait for the County’s a...comments to come back.

Mr. Manley: Okay, very good, you may proceed.

Mr. Cappello: What we’re tonight is a...Mr. Michalski’s a...organization owns a building located at 254 Route 17K it’s a commercial building a...in one of the suites within the building that is approximately twenty-five hundred square feet in size a...was operating as a massage establishment when Mr. Michalski purchased the building back in (2013) two thousand and thirteen. Your Zoning Code was modified to create a definition for adult uses in effect in (2012) two thousand and twelve. At that time, they determined massage establishments were considered an adult use. However, within that Code provision in the definition of massage establishment it does say that hospitals, nursing homes, medical clinics or offices of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist, occupational therapist or duly licensed massage therapists are exempt from the deter...from the definition of massage establishments and therefore not a...considered adult uses. Mr. Michalski a...re-upted and signed a lease agreement as the new owner with the establishment in (2015) two thousand and fifteen, that lease runs to (2020) two thousand and twenty. In order a...to induce the tenants to continue Mr. Michalski made repairs a...to the facility that are retrofitted to have massage units in there. Also the proprietor of the facility and tenant is...

Mr. Donovan: John if I could just interrupt...interrupt for a second? So there’s two...two applications...

Mr. Cappello: Yes.

Mr. Donovan: First is for the interpretation and second is for the relief under the provision of the Code which is...actually gets you an extra (up to) three years.

Mr. Cappello: Yes.

Mr. Donovan: Do you want to kind of meld them together? Or do you want to deal one at a time?

Mr. Cappello: I’m giving general facts that pertain to both...

Mr. Donovan: That’s okay.

Mr. Cappello: ...then I will go in...because the interpretation actually fairly...simple. A...the proprietor of the facility Chu Im Yon (Im Yon Chu) is a licensed a...and we did provide a copy. She is a licensed massage therapist. It’s her office and she has other people who work with her who do provide massages who are not licensed massage therapists...therapists but it’s her office. I think it would be akin to you go to a Dentist that this is a licensed Dentist. He has a license or she has a license and there are also Hygienists and people who you go see that aren’t Dentists but you’re in a Dentist office. So really that’s the crux of that portion of the interpretation that we’re looking for a...you know, given that zoning is a derogation of the common law and ambiguities go a...in favor of the applicant we are requesting of this Board to determine that since this is the office of a licensed massage therapist that...

Mr. Manley: So could I just ask a question while my...my thought...

Mr. Cappello: Yes, yes.

Mr. Manley: ...train is going? So what you’re saying is that you have individuals...you have one licensed person but eight maybe nine, maybe five...it doesn’t really matter how many but you have a number of other people who are unlicensed that you’re saying assist the therapist, correct?

Mr. Cappello: Yes, the therapist her offices the other people are her employees, it’s a...massage therapy yes...

Mr. Manley: So my question is if you have four or five people that come in for a massage...

Mr. Cappello: Right.

Mr. Manley: Okay? And they go into the...everyone is in a different room...

Mr. Cappello: You would make an appointment with either the massage therapist or either you would make an appointment to have a massage or relaxation... (Inaudible)

Mr. Manley: So who is the one who is going to be giving the massage?

Mr. Cappello: There would be people other than the massage therapist giving them. She would oversee it. It’s her operation but there would be overseeing it.

Mr. Manley: So basically that would be like going to a Dentist wouldn’t it...?

Mr. Bell: Yes.

Mr. Manley: ...and having an unlicensed hygienist going in and scrapping your teeth...you know, that’s not allowed right?

Mr. Cappello: Well I...I...hygienists actually do go in and scrape your teeth and (Inaudible)

Mr. Donovan: I think...I think the point they’re...they’re licensed, if you’re a hygienist you have to get a certification and...just the same way in your...in your application you talked about the physician’s office and you know, unfortunately I’m of the age where I go to Doctors on a fair occasion so I see a...the Nurse, the Nurse Practitioner, the Physician’s Assistant or a Physician leave out the Physician all those other people have got a degree, they’ve got a certification, license hangs on the wall. I mean I...you...I don’t know that it’s apples to apples... (Inaudible)

Mr. Cappello: If...not exactly apples to apples but I’m looking at the definition. I’m not arguing globally that a Massage Therapist is the same as a Physician or a Surgeon or an Osteopath whether under the definition of adult uses in the Town of Newburgh the way the Code is written I would say it’s a fair reading that it’s the office of a Massage Therapist just as it’s an office of a Dentist or an Osteopath, they may have other people working there that a...you know, provide services there.

Mr. Manley: Okay but you...you might have a situation and...and I see where you’re kind of going with this a...let’s say that I have a dental office, you have a Dentist, you have a Hygienist, you have a Secretary that you know does the billing or you might even have a billing person but the Secretary doesn’t come and say ‘oh, I’m going to clean your teeth’...

Mr. Cappello: I...I understand...your position is...

Mr. Manley: ...you know and I think where you’re going is that these other workers that are there, they’re going to go in and they’re going to give me a massage and they could be the Secretary I mean...what makes them qualified to be able to...what pressure points and...?

Mr. Cappello: A...I understand that and the person going there would know that they’re not getting a massage from a Licensed Therapist once again I’m looking at the definition that’s in your Code that says if it’s the offices of a Therapist it’s exempt from the definition of what an adult use is and that’s what we’re looking to... (Inaudible)

Mr. Scalzo: Okay, and approximately one hour ago I was on the Office of Professions website and I looked up Ms. Yon and they’re showing no active license for this person.

Mr. Cappello: Well I’ve got that registrations here...

Mr. Scalzo: That’s fine but the Office of Professions website is updated daily.

Mr. Cappello: Well I...don’t know, I have a license here that hangs in the facility that says she is registered to practice in the New York State Education Department.

Mr. Scalzo: Do you folks have that in your packet?

Ms. Gennarelli: We didn’t receive that.

Mr. Bell: No, we didn’t receive it.

Mr. Masten: No.

Mr. Cappello: Well I would be willing to hand it to you and supplement the record I thought it was...

Ms. Gennarelli: It was not submitted.

Mr. Bell: It wasn’t, it wasn’t in there.

Mr. Cappello: Could I, could we use that to copy them?

Mr. Manley: Well and that’s one of the reasons that the Board has to have these things prior to...

Mr. Cappello: I...I was under the understanding that it was submitted so I apologize if there was a...without it and...

Mr. Manley: So you would like to actually submit that now for the record?

Mr. Cappello: Yes, yes.

Mr. Manley: Okay, I’ll go ahead and take this, we’ll as the a...Secretary to make some copies and a...we’ll certainly have this obviously verified.

Mr. Cappello: Yes.

Mr. Manley: It has no date on it. Wait, hold on, through 4-30-2020 but we don’t know when it was taken out.

Mr. McKelvey: Does the State say they have to be licensed?

Mr. Cappello: No. To be a Massage Therapist and to advertise yourself as a Massage Therapist you’d have to be licensed but you don’t have to have the facility.

Mr. McKelvey: I mean for these other people to...to give massages.

Mr. Cappello: No, they don’t have to be...licensed.

Mr. Scalzo: Well, again on the Office of Professions website depending on the type of massage we’re talking about. Is it deep tissue massage that...that they’re...?

Mr. Cappello: It wouldn’t be a massage that would require that. She is the only one that is authorized to provide massages that a licensed Massage Therapist, the other and it’s advertised as deep a...as relaxation so if you go in there for relaxation (Inaudible) facility is.

Mr. Manley: Is the...is the a...individual that runs this and the licensed individual here this evening to testify before this Board?

Mr. Cappello: No, she is not.

Mr. Manley: Okay, is that person willing to provide us with an Affidavit of Testimony?

Mr. Cappello: If that’s what you’re requesting we certainly would...check. I don’t, I don’t...I haven’t met her but I would ask if she would... (Inaudible)

Mr. Scalzo: As a healthcare professional they’re also required to keep records, medical records of their clientele.

Mr. Manley: The other thing that a...we obviously need to bring up is there’s been a...on file a number of instances with regard to Police activity at that location regarding not having individuals that are licensed. Is that something that is correct that they have been...that they have been cited and that there’s been a...?

Mr. Cappello: My understanding is not that they have been cited for not having licenses and a... providing a...I believe there was an instance when Mr. Michalski first took over about people living at the facility. That’s the only Police activity that I am aware of that and that has been rectified.

Mr. Manley: So if...if this Board were to obtain documents showing that there’s been Police activity at that location a...and potentially if there’s any issues with regard to any type of arrests or anything at that location that would be...that would be news to you?

Mr. Cappello: Relevant to your decision I would say...it would be news to me, yes.

Mr. Manley: Okay.

Mr. Cappello: And a...

Mr. Michalski: Can...can I speak for a second?

Mr. Cappello: So...yeah if they would...

Mr. Manley: Certainly, if you could just come forward and provide us with your a...your name.

Mr. Michalski: Yeah, my name is Steve Michalski; I am the owner of the property. I bought it in (2013) two thousand and thirteen in June...they were...that Spa was in the property when I bought it. They were...they were a tenant when I bought it. Okay? My office is in the building, real estate developer in Orange County I’ve sold over a thousand units of housing in Orange County. My office is on the first floor right down from where the spa is. Okay? So I...I’m there three, four days a week I...you know, I’m not there at night sometimes I’m there at night but I never...never had any issues there, never had any complaints from the other tenants, never seen any issues myself. A lot of times I’m there at eight o’clock so I...I’m unaware of any issues other there was the one thing when with this thing came up with the license about two years ago I guess the Police went there. Other than that I’m not aware of any issue that have happened. There...

Mr. Manley: So the...

Mr. Michalski: ...there could have been something I’m not saying...

Mr. Manley: So the Police were there due to licensing issues?

Mr. Michalski: I don’t...I don’t know if it’s licensing...there...there was some incidents where they...that’s...I...I...I don’t...I’m not sure what it was. I have a copy of it, one time there were...I know they there...to my knowledge.

Mr. Manley: Do you...do you recall if there were any arrests there as a result of unlicensed individuals?

Mr. Michalski: I...I...I don’t know. I...I...the only way I know about it...I was on vacation, I got a call from the Building Inspector about that. I never got any Police Report but one time the board there is...I know the Police were there other than that I said I’m there a lot and if it was really an issue because I’m there three, four days a week minimum. My office is right there and my secretaries are there all the time. So and my tenants are there and you know, I don’t hear anything. As far as I know nothing is...nothing has ever happened there so...

Mr. Manley: Well I certainly wouldn’t question the fact that you’re an astute businessman...

Mr. Michalski: And...and again I...I...I...could something, I mean, I can’t say I have perfect knowledge but on a day to day basis it’s not a real problem. If it was a problem, I wouldn’t...I wouldn’t ask to have them there for the rest of the lease, so...

Mr. Manley: So the...the other question while you’re here that I’ll ask is, you purchased the property in (2013) two thousand thirteen...

Mr. Michalski: That’s correct.

Mr. Manley: The Law for the Town with regard to this type of use and the amount of time that would tick as a result of it a...was prior to that. When you purchased the property did you not take time to visit you know, the zoning requirements? Did you not conduct due diligence...

Mr. Michalski: I...

Mr. Manley: ...in the purchased of the property?

Mr. Michalski: I...did I do...a...no, I mean I...I bought the property there was no...there was no...I was no...I was never notified about any of that, any of that...how would I...I was not...?

Mr. Cappello: I...I can...I can respond to that in...in the February, two thousand, February fifth, two thousand sixteen letter from...a...Building Inspector Mr. Campbell which was when Mr. Michalski was advised for the first time that it was determined that this was not a massage...this was a...a adult use, he was...it says right in the letter...accordingly the use for which a Permit and Certificate of Occupancy the premises were issued massage body relaxation so when Mr. Michalski bought the property there was a valid C.O. and Building Permit for a massage body relaxation and there had been no determination at that time that this was considered a massage establishment or an adult use. The first indication that he got was this letter of February sixth, two thousand sixteen which said you have two years from the date of the letter to occupy it or you can a...request the extension pursuant to the adult use provisions for another additional three years which is our variance a...application is due to the fact that when Mr. Michalski did sign the lease there was a valid C.O. and it was called massage body relaxation. A...there’s no indication that it was considered a massage establishment or not permitted. He signed the lease for five years, he made repairs so we are seeking as part of the variance that based upon those repairs that additional time to a...finish out the lease that Mr. Michalski is not a...faced with any a...issues with the tenant and any potential lawsuits to a...finish out the terms of the lease to allowing them to...towards the end of the lease seek a new tenant or a...seek there but at least recoup a...any money we have and we understand your issue and we will call the Police to get the Police Reports but the understanding is that the facility which by the way is occupied in a multi-tenant building. This is not a...you can drive by the building...this is not a sleazy shed that people are going in and out of it, it’s a suite in a building that is occupied by other tenants that there have been no complaints.

Mr. Maher: What...what are your other tenants there?

Mr. Michalski: I...I have an accounting firm, I have a...a chiro...chiropractor acupuncturist, I have a insurance a...yeah, like an insurance adjuster type company, I have a...a lawyer who is right next to them, I have my office, I have a...a home healthcare aides. I...I talk to my tenants in there all the time. There’s no issues there. And...and I have had no issues so it’s...there’s really not an issue at the property. I would like to finish out the term of the lease that I signed with them.

Mr. Maher: Well I don’t...I don’t think...I think you would agree there is limited liability on...on the owner if in fact the tenant is not...is doing something that the Town finds a violation for them that there’s no judge, I would think, that would hold you liable for...

Mr. Michalski: Well...

Mr. Cappello: It’s the cost of going through that and it’s the commitment that Mr. Michalski made and you know, finishing the building and doing improvements based upon his tenant’s...

Mr. Maher: No, I understand that but you have to agree that at the end of the day...

Mr. Cappello: A...no, I agree but you still have to win a lawsuit and it’s still costly and they still have a claim and they still have a signed lease so what I’m...if a determination is made after a...a...yeah, he may win but he would still a...be litigation, he would still be forced to litigation and I think, you know, what you heard here and we can certainly supplement a...for the record you know, because due to the...I think we kind of switched onto the variance portion of this...

Mr. Donovan: I was trying not to do that but it was inevitable I guess...

Mr. Cappello: Yes, yes...

Mr. Donovan: ...it was.

Mr. Cappello: ...yeah, based upon the questions is that this oc...this activity has been occurring in a manner that if there were anything untoward about it none of the tenan...you know, it hasn’t impacted...there hasn’t been anything any events that have shown that the building is not being kept up that there’s undesirable people because otherwise there’s other tenants in this building, I mean you guys drive by this building, there’s no evidence of...a...this...this place is...there may be some other one’s where they’re free-standing. There’s no traffic flow, there’s no undesirable people going, this is really a massage therapist and other people that...people go there for (Inaudible)

Mr. Michalski: Just since...since I bought the building in two thousand thirteen, I also bought it with that was you know...

Mr. McKelvey: Do you want to speak into the microphone?

Mr. Cappello: Yes.

Mr. Michalski: ...so when I...when I bought the building in June of two thousand thirteen I...anyone was not aware of anything. I was not notified of anything and I’m very familiar with zoning. I buy...you know, Mr. Donovan, and I built over a thousand units housing in Orange County. You know, I’m very familiar with zoning and not aware about any of this till I got the letter from the Building Inspector. A...the...I put into that building, when I bought that building...I’m sure if you live in Newburgh you’ve seen it. There was no sign up front I put a marquee, I spent fifty thousand dollars putting a marque sign for the tenants. I paved the parking lot, I’ve done the lights over, I’ve put air conditioning as the building is in much better shape than when I bought it. My tenants are generally pretty happy. My office is there. I...I would like to have the rest of the time of the lease to, you know, recoup my investment. Okay? I have lots of property, I take care of them and I think that’s a fair thing to ask for.

Mr. Cappello: And I think the Law, the provisions of the Law, the Adult-Use Law do envision and provide you the authority to allow up to three additional years a...from the time of termination which here would be February two thousand and eighteen to allow a a landlord or a developer or person to a...to recoup their investment and I think here this would certainly be a...you know, in order a...if the owner of the business has made financial expenditures related to such building, hasn’t recovered all of such financial experiences and the period for which such business may be permitted to continue is the minimum period sufficient a...for that. So we’re saying that you know, a lease is and while I am making the presentation I will bring this up because I am not sure if it’s going to be a...we’re going to be...have a decision from the Code Enforcement Officer but while we were doing a...a...the review and submitting the materials for this we also found out that this property may be the one property because I’ve litigated this with the Town before in looking at the Law, adult uses are permitted in the I/B zone where this property is located. There are a...several dimensional requirements that you have to be five hundred feet from a residential zoning district, you have...

Mr. Michalski: Thousand.

Mr. Cappello: ...a thousand feet from a residential zoning district, five hundred feet from any other adult use and several other distance restrictions a...I remember vividly on another case looking for properties in the Town were met those requirements. This may be one of the one or two properties that actually do meet the requirements and is located in a area where adult uses are permitted within the Town. As soon as we found that out. We have a letter to the Building Inspector dated on August 17th asking for a confirmation on that. Depending on his interpretation or determination this application may be moot or a...we may be back to you a...to appeal that but it appears that this use may be permitted on this property. I can provide you a copy of that letter as well.

Mr. Manley: I think that the other that a...this Board is going to need is some sort of financial...

Mr. Cappello: Sure.

Mr. Manley: ...evidence as to exactly what the expenditure has been and what the financial commitment is of the tenant and you know, what the going rate is that particular unit.

Mr. Michalski: You mean what you want to see copies of the lease...the lease?

Mr. Manley: A copy of the lease, I would also recommend a...copies of all expenditures related to...you’re saying that there’s been a significant a...investment in upgrading that particular unit. Well we don’t have any dollar or cents before this Board this evening to...to show that even a penny was spent.

Mr. Cappello: Yeah, I understand and we’ll...we will provide that.

Mr. Manley: I mean I...

Mr. Donovan: So you’ve seen the standard in the Code, right?

Mr. Cappello: Yes, yes.

Mr. Manley: But I mean I would have expected that you would have had that here tonight as that’s part of the...

Mr. Cappello: Well I...

Mr. Manley: ...determination of the Board...

Mr. Cappello: Yes.

Mr. Manley: ...had the Board had the information back from the County you know, that information would have been insufficient this evening and the Board...

Mr. Cappello: We understand, we’re...we’re, you know, we’re balancing because the other aspect of it is we did want to hear some of what the Board thought so that we could a...reply and provide you the information you had and frankly if you were to say that we agree on the interpretation then that information and the time spent to gather that information wouldn’t necessarily be required but if you’re saying we want the information we’re certainly more than happy to submit a...to you. When do you want it, prior to your next meeting? If you give us a submission date so you have ample time to review we’d be happy to...

Mr. Manley: Ms. Gennarelli, the meeting next month is on the 28th of September...

Ms. Gennarelli: That’s correct so that would be at least by the 14th.

Mr. Manley: Let me look at the calendar here. Yeah that will be two weeks before the meeting that would be Thursday, the fourteenth of September. Whenever a...before we open it up to the public does anybody from the Board have any questions on either the Interpretation portion or the second portion which is the request for the variance on the a...on the Code 185-75?

No response.

Mr. Manley: At this point, if the Board doesn’t have any further questions at this time we’ll turn to the public if there is anybody here from the public that has any questions or comments with regard to this application just raise your hand and I’ll call on you. Mr. Taylor?

Mr. Taylor: Thank you Mr. Chairman, I’m Mark Taylor, attorney for the Town of Newburgh here tonight representing the Code Compliance Department. I apologize I’m just apprised of this application yesterday and requested by the Department to appear tonight so I apologize...apologies if I appear disorganized in my presentation. Firstly the matter of arrests and what generated the Code Compliance Department’s Notice of Violation to a...the premises owner, an arrest occurred on January 27, 2016 of a worker at the premises who apparently also resided on the premises, that arrest resulted in charges of practice of massage therapy without a license in violation of the Education Law that is a Class E Felony as well as prostitution. I have here to present to the Board in evidence a Final Disposition of that matter which was an attempted professional violation rendered by the Town of Newburgh Justice Court. So following January 27th arrest a Notice of Violation was mailed by the Department on February 5th, 2016 to the property owner advising of the Code Compliance Department determination that a massage establishment was being...was the use of the premises and that a...pursuant to the Code was required to be terminated with a stated period of time (Inaudible)...

Mr. Manley: So just a...if I could prior to that the Town didn’t...prior to that arrest on 1-27-16 the Town didn’t have any knowledge that was actually being used as or was considered an unlicensed adult-oriented type of establishment versus a legal massage therapy location?

Mr. Taylor: That’s correct.

Mr. Manley: Okay, thank you.

Mr. Taylor: With respect to the applicant’s contention that this is a...the office of a licensed massage therapist a...like Member Scalzo I also went on to the Department of Education’s Profession’s website and a...took a look at the law and the regulations and certainly there are exempt persons who can perform massages a...with respect to performance a...by non-licensed individuals I’ve that noted two exceptions and I don’t believe the workers at this premises qualify for either. One is a permitee who otherwise qualifies and second is a student of massage. In each case the licensed massage therapist must be on premise and must be providing supervision so I think one of the questions which I did not hear but which the Board may want to ask the applicant is...okay, who are the workers performing the massages, what are the qualifications, secondly is the licensed massage therapist on premise during the performance of those services and is providing supervisory... The licensed massage premise... massage therapist is there from 9 to 5 and the premises is open from 9 to 12 at night...what’s going on? In any event I’d just like to submit what I downloaded from the a...Office of Profession’s Services as well as special provisions for the Board can review it...

Mr. Manley: Thank you.

Mr. Taylor: I will provide obviously a copy of the Disposition and what action...

Mr. Manley: There’s actually three each it looks like...

Mr. Taylor: I think you’ll have to make additional copies of this.

Mr. Manley: I will pass them down to Betty and ask her to make some copies for us for the file.

Mr. Taylor: So that’s the question before you, yes, there is a licensed massage therapist apparently depending upon verification on...on premise but does that mean that there is actually an office or if what is being conducted at the premise the office of a licensed massage therapist.

Mr. Manley: I guess the question, Mr. Taylor, too is if the requirement is that if you do have a licensed person that that licensed person must directly supervise...if you have a double booked appointment with three people and three people are getting a massage, two are getting it done by somebody that’s...two rooms are not being supervised but one is being supervised that still doesn’t meet...you...you would need three licensed people to supervise three other people that...

Mr. Taylor: Well I think Mr. Cappello probably advanced his arguments in that regard though and I’m not sure how on-site supervision is interpreted but that may very well be the case.

Mr. Scalzo: There are exceptions depending on the type of massage, that’s why I asked if it was deep tissue massage a...again the State Education Department Office of Professions website, the massage that is customarily given in a barbershop or a beauty salon for purposes of beautification may be provided by a licensed Barber or Appearance Enhancement Practitioner as long as it is light massage of the surface tissues solely for purposes of beautification.

Mr. Taylor: And...and the Code does contain and will reflect that exception as that is one of the exceptions, yes.

Mr. Donovan: Darrin is that an Appearance Enhancement...what was that again?

Mr. Scalzo: I didn’t write it.

Mr. Donovan: Do you need a license for that?

Mr. Scalzo: An Appearance Enhancement Practitioner.

Mr. Donovan: Okay.

Mr. Maher: I actually had an application or that... also a tattoo artist... (Inaudible)

Mr. Taylor: With respect to the application for an extension of the period of time that the Code Compliance Department position it’s a matter of the applicant meeting the standards of the provision in the Code.

Mr. Manley: Does the Board have any questions for Mr. Taylor at all?

Mr. Taylor: Certainly if you would prefer the Code Compliance Department’s Officers Mr. Canfield or Mr. Campbell to be present at your...your a...next session I...I will endeavor to a...secure agreement to that.

Mr. Manley: If it’s acceptable to you it may even be possible that we may not need them here if the Board has specific questions a...the Board could supply those questions to Ms. Gennarelli before the meeting and then perhaps they could then provide their responses in writing to the Board and that would save them from having to...

Mr. Taylor: If that’s acceptable to Mr. Cappello obviously he may want the opportunity to cross examine them.

Mr. Cappello: I will let you know. I’m going to take this information, I’m going to discuss it with my client and we will have a submission for you on September 14th at that point we’ll move from there.

Mr. Taylor: And, and I just received a copy of Mr. Cappello’s letter yesterday as well a...to...addressed to the Code Compliance Department. Obviously depending on their determination you may wish to amend his application to include that determination with respect to it’s being an allowable use for that.

Mr. Manley: And with that if he does amend his application Counselor based on the fact that it’s broadening...?

Mr. Donovan: I’m going to give you my favorite answer. It depends. So let’s not prejudge what Code Compliance may do, what Mr. Cappello may do in response to that, we have two applications in front of us this evening and I think we all pretty much know we’re not going to act because we’re waiting to hear from the County on the second so my suggestion open up to the public if anybody else is here is that they adjourn for the period to you know... That’s my suggestion to the Board.

Mr. Manley: Very good. At this point is there anyone else from the public that has any comments with regard to this application? If you do, just raise your hand and we’ll have you come forward. Seeing none I’ll come back to this Board is there any...?

Mr. Maher: Yeah, one thing, Mr. Cappello, so the question I have so the date of the...

Ms. Gennarelli: John, if you could go to the...?

Mr. Maher: ...the issue of...the issue are the conditions of the letter from the Town from February 5th, 2016...

Mr. Cappello: Yes.

Mr. Maher: ...and we’re in April (August) of 2017 so the past eighteen months what’s occurred? Has the operation continued?

Mr. Cappello: I believe so.

Mr. Maher: So, I guess my question...

(Inaudible)

Mr. Michalski: I...I...I can answer that.

Mr. Cappello: (Inaudible)

Mr. Michalski: Are the still my tenants or they still there... (Inaudible)

Mr. Maher: Has...has the operation still continued since the February 5th letter to the...to you?

Mr. Michalski: Yes because the letter says that I have two years, the letter says I have two years to operate from that date. That ends in February of two thousand eighteen and then (Inaudible)

Mr. Cappello: And it also says within a hundred and twenty days of the expiration of that two years you can come to this Board for the extension of the non-conforming use...

Mr. Maher: So...so in essence you’re requesting obviously to extend beyond that...

Mr. Cappello: Yes.

Mr. Maher: ...two thousand eighteen timeframe?

Mr. Cappello: Yes.

Mr. Maher: So my other question is so...if the argument for the unlicensed massage therapists is that it’s...it’s allowed under the auspices of the actual license then the arrest for a non-licensed massage therapist took place and if I’m not mistaken the indication was that of a...what was it?

Mr. Donovan: I really...it looks like they might plead to a...an attempted...

Mr. Cappello: That’s my understanding.

Mr. Donovan: Yeah, yeah.

Mr. Maher: Right, so I mean...

Mr. Cappello: I have to...I’ll be honest with you...we were looking at this from the zoning aspect of how it’s defined in your Code. I don’t know if the activity... if itself and how massages are licensed through the State and whether there are any Violations on the State and I have to look into that so I...yeah so, I know...I think I know where you’re going for purposes of the zoning and looking at your zoning code we made this provision. You’ve all...all brought to light issues that we’re going to have to address and...and resolve that really go beyond the...the zoning code.

Mr. Manley: But I think that perhaps when the Town crafted the Code that they took into account the requirements of the State with regard to what is considered licensed and unlicensed in determining what is Adult-Oriented versus what is massage.

Mr. Cappello: If...if you can’t do it even if it’s Adult-Oriented because the State prohibits it then I think the whole really provision in the Code didn’t need to be write...written because either you’re licensed or not licensed and you can or can’t do it by virtue of the State. That’s what I have to look at. In your Code there is a differentiation. If there is no differentiation in the State and I have to be licensed or a student to be in operation then the differation in the Code may make no difference. I...I just don’t know the answer (Inaudible)...

Mr. Michalski: Can I...I say something? Mr. Taylor said that the a...that’s when I was notified that there was this incident on Jan...January of...

Mr. Manley: January 27th, 2016.

Mr. Michalski: So I bought the building two and a half years before that. When I bought...bought it there was...I...I went through that before I bought it...I went through that, I walked through that establishment. My office has been next door. There’s never been any issues. I was away on vacation when I got the letter. I was away for two weeks and so I...and I signed a lease just before that. I had no knowledge of any issues at all prior to this...the Town never notified me...no issu...other before that I had no awareness of there was any problems with that establishment or the Town had any (Inaudible). So I made it...I bought the property, somewhat based on that lease amount...that they were paying there, made improvements to things, sign the lease and had no knowledge of an issue. My office is there. There’s never been an issue since then so yeah, for me it’s a financial hardship. It’s kind of like...it’s kind of caught me you know, yeah off guard. So I’m asking for relief to a...yeah to continue it longer to...to continue out the rest of the lease basically.

Mr. Scalzo: In the eighteen months from the original Code Compliance letter to now a...have there been any actions on your part to try and either find another tenant or a...make any modification...?

Mr. Michalski: They have...they have...they have a lease. They have a written lease with me. They have a lease I can’t...I can’t kick someone out who has a lease.

Mr. Maher: Were there vacancies when you purchased the building?

Mr. Michalski: There were vacancies a...there were other vacancies, the building is a hundred percent occupied now at...at...at the present time yeah but I made some...the building is fixed up, I put the sign up...

Mr. Maher: No, I am...I’m familiar I mean you definitely improved it don’t think...

Mr. Michalski: (Inaudible)

Mr. Maher: ...about that...obviously you...you took shrubbery down and the...and the trees around. No I’m familiar...

Mr. Michalski: (Inaudible)

Mr. Maher: ...with the improvements you’ve made.

Mr. Michalski: And...and I was...I was unaware about this thing with the Town. It caught...caught me off guard and yeah, they’re there and it’s you...and then...it’s in the back, it’s a difficult space to rent so you know, I feel like I need more time to you know, to...to eventually...get...recoup my money and then eventually they...they will leave and I’ll...someone else will go there so I’m just asking for more time basically.

Inaudible Audience Member

Mr. Manley: We’ll...we’ll actually call you in just a minute sir. I just have a...a follow up question. There...there were alterations done to this particular...in (2005) two thousand and five to this particular a...unit.

Mr. Michalski: Okay.

Mr. Manley: That’s when the Danza Group owned it.

Mr. Michalski: That’s who I bought it...bought it from the Danza Group.

Mr. Manley: And it looks like a...they had interior alterations to create massage body relaxation with two new shower rooms a...the Building Permit says that the approximate cost was fifty thousand dollars and that was Building Permit back in...it was filed January twenty-fourth of two thousand and five and then a Certificate of Occupancy and a C.O. issued (4-4) four, four of two thousand five for interior alterations for the massage body relaxation with two new shower rooms. So you’re saying is that in two thousand and what year did you say you made the alterations?

Mr. Michalski: A...couple of years ago before I signed the lease a...about two years ago a...what’s that...the beginning of fifteen...end of fifteen...about a year and eight months ago, a year and ten months ago...end of two thousand fifteen I made alterations. They, they...the lease was coming due, a lot of the stuff was in disrepair so I did a lot of, you know, stuff not requiring not requiring a building...but I just did renovations, you know, fixing the showers, fixing...I did a bunch of work there and putting...and putting in the sign was...they had told me if I didn’t get a sign out front they were not going to renew the lease. So I put it...that...

Mr. Manley: But...but the sign just doesn’t benefit them, it benefits all the tenants.

Mr. Michalski: I...I...It was...they...they were the only one that was complaining...the other people didn’t...were good, they were complaining they wanted...so it does benefit the other tenants but they did primarily for them because they wanted like a lighted sign.

Mr. Manley: I don’t know...I don’t know if I would I mean...the fact that there’s a sign there benefits you know all tenants that...

Mr. Michalski: It does benefit them but I’m saying they...the other tenants weren’t complaining they were complaining about it nobody knew they were there that they couldn’t even find the other tenants yeah, I’m sure they do benefit but they were the primary reason why I did it. They threatened to leave if I didn’t do that.

Mr. Scalzo: Other than massages what other services are offered from that facility?

Mr. Michalski: Honestly I...I...I...I don’t know really...I don’t know. I’m assuming...I don’t know. I’ve gone...I’ve gone in there when there’s been leaks, you know, with my...with my guy that works for me, my contractor and my handy...we’ve gone in there to fix air conditioning, to...

Ms. Gennarelli: Could you just get a little closer to the microphone?

Mr. Michalski: I’ve gone in there to fix things over times and we were doing the upgrades they wanted. I was in there for...my office is next door, I was there for a couple of months as my guy was working there so I...I don’t...I don’t really know. I just know that I’m there all the time never had any...seen anything bad happen, anything that was an issue for me. My office is right next door.

Mr. Scalzo: Are there hairdresser chairs in there or...?

Mr. Michalski: No.

Mr. Scalzo: ...or places where they cut toenails or...?

Mr. Michalski: No, no. There’s like...there’s something....there’s rooms with a tables...like massage tables on them...in them and showers.

Mr. Manley: Are...are showers something common at a massage...?

Mr. Michalski: Honestly I don’t know, I...I’m not an expert in massage but...yeah, are they? I...I...a...yeah, I live...I live in New Paltz, I get a massage and there’s like a bathroom there with shower. Right after I...sometimes I’ve taken a shower after I get a massage so...

Mr. Manley: Okay, does the Board have any questions? We do have somebody from the public that has a comment so...

No response.

Mr. Manley: Sir, if you just want to come forward to the microphone and just a...state your name for the record and then your comment?

Mr. Sylcox: Yes, my name is Ed Sylcox, I own Mid-Hudson Managed Home Care at 243 Route 17K. I got one of these (Notice of Hearing). My son is a licensed massage therapist and the definition that you were talking about is based on schools that teach massage therapy and they do supervise the different techniques that they...that they...these people have and then they also have a clinic where they do their practical hours before they take the State exam. That’s the purpose of it. I used to go to the massage a...at the chiropractor that was upstairs. Her name is Carol Ann...I don’t know her last name...

Audience Member: Malizia.

Mr. Sylcox: ...thank you but I know they complained a lot about downstairs. Of course, that’s hearsay for me to say it but they also said that they did go to the Town Police and this was before you owned it so I mean and they complained to the previous owner about what was going on down there. So that’s all I can share that I know about.

Mr. Manley: Thank you sir.

Mr. Michalski: And...and I can share I’m the owner and I’m there every day and none of the tenants haven’t complained to me about it and I haven’t seen...it’s not...it’s not an issue. I would like to know have there been any inst...instances since then that have happened I...I...I’m unaware of anything so...

Mr. Maher: What time does the establishment close?

Mr. Michalski: A...

Ms. Gennarelli: Can you stay at the mic, please?

Mr. Michalski: What time does it close? I honestly...I don’t...I don’t know...I know that sometimes I...I...you know work during the day, sometimes I’m there at night. Been there till like ten and they’re still there at ten so honestly I don’t know but I’m there at night...you know, in the winter...I was there a lot this winter at night I...I...with my secretary till like a...ten doing my taxes and ne...never had any issues there.

Mr. Manley: Well I think the Board will need confirmation on hours of operation. I think that’s something that we’re going to need to a...we’re really going to need to know. I think also we’re going to need see some sort of schedules a...there’s a question as to...you know, we need to know how many unlicensed people are there. Are there five people there? Are there six people there? Ten people? How many employees are we talking that actually...? If...if the place is open from ten in the morning till ten at night is there one person there for twelve hours? What’s...what’s the...the scheduling like? I think that we need to know how many, you know how many people we’re...we’re...we’re dealing with. How many have licenses? We’ve established only one so far has a license. So I...I...you know I think that, you know, how many appointments are there during a day so that we can get a feel for how busy the place is and you know, what...what type of traffic is there, you know, at the a...at the spa?

Mr. Michalski: So how...how does somebody get that? How can I...it’s not my business I mean it’s...

Mr. Manley: But you’re representing the business and you’re the one asking for the variance so I think that the Board needs to know the economic loss to you. If there’s...and I’m just making up a number...if there’s a hundred people there a day, you know, and the business is making, you know, a million dollars a year and they’re paying you in rent fifty, sixty thousand dollars a year well then, you know, that’s...that’s a loss to you but we...we need to see that and the only way to establish that is to actual facts and...facts and figures.

Mr. Michalski: So the...the economic loss today is I bought the building not knowing this and paid a price on it with...with...with that rent there thinking they were going to stay there and the economic loss to me is I made improvements. The economic loss to me is the rent I’m getting. I...I...I’m not involved in the business I just get a certain amount of rent every month and I...and I...have the...you know as a landlord responsibility to make...to make repairs that’s...that’s my loss. I mean the internals of the business it’s not my...it’s...it’s the loss in rental income that I’m...

Mr. Maher: Right but you have to...

Mr. Michalski: ...I...I...

Mr. Maher: ...understand though that you...while...while technically you’re the owner of the building and the applicant in essence you...you’re actually representing them to get...they’re the ones that actually needs the actual...technically you are the owner of the building again but the...the ability to continue the business as it stands now benefits them as well...as well as you. I mean so that...I would almost think that there would be some need for them to be here to...to a...state their side of it and why...why they should be granted in some manner. You have to understand my point, that they’re the ones that are benefiting from it also. They have something to lose if...if the answer is no, at the end of the day then they’re out of business. So they do have some...some skin in the game so...

Mr. Michalski: Yeah, I mean they’re out of business, my...my thing is I’m losing rental income and that’s a hard place to rent and...

Mr. Maher: No, I...I don’t...I don’t disagree with there but by the same token though you know, there...there was vacancies when you bought the building too so you understood there was some...there was some loss to income at the beginning of the process...or beginning of the ownership just saying. So you know, again I just think that they...they...if they’re that concerned about it you know, continue the business they would be here also.

Mr. McKelvey: I think if a...as you are the owner of the building you should know what hours they operate.

Mr. Cappello: Well we...we understand the questions...

Ms. Gennarelli: If you...the microphone...? Thank you.

Mr. Cappello: We understand the question you raised, we’re going too stop talking, give you figures and you’ll make a...you know, make a determination.

Mr. Manley: Right and I think at the end of the day the Board needs to know is a thousand dollar loss or is it a seventy-five thousand dollar loss?

Mr. Cappello: Yes.

Mr. Manley: You know, anybody can have a loss but for us to consider relief we need to have documented, you know, proof, dollars and cents of what the loss is because the amount of the loss will determine probably how the Board rules as far as you know the length of relief. You know, if there’s a huge loss well maybe it’s...maybe it is you know, something that you deserve the full three years. If it's a smaller loss maybe it’s only six months, maybe it’s three months. So all of that is going to you know, be based on how we...how weigh our decision and I...hopefully think that you can appreciate that we obviously have your best interests but we also have to have the...the interests of the...of the residents of Town at heart as well.

Mr. Donovan: Well of course, overriding everything is the terms and provisions of the Code which we will strictly adhere to.

Mr. Manley: Bingo.

Mr. Cappello: Thank you very much.

Mr. Michalski: Thanks very much.

Mr. Manley: Thank you. Is there anyone else here this evening with regard to this application?

No response.

Mr. Manley: If not, I would ask the Public Hearing be continued. There will be no Notices sent of the continuation of the Hearing on September 28th but do I have a motion to continue the Public Hearing to...?

Mr. Donovan: Just for clarification, that’s for each application.

Mr. Manley: Correct, for the Interpretation and for the a...

Mr. Donovan: Request for the extension for a (up to) three year period, yes.

Mr. Manley: Correct.

Mr. McKelvey: I’ll make that motion.

Mr. Scalzo: I’ll second.

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

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is continued till September 28th.

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:26 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – PM)

AUTUMN SKY DEVELOPMENT, INC. 254 ROUTE 17K, NBGH

(86-1-86) I/B ZONE

Applicant is seeking a variance for relief from the requirements of Article XVI Section 185-75 (A) entitled “Termination and Amortization of non-conforming Adult-Oriented Businesses” pursuant to the procedures set forth in Article XVI, Sections 185-75 (C) and 185-75 (D) so as to be allowed to continue the non-conforming Adult-Oriented Business on the premises identified above for an additional period not to exceed three (3) years.

**THE SAME COMBINED MINUTES USED FOR BOTH APPLICATIONS**

Mr. Manley: The next item before the Board this evening is application of Autumn Sky Development, Inc. at 254 Route 17K in Newburgh, here for two variances, one is for actually a...an Interpretation of Article XVI - Adult-Oriented Businesses Section - 185-67 Definitions - of a Massage Establishment. The second is a variance seeking relief from the requirements of Article XVI Section 185-75 (A) entitled “Termination and Amortization of non-conforming Adult-Oriented Businesses” pursuant to the procedures set forth in Article XVI, Sections 185-75 (C) and 185-75 (D) so as to be allowed to continue the non-conforming Adult-Oriented Business on the premises identified above for an additional period not to exceed three (3) years. Ms. Gennarelli are all the postings and mailings in order?

Ms. Gennarelli: Yes for the Interpretation case and then secondly for the extension variance they sent out for each sixteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening, could you introduce yourself for the record please?

Mr. Cappello: My name is John Cappello, I’m an attorney with Jacobowitz and Gubitz and I’m here on behalf of Autumn Sky Development and I have the principal Steve Michalski a...here with me also in case you have any questions for him.

Mr. Manley: Thank you, good evening.

Mr. Cappello: Good evening a...we’re here tonight a...

Mr. Manley: May I just interrupt you for just...

Mr. Cappello: Sure.

Mr. Manley: ...one second to just bring you up-to-date with a matter that this Board wants to make aware to you. There’s a couple of things, one is the County we contacted them today, the Department of Planning to see if they had for us their a...decision as to whether it’s local determination and...and unfortunately they have not a...they have up to thirty days to provide us a copy of that a...we can hear everything in its entirety this evening. Unfortunately on the second item, not the interpretation, but the other variance we would need to a...hold that over till next month till we get that. Would you like to proceed this evening with your presentation or would you like the Board to hold everything over until next month? That’s your call.

Mr. Cappello: Actually I...I think it will be helpful. We’ll...we will proceed and then if there’s any questions or any supplements that you may want we can provide it while we wait for the County’s a...comments to come back.

Mr. Manley: Okay, very good, you may proceed.

Mr. Cappello: What we’re tonight is a...Mr. Michalski’s a...organization owns a building located at 254 Route 17K it’s a commercial building a...in one of the suites within the building that is approximately twenty-five hundred square feet in size a...was operating as a massage establishment when Mr. Michalski purchased the building back in (2013) two thousand and thirteen. Your Zoning Code was modified to create a definition for adult uses in effect in (2012) two thousand and twelve. At that time, they determined massage establishments were considered an adult use. However, within that Code provision in the definition of massage establishment it does say that hospitals, nursing homes, medical clinics or offices of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist, occupational therapist or duly licensed massage therapists are exempt from the deter...from the definition of massage establishments and therefore not a...considered adult uses. Mr. Michalski a...re-upted and signed a lease agreement as the new owner with the establishment in (2015) two thousand and fifteen, that lease runs to (2020) two thousand and twenty. In order a...to induce the tenants to continue Mr. Michalski made repairs a...to the facility that are retrofitted to have massage units in there. Also the proprietor of the facility and tenant is...

Mr. Donovan: John if I could just interrupt...interrupt for a second? So there’s two...two applications...

Mr. Cappello: Yes.

Mr. Donovan: First is for the interpretation and second is for the relief under the provision of the Code which is...actually gets you an extra (up to) three years.

Mr. Cappello: Yes.

Mr. Donovan: Do you want to kind of meld them together? Or do you want to deal one at a time?

Mr. Cappello: I’m giving general facts that pertain to both...

Mr. Donovan: That’s okay.

Mr. Cappello: ...then I will go in...because the interpretation actually fairly...simple. A...the proprietor of the facility Chu Im Yon (Im Yon Chu) is a licensed a...and we did provide a copy. She is a licensed massage therapist. It’s her office and she has other people who work with her who do provide massages who are not licensed massage therapists...therapists but it’s her office. I think it would be akin to you go to a Dentist that this is a licensed Dentist. He has a license or she has a license and there are also Hygienists and people who you go see that aren’t Dentists but you’re in a Dentist office. So really that’s the crux of that portion of the interpretation that we’re looking for a...you know, given that zoning is a derogation of the common law and ambiguities go a...in favor of the applicant we are requesting of this Board to determine that since this is the office of a licensed massage therapist that...

Mr. Manley: So could I just ask a question while my...my thought...

Mr. Cappello: Yes, yes.

Mr. Manley: ...train is going? So what you’re saying is that you have individuals...you have one licensed person but eight maybe nine, maybe five...it doesn’t really matter how many but you have a number of other people who are unlicensed that you’re saying assist the therapist, correct?

Mr. Cappello: Yes, the therapist her offices the other people are her employees, it’s a...massage therapy yes...

Mr. Manley: So my question is if you have four or five people that come in for a massage...

Mr. Cappello: Right.

Mr. Manley: Okay? And they go into the...everyone is in a different room...

Mr. Cappello: You would make an appointment with either the massage therapist or either you would make an appointment to have a massage or relaxation... (Inaudible)

Mr. Manley: So who is the one who is going to be giving the massage?

Mr. Cappello: There would be people other than the massage therapist giving them. She would oversee it. It’s her operation but there would be overseeing it.

Mr. Manley: So basically that would be like going to a Dentist wouldn’t it...?

Mr. Bell: Yes.

Mr. Manley: ...and having an unlicensed hygienist going in and scrapping your teeth...you know, that’s not allowed right?

Mr. Cappello: Well I...I...hygienists actually do go in and scrape your teeth and (Inaudible)

Mr. Donovan: I think...I think the point they’re...they’re licensed, if you’re a hygienist you have to get a certification and...just the same way in your...in your application you talked about the physician’s office and you know, unfortunately I’m of the age where I go to Doctors on a fair occasion so I see a...the Nurse, the Nurse Practitioner, the Physician’s Assistant or a Physician leave out the Physician all those other people have got a degree, they’ve got a certification, license hangs on the wall. I mean I...you...I don’t know that it’s apples to apples... (Inaudible)

Mr. Cappello: If...not exactly apples to apples but I’m looking at the definition. I’m not arguing globally that a Massage Therapist is the same as a Physician or a Surgeon or an Osteopath whether under the definition of adult uses in the Town of Newburgh the way the Code is written I would say it’s a fair reading that it’s the office of a Massage Therapist just as it’s an office of a Dentist or an Osteopath, they may have other people working there that a...you know, provide services there.

Mr. Manley: Okay but you...you might have a situation and...and I see where you’re kind of going with this a...let’s say that I have a dental office, you have a Dentist, you have a Hygienist, you have a Secretary that you know does the billing or you might even have a billing person but the Secretary doesn’t come and say ‘oh, I’m going to clean your teeth’...

Mr. Cappello: I...I understand...your position is...

Mr. Manley: ...you know and I think where you’re going is that these other workers that are there, they’re going to go in and they’re going to give me a massage and they could be the Secretary I mean...what makes them qualified to be able to...what pressure points and...?

Mr. Cappello: A...I understand that and the person going there would know that they’re not getting a massage from a Licensed Therapist once again I’m looking at the definition that’s in your Code that says if it’s the offices of a Therapist it’s exempt from the definition of what an adult use is and that’s what we’re looking to... (Inaudible)

Mr. Scalzo: Okay, and approximately one hour ago I was on the Office of Professions website and I looked up Ms. Yon and they’re showing no active license for this person.

Mr. Cappello: Well I’ve got that registrations here...

Mr. Scalzo: That’s fine but the Office of Professions website is updated daily.

Mr. Cappello: Well I...don’t know, I have a license here that hangs in the facility that says she is registered to practice in the New York State Education Department.

Mr. Scalzo: Do you folks have that in your packet?

Ms. Gennarelli: We didn’t receive that.

Mr. Bell: No, we didn’t receive it.

Mr. Masten: No.

Mr. Cappello: Well I would be willing to hand it to you and supplement the record I thought it was...

Ms. Gennarelli: It was not submitted.

Mr. Bell: It wasn’t, it wasn’t in there.

Mr. Cappello: Could I, could we use that to copy them?

Mr. Manley: Well and that’s one of the reasons that the Board has to have these things prior to...

Mr. Cappello: I...I was under the understanding that it was submitted so I apologize if there was a...without it and...

Mr. Manley: So you would like to actually submit that now for the record?

Mr. Cappello: Yes, yes.

Mr. Manley: Okay, I’ll go ahead and take this, we’ll as the a...Secretary to make some copies and a...we’ll certainly have this obviously verified.

Mr. Cappello: Yes.

Mr. Manley: It has no date on it. Wait, hold on, through 4-30-2020 but we don’t know when it was taken out.

Mr. McKelvey: Does the State say they have to be licensed?

Mr. Cappello: No. To be a Massage Therapist and to advertise yourself as a Massage Therapist you’d have to be licensed but you don’t have to have the facility.

Mr. McKelvey: I mean for these other people to...to give massages.

Mr. Cappello: No, they don’t have to be...licensed.

Mr. Scalzo: Well, again on the Office of Professions website depending on the type of massage we’re talking about. Is it deep tissue massage that...that they’re...?

Mr. Cappello: It wouldn’t be a massage that would require that. She is the only one that is authorized to provide massages that a licensed Massage Therapist, the other and it’s advertised as deep a...as relaxation so if you go in there for relaxation (Inaudible) facility is.

Mr. Manley: Is the...is the a...individual that runs this and the licensed individual here this evening to testify before this Board?

Mr. Cappello: No, she is not.

Mr. Manley: Okay, is that person willing to provide us with an Affidavit of Testimony?

Mr. Cappello: If that’s what you’re requesting we certainly would...check. I don’t, I don’t...I haven’t met her but I would ask if she would... (Inaudible)

Mr. Scalzo: As a healthcare professional they’re also required to keep records, medical records of their clientele.

Mr. Manley: The other thing that a...we obviously need to bring up is there’s been a...on file a number of instances with regard to Police activity at that location regarding not having individuals that are licensed. Is that something that is correct that they have been...that they have been cited and that there’s been a...?

Mr. Cappello: My understanding is not that they have been cited for not having licenses and a... providing a...I believe there was an instance when Mr. Michalski first took over about people living at the facility. That’s the only Police activity that I am aware of that and that has been rectified.

Mr. Manley: So if...if this Board were to obtain documents showing that there’s been Police activity at that location a...and potentially if there’s any issues with regard to any type of arrests or anything at that location that would be...that would be news to you?

Mr. Cappello: Relevant to your decision I would say...it would be news to me, yes.

Mr. Manley: Okay.

Mr. Cappello: And a...

Mr. Michalski: Can...can I speak for a second?

Mr. Cappello: So...yeah if they would...

Mr. Manley: Certainly, if you could just come forward and provide us with your a...your name.

Mr. Michalski: Yeah, my name is Steve Michalski; I am the owner of the property. I bought it in (2013) two thousand and thirteen in June...they were...that Spa was in the property when I bought it. They were...they were a tenant when I bought it. Okay? My office is in the building, real estate developer in Orange County I’ve sold over a thousand units of housing in Orange County. My office is on the first floor right down from where the spa is. Okay? So I...I’m there three, four days a week I...you know, I’m not there at night sometimes I’m there at night but I never...never had any issues there, never had any complaints from the other tenants, never seen any issues myself. A lot of times I’m there at eight o’clock so I...I’m unaware of any issues other there was the one thing when with this thing came up with the license about two years ago I guess the Police went there. Other than that I’m not aware of any issue that have happened. There...

Mr. Manley: So the...

Mr. Michalski: ...there could have been something I’m not saying...

Mr. Manley: So the Police were there due to licensing issues?

Mr. Michalski: I don’t...I don’t know if it’s licensing...there...there was some incidents where they...that’s...I...I...I don’t...I’m not sure what it was. I have a copy of it, one time there were...I know they there...to my knowledge.

Mr. Manley: Do you...do you recall if there were any arrests there as a result of unlicensed individuals?

Mr. Michalski: I...I...I don’t know. I...I...the only way I know about it...I was on vacation, I got a call from the Building Inspector about that. I never got any Police Report but one time the board there is...I know the Police were there other than that I said I’m there a lot and if it was really an issue because I’m there three, four days a week minimum. My office is right there and my secretaries are there all the time. So and my tenants are there and you know, I don’t hear anything. As far as I know nothing is...nothing has ever happened there so...

Mr. Manley: Well I certainly wouldn’t question the fact that you’re an astute businessman...

Mr. Michalski: And...and again I...I...I...could something, I mean, I can’t say I have perfect knowledge but on a day to day basis it’s not a real problem. If it was a problem, I wouldn’t...I wouldn’t ask to have them there for the rest of the lease, so...

Mr. Manley: So the...the other question while you’re here that I’ll ask is, you purchased the property in (2013) two thousand thirteen...

Mr. Michalski: That’s correct.

Mr. Manley: The Law for the Town with regard to this type of use and the amount of time that would tick as a result of it a...was prior to that. When you purchased the property did you not take time to visit you know, the zoning requirements? Did you not conduct due diligence...

Mr. Michalski: I...

Mr. Manley: ...in the purchased of the property?

Mr. Michalski: I...did I do...a...no, I mean I...I bought the property there was no...there was no...I was no...I was never notified about any of that, any of that...how would I...I was not...?

Mr. Cappello: I...I can...I can respond to that in...in the February, two thousand, February fifth, two thousand sixteen letter from...a...Building Inspector Mr. Campbell which was when Mr. Michalski was advised for the first time that it was determined that this was not a massage...this was a...a adult use, he was...it says right in the letter...accordingly the use for which a Permit and Certificate of Occupancy the premises were issued massage body relaxation so when Mr. Michalski bought the property there was a valid C.O. and Building Permit for a massage body relaxation and there had been no determination at that time that this was considered a massage establishment or an adult use. The first indication that he got was this letter of February sixth, two thousand sixteen which said you have two years from the date of the letter to occupy it or you can a...request the extension pursuant to the adult use provisions for another additional three years which is our variance a...application is due to the fact that when Mr. Michalski did sign the lease there was a valid C.O. and it was called massage body relaxation. A...there’s no indication that it was considered a massage establishment or not permitted. He signed the lease for five years, he made repairs so we are seeking as part of the variance that based upon those repairs that additional time to a...finish out the lease that Mr. Michalski is not a...faced with any a...issues with the tenant and any potential lawsuits to a...finish out the terms of the lease to allowing them to...towards the end of the lease seek a new tenant or a...seek there but at least recoup a...any money we have and we understand your issue and we will call the Police to get the Police Reports but the understanding is that the facility which by the way is occupied in a multi-tenant building. This is not a...you can drive by the building...this is not a sleazy shed that people are going in and out of it, it’s a suite in a building that is occupied by other tenants that there have been no complaints.

Mr. Maher: What...what are your other tenants there?

Mr. Michalski: I...I have an accounting firm, I have a...a chiro...chiropractor acupuncturist, I have a insurance a...yeah, like an insurance adjuster type company, I have a...a lawyer who is right next to them, I have my office, I have a...a home healthcare aides. I...I talk to my tenants in there all the time. There’s no issues there. And...and I have had no issues so it’s...there’s really not an issue at the property. I would like to finish out the term of the lease that I signed with them.

Mr. Maher: Well I don’t...I don’t think...I think you would agree there is limited liability on...on the owner if in fact the tenant is not...is doing something that the Town finds a violation for them that there’s no judge, I would think, that would hold you liable for...

Mr. Michalski: Well...

Mr. Cappello: It’s the cost of going through that and it’s the commitment that Mr. Michalski made and you know, finishing the building and doing improvements based upon his tenant’s...

Mr. Maher: No, I understand that but you have to agree that at the end of the day...

Mr. Cappello: A...no, I agree but you still have to win a lawsuit and it’s still costly and they still have a claim and they still have a signed lease so what I’m...if a determination is made after a...a...yeah, he may win but he would still a...be litigation, he would still be forced to litigation and I think, you know, what you heard here and we can certainly supplement a...for the record you know, because due to the...I think we kind of switched onto the variance portion of this...

Mr. Donovan: I was trying not to do that but it was inevitable I guess...

Mr. Cappello: Yes, yes...

Mr. Donovan: ...it was.

Mr. Cappello: ...yeah, based upon the questions is that this oc...this activity has been occurring in a manner that if there were anything untoward about it none of the tenan...you know, it hasn’t impacted...there hasn’t been anything any events that have shown that the building is not being kept up that there’s undesirable people because otherwise there’s other tenants in this building, I mean you guys drive by this building, there’s no evidence of...a...this...this place is...there may be some other one’s where they’re free-standing. There’s no traffic flow, there’s no undesirable people going, this is really a massage therapist and other people that...people go there for (Inaudible)

Mr. Michalski: Just since...since I bought the building in two thousand thirteen, I also bought it with that was you know...

Mr. McKelvey: Do you want to speak into the microphone?

Mr. Cappello: Yes.

Mr. Michalski: ...so when I...when I bought the building in June of two thousand thirteen I...anyone was not aware of anything. I was not notified of anything and I’m very familiar with zoning. I buy...you know, Mr. Donovan, and I built over a thousand units housing in Orange County. You know, I’m very familiar with zoning and not aware about any of this till I got the letter from the Building Inspector. A...the...I put into that building, when I bought that building...I’m sure if you live in Newburgh you’ve seen it. There was no sign up front I put a marquee, I spent fifty thousand dollars putting a marque sign for the tenants. I paved the parking lot, I’ve done the lights over, I’ve put air conditioning as the building is in much better shape than when I bought it. My tenants are generally pretty happy. My office is there. I...I would like to have the rest of the time of the lease to, you know, recoup my investment. Okay? I have lots of property, I take care of them and I think that’s a fair thing to ask for.

Mr. Cappello: And I think the Law, the provisions of the Law, the Adult-Use Law do envision and provide you the authority to allow up to three additional years a...from the time of termination which here would be February two thousand and eighteen to allow a a landlord or a developer or person to a...to recoup their investment and I think here this would certainly be a...you know, in order a...if the owner of the business has made financial expenditures related to such building, hasn’t recovered all of such financial experiences and the period for which such business may be permitted to continue is the minimum period sufficient a...for that. So we’re saying that you know, a lease is and while I am making the presentation I will bring this up because I am not sure if it’s going to be a...we’re going to be...have a decision from the Code Enforcement Officer but while we were doing a...a...the review and submitting the materials for this we also found out that this property may be the one property because I’ve litigated this with the Town before in looking at the Law, adult uses are permitted in the I/B zone where this property is located. There are a...several dimensional requirements that you have to be five hundred feet from a residential zoning district, you have...

Mr. Michalski: Thousand.

Mr. Cappello: ...a thousand feet from a residential zoning district, five hundred feet from any other adult use and several other distance restrictions a...I remember vividly on another case looking for properties in the Town were met those requirements. This may be one of the one or two properties that actually do meet the requirements and is located in a area where adult uses are permitted within the Town. As soon as we found that out. We have a letter to the Building Inspector dated on August 17th asking for a confirmation on that. Depending on his interpretation or determination this application may be moot or a...we may be back to you a...to appeal that but it appears that this use may be permitted on this property. I can provide you a copy of that letter as well.

Mr. Manley: I think that the other that a...this Board is going to need is some sort of financial...

Mr. Cappello: Sure.

Mr. Manley: ...evidence as to exactly what the expenditure has been and what the financial commitment is of the tenant and you know, what the going rate is that particular unit.

Mr. Michalski: You mean what you want to see copies of the lease...the lease?

Mr. Manley: A copy of the lease, I would also recommend a...copies of all expenditures related to...you’re saying that there’s been a significant a...investment in upgrading that particular unit. Well we don’t have any dollar or cents before this Board this evening to...to show that even a penny was spent.

Mr. Cappello: Yeah, I understand and we’ll...we will provide that.

Mr. Manley: I mean I...

Mr. Donovan: So you’ve seen the standard in the Code, right?

Mr. Cappello: Yes, yes.

Mr. Manley: But I mean I would have expected that you would have had that here tonight as that’s part of the...

Mr. Cappello: Well I...

Mr. Manley: ...determination of the Board...

Mr. Cappello: Yes.

Mr. Manley: ...had the Board had the information back from the County you know, that information would have been insufficient this evening and the Board...

Mr. Cappello: We understand, we’re...we’re, you know, we’re balancing because the other aspect of it is we did want to hear some of what the Board thought so that we could a...reply and provide you the information you had and frankly if you were to say that we agree on the interpretation then that information and the time spent to gather that information wouldn’t necessarily be required but if you’re saying we want the information we’re certainly more than happy to submit a...to you. When do you want it, prior to your next meeting? If you give us a submission date so you have ample time to review we’d be happy to...

Mr. Manley: Ms. Gennarelli, the meeting next month is on the 28th of September...

Ms. Gennarelli: That’s correct so that would be at least by the 14th.

Mr. Manley: Let me look at the calendar here. Yeah that will be two weeks before the meeting that would be Thursday, the fourteenth of September. Whenever a...before we open it up to the public does anybody from the Board have any questions on either the Interpretation portion or the second portion which is the request for the variance on the a...on the Code 185-75?

No response.

Mr. Manley: At this point, if the Board doesn’t have any further questions at this time we’ll turn to the public if there is anybody here from the public that has any questions or comments with regard to this application just raise your hand and I’ll call on you. Mr. Taylor?

Mr. Taylor: Thank you Mr. Chairman, I’m Mark Taylor, attorney for the Town of Newburgh here tonight representing the Code Compliance Department. I apologize I’m just apprised of this application yesterday and requested by the Department to appear tonight so I apologize...apologies if I appear disorganized in my presentation. Firstly the matter of arrests and what generated the Code Compliance Department’s Notice of Violation to a...the premises owner, an arrest occurred on January 27, 2016 of a worker at the premises who apparently also resided on the premises, that arrest resulted in charges of practice of massage therapy without a license in violation of the Education Law that is a Class E Felony as well as prostitution. I have here to present to the Board in evidence a Final Disposition of that matter which was an attempted professional violation rendered by the Town of Newburgh Justice Court. So following January 27th arrest a Notice of Violation was mailed by the Department on February 5th, 2016 to the property owner advising of the Code Compliance Department determination that a massage establishment was being...was the use of the premises and that a...pursuant to the Code was required to be terminated with a stated period of time (Inaudible)...

Mr. Manley: So just a...if I could prior to that the Town didn’t...prior to that arrest on 1-27-16 the Town didn’t have any knowledge that was actually being used as or was considered an unlicensed adult-oriented type of establishment versus a legal massage therapy location?

Mr. Taylor: That’s correct.

Mr. Manley: Okay, thank you.

Mr. Taylor: With respect to the applicant’s contention that this is a...the office of a licensed massage therapist a...like Member Scalzo I also went on to the Department of Education’s Profession’s website and a...took a look at the law and the regulations and certainly there are exempt persons who can perform massages a...with respect to performance a...by non-licensed individuals I’ve that noted two exceptions and I don’t believe the workers at this premises qualify for either. One is a permitee who otherwise qualifies and second is a student of massage. In each case the licensed massage therapist must be on premise and must be providing supervision so I think one of the questions which I did not hear but which the Board may want to ask the applicant is...okay, who are the workers performing the massages, what are the qualifications, secondly is the licensed massage therapist on premise during the performance of those services and is providing supervisory... The licensed massage premise... massage therapist is there from 9 to 5 and the premises is open from 9 to 12 at night...what’s going on? In any event I’d just like to submit what I downloaded from the a...Office of Profession’s Services as well as special provisions for the Board can review it...

Mr. Manley: Thank you.

Mr. Taylor: I will provide obviously a copy of the Disposition and what action...

Mr. Manley: There’s actually three each it looks like...

Mr. Taylor: I think you’ll have to make additional copies of this.

Mr. Manley: I will pass them down to Betty and ask her to make some copies for us for the file.

Mr. Taylor: So that’s the question before you, yes, there is a licensed massage therapist apparently depending upon verification on...on premise but does that mean that there is actually an office or if what is being conducted at the premise the office of a licensed massage therapist.

Mr. Manley: I guess the question, Mr. Taylor, too is if the requirement is that if you do have a licensed person that that licensed person must directly supervise...if you have a double booked appointment with three people and three people are getting a massage, two are getting it done by somebody that’s...two rooms are not being supervised but one is being supervised that still doesn’t meet...you...you would need three licensed people to supervise three other people that...

Mr. Taylor: Well I think Mr. Cappello probably advanced his arguments in that regard though and I’m not sure how on-site supervision is interpreted but that may very well be the case.

Mr. Scalzo: There are exceptions depending on the type of massage, that’s why I asked if it was deep tissue massage a...again the State Education Department Office of Professions website, the massage that is customarily given in a barbershop or a beauty salon for purposes of beautification may be provided by a licensed Barber or Appearance Enhancement Practitioner as long as it is light massage of the surface tissues solely for purposes of beautification.

Mr. Taylor: And...and the Code does contain and will reflect that exception as that is one of the exceptions, yes.

Mr. Donovan: Darrin is that an Appearance Enhancement...what was that again?

Mr. Scalzo: I didn’t write it.

Mr. Donovan: Do you need a license for that?

Mr. Scalzo: An Appearance Enhancement Practitioner.

Mr. Donovan: Okay.

Mr. Maher: I actually had an application or that... also a tattoo artist... (Inaudible)

Mr. Taylor: With respect to the application for an extension of the period of time that the Code Compliance Department position it’s a matter of the applicant meeting the standards of the provision in the Code.

Mr. Manley: Does the Board have any questions for Mr. Taylor at all?

Mr. Taylor: Certainly if you would prefer the Code Compliance Department’s Officers Mr. Canfield or Mr. Campbell to be present at your...your a...next session I...I will endeavor to a...secure agreement to that.

Mr. Manley: If it’s acceptable to you it may even be possible that we may not need them here if the Board has specific questions a...the Board could supply those questions to Ms. Gennarelli before the meeting and then perhaps they could then provide their responses in writing to the Board and that would save them from having to...

Mr. Taylor: If that’s acceptable to Mr. Cappello obviously he may want the opportunity to cross examine them.

Mr. Cappello: I will let you know. I’m going to take this information, I’m going to discuss it with my client and we will have a submission for you on September 14th at that point we’ll move from there.

Mr. Taylor: And, and I just received a copy of Mr. Cappello’s letter yesterday as well a...to...addressed to the Code Compliance Department. Obviously depending on their determination you may wish to amend his application to include that determination with respect to it’s being an allowable use for that.

Mr. Manley: And with that if he does amend his application Counselor based on the fact that it’s broadening...?

Mr. Donovan: I’m going to give you my favorite answer. It depends. So let’s not prejudge what Code Compliance may do, what Mr. Cappello may do in response to that, we have two applications in front of us this evening and I think we all pretty much know we’re not going to act because we’re waiting to hear from the County on the second so my suggestion open up to the public if anybody else is here is that they adjourn for the period to you know... That’s my suggestion to the Board.

Mr. Manley: Very good. At this point is there anyone else from the public that has any comments with regard to this application? If you do, just raise your hand and we’ll have you come forward. Seeing none I’ll come back to this Board is there any...?

Mr. Maher: Yeah, one thing, Mr. Cappello, so the question I have so the date of the...

Ms. Gennarelli: John, if you could go to the...?

Mr. Maher: ...the issue of...the issue are the conditions of the letter from the Town from February 5th, 2016...

Mr. Cappello: Yes.

Mr. Maher: ...and we’re in April (August) of 2017 so the past eighteen months what’s occurred? Has the operation continued?

Mr. Cappello: I believe so.

Mr. Maher: So, I guess my question...

(Inaudible)

Mr. Michalski: I...I...I can answer that.

Mr. Cappello: (Inaudible)

Mr. Michalski: Are the still my tenants or they still there... (Inaudible)

Mr. Maher: Has...has the operation still continued since the February 5th letter to the...to you?

Mr. Michalski: Yes because the letter says that I have two years, the letter says I have two years to operate from that date. That ends in February of two thousand eighteen and then (Inaudible)

Mr. Cappello: And it also says within a hundred and twenty days of the expiration of that two years you can come to this Board for the extension of the non-conforming use...

Mr. Maher: So...so in essence you’re requesting obviously to extend beyond that...

Mr. Cappello: Yes.

Mr. Maher: ...two thousand eighteen timeframe?

Mr. Cappello: Yes.

Mr. Maher: So my other question is so...if the argument for the unlicensed massage therapists is that it’s...it’s allowed under the auspices of the actual license then the arrest for a non-licensed massage therapist took place and if I’m not mistaken the indication was that of a...what was it?

Mr. Donovan: I really...it looks like they might plead to a...an attempted...

Mr. Cappello: That’s my understanding.

Mr. Donovan: Yeah, yeah.

Mr. Maher: Right, so I mean...

Mr. Cappello: I have to...I’ll be honest with you...we were looking at this from the zoning aspect of how it’s defined in your Code. I don’t know if the activity... if itself and how massages are licensed through the State and whether there are any Violations on the State and I have to look into that so I...yeah so, I know...I think I know where you’re going for purposes of the zoning and looking at your zoning code we made this provision. You’ve all...all brought to light issues that we’re going to have to address and...and resolve that really go beyond the...the zoning code.

Mr. Manley: But I think that perhaps when the Town crafted the Code that they took into account the requirements of the State with regard to what is considered licensed and unlicensed in determining what is Adult-Oriented versus what is massage.

Mr. Cappello: If...if you can’t do it even if it’s Adult-Oriented because the State prohibits it then I think the whole really provision in the Code didn’t need to be write...written because either you’re licensed or not licensed and you can or can’t do it by virtue of the State. That’s what I have to look at. In your Code there is a differentiation. If there is no differentiation in the State and I have to be licensed or a student to be in operation then the differation in the Code may make no difference. I...I just don’t know the answer (Inaudible)...

Mr. Michalski: Can I...I say something? Mr. Taylor said that the a...that’s when I was notified that there was this incident on Jan...January of...

Mr. Manley: January 27th, 2016.

Mr. Michalski: So I bought the building two and a half years before that. When I bought...bought it there was...I...I went through that before I bought it...I went through that, I walked through that establishment. My office has been next door. There’s never been any issues. I was away on vacation when I got the letter. I was away for two weeks and so I...and I signed a lease just before that. I had no knowledge of any issues at all prior to this...the Town never notified me...no issu...other before that I had no awareness of there was any problems with that establishment or the Town had any (Inaudible). So I made it...I bought the property, somewhat based on that lease amount...that they were paying there, made improvements to things, sign the lease and had no knowledge of an issue. My office is there. There’s never been an issue since then so yeah, for me it’s a financial hardship. It’s kind of like...it’s kind of caught me you know, yeah off guard. So I’m asking for relief to a...yeah to continue it longer to...to continue out the rest of the lease basically.

Mr. Scalzo: In the eighteen months from the original Code Compliance letter to now a...have there been any actions on your part to try and either find another tenant or a...make any modification...?

Mr. Michalski: They have...they have...they have a lease. They have a written lease with me. They have a lease I can’t...I can’t kick someone out who has a lease.

Mr. Maher: Were there vacancies when you purchased the building?

Mr. Michalski: There were vacancies a...there were other vacancies, the building is a hundred percent occupied now at...at...at the present time yeah but I made some...the building is fixed up, I put the sign up...

Mr. Maher: No, I am...I’m familiar I mean you definitely improved it don’t think...

Mr. Michalski: (Inaudible)

Mr. Maher: ...about that...obviously you...you took shrubbery down and the...and the trees around. No I’m familiar...

Mr. Michalski: (Inaudible)

Mr. Maher: ...with the improvements you’ve made.

Mr. Michalski: And...and I was...I was unaware about this thing with the Town. It caught...caught me off guard and yeah, they’re there and it’s you...and then...it’s in the back, it’s a difficult space to rent so you know, I feel like I need more time to you know, to...to eventually...get...recoup my money and then eventually they...they will leave and I’ll...someone else will go there so I’m just asking for more time basically.

Inaudible Audience Member

Mr. Manley: We’ll...we’ll actually call you in just a minute sir. I just have a...a follow up question. There...there were alterations done to this particular...in (2005) two thousand and five to this particular a...unit.

Mr. Michalski: Okay.

Mr. Manley: That’s when the Danza Group owned it.

Mr. Michalski: That’s who I bought it...bought it from the Danza Group.

Mr. Manley: And it looks like a...they had interior alterations to create massage body relaxation with two new shower rooms a...the Building Permit says that the approximate cost was fifty thousand dollars and that was Building Permit back in...it was filed January twenty-fourth of two thousand and five and then a Certificate of Occupancy and a C.O. issued (4-4) four, four of two thousand five for interior alterations for the massage body relaxation with two new shower rooms. So you’re saying is that in two thousand and what year did you say you made the alterations?

Mr. Michalski: A...couple of years ago before I signed the lease a...about two years ago a...what’s that...the beginning of fifteen...end of fifteen...about a year and eight months ago, a year and ten months ago...end of two thousand fifteen I made alterations. They, they...the lease was coming due, a lot of the stuff was in disrepair so I did a lot of, you know, stuff not requiring not requiring a building...but I just did renovations, you know, fixing the showers, fixing...I did a bunch of work there and putting...and putting in the sign was...they had told me if I didn’t get a sign out front they were not going to renew the lease. So I put it...that...

Mr. Manley: But...but the sign just doesn’t benefit them, it benefits all the tenants.

Mr. Michalski: I...I...It was...they...they were the only one that was complaining...the other people didn’t...were good, they were complaining they wanted...so it does benefit the other tenants but they did primarily for them because they wanted like a lighted sign.

Mr. Manley: I don’t know...I don’t know if I would I mean...the fact that there’s a sign there benefits you know all tenants that...

Mr. Michalski: It does benefit them but I’m saying they...the other tenants weren’t complaining they were complaining about it nobody knew they were there that they couldn’t even find the other tenants yeah, I’m sure they do benefit but they were the primary reason why I did it. They threatened to leave if I didn’t do that.

Mr. Scalzo: Other than massages what other services are offered from that facility?

Mr. Michalski: Honestly I...I...I...I don’t know really...I don’t know. I’m assuming...I don’t know. I’ve gone...I’ve gone in there when there’s been leaks, you know, with my...with my guy that works for me, my contractor and my handy...we’ve gone in there to fix air conditioning, to...

Ms. Gennarelli: Could you just get a little closer to the microphone?

Mr. Michalski: I’ve gone in there to fix things over times and we were doing the upgrades they wanted. I was in there for...my office is next door, I was there for a couple of months as my guy was working there so I...I don’t...I don’t really know. I just know that I’m there all the time never had any...seen anything bad happen, anything that was an issue for me. My office is right next door.

Mr. Scalzo: Are there hairdresser chairs in there or...?

Mr. Michalski: No.

Mr. Scalzo: ...or places where they cut toenails or...?

Mr. Michalski: No, no. There’s like...there’s something....there’s rooms with a tables...like massage tables on them...in them and showers.

Mr. Manley: Are...are showers something common at a massage...?

Mr. Michalski: Honestly I don’t know, I...I’m not an expert in massage but...yeah, are they? I...I...a...yeah, I live...I live in New Paltz, I get a massage and there’s like a bathroom there with shower. Right after I...sometimes I’ve taken a shower after I get a massage so...

Mr. Manley: Okay, does the Board have any questions? We do have somebody from the public that has a comment so...

No response.

Mr. Manley: Sir, if you just want to come forward to the microphone and just a...state your name for the record and then your comment?

Mr. Sylcox: Yes, my name is Ed Sylcox, I own Mid-Hudson Managed Home Care at 243 Route 17K. I got one of these (Notice of Hearing). My son is a licensed massage therapist and the definition that you were talking about is based on schools that teach massage therapy and they do supervise the different techniques that they...that they...these people have and then they also have a clinic where they do their practical hours before they take the State exam. That’s the purpose of it. I used to go to the massage a...at the chiropractor that was upstairs. Her name is Carol Ann...I don’t know her last name...

Audience Member: Malizia.

Mr. Sylcox: ...thank you but I know they complained a lot about downstairs. Of course, that’s hearsay for me to say it but they also said that they did go to the Town Police and this was before you owned it so I mean and they complained to the previous owner about what was going on down there. So that’s all I can share that I know about.

Mr. Manley: Thank you sir.

Mr. Michalski: And...and I can share I’m the owner and I’m there every day and none of the tenants haven’t complained to me about it and I haven’t seen...it’s not...it’s not an issue. I would like to know have there been any inst...instances since then that have happened I...I...I’m unaware of anything so...

Mr. Maher: What time does the establishment close?

Mr. Michalski: A...

Ms. Gennarelli: Can you stay at the mic, please?

Mr. Michalski: What time does it close? I honestly...I don’t...I don’t know...I know that sometimes I...I...you know work during the day, sometimes I’m there at night. Been there till like ten and they’re still there at ten so honestly I don’t know but I’m there at night...you know, in the winter...I was there a lot this winter at night I...I...with my secretary till like a...ten doing my taxes and ne...never had any issues there.

Mr. Manley: Well I think the Board will need confirmation on hours of operation. I think that’s something that we’re going to need to a...we’re really going to need to know. I think also we’re going to need see some sort of schedules a...there’s a question as to...you know, we need to know how many unlicensed people are there. Are there five people there? Are there six people there? Ten people? How many employees are we talking that actually...? If...if the place is open from ten in the morning till ten at night is there one person there for twelve hours? What’s...what’s the...the scheduling like? I think that we need to know how many, you know how many people we’re...we’re...we’re dealing with. How many have licenses? We’ve established only one so far has a license. So I...I...you know I think that, you know, how many appointments are there during a day so that we can get a feel for how busy the place is and you know, what...what type of traffic is there, you know, at the a...at the spa?

Mr. Michalski: So how...how does somebody get that? How can I...it’s not my business I mean it’s...

Mr. Manley: But you’re representing the business and you’re the one asking for the variance so I think that the Board needs to know the economic loss to you. If there’s...and I’m just making up a number...if there’s a hundred people there a day, you know, and the business is making, you know, a million dollars a year and they’re paying you in rent fifty, sixty thousand dollars a year well then, you know, that’s...that’s a loss to you but we...we need to see that and the only way to establish that is to actual facts and...facts and figures.

Mr. Michalski: So the...the economic loss today is I bought the building not knowing this and paid a price on it with...with...with that rent there thinking they were going to stay there and the economic loss to me is I made improvements. The economic loss to me is the rent I’m getting. I...I...I’m not involved in the business I just get a certain amount of rent every month and I...and I...have the...you know as a landlord responsibility to make...to make repairs that’s...that’s my loss. I mean the internals of the business it’s not my...it’s...it’s the loss in rental income that I’m...

Mr. Maher: Right but you have to...

Mr. Michalski: ...I...I...

Mr. Maher: ...understand though that you...while...while technically you’re the owner of the building and the applicant in essence you...you’re actually representing them to get...they’re the ones that actually needs the actual...technically you are the owner of the building again but the...the ability to continue the business as it stands now benefits them as well...as well as you. I mean so that...I would almost think that there would be some need for them to be here to...to a...state their side of it and why...why they should be granted in some manner. You have to understand my point, that they’re the ones that are benefiting from it also. They have something to lose if...if the answer is no, at the end of the day then they’re out of business. So they do have some...some skin in the game so...

Mr. Michalski: Yeah, I mean they’re out of business, my...my thing is I’m losing rental income and that’s a hard place to rent and...

Mr. Maher: No, I...I don’t...I don’t disagree with there but by the same token though you know, there...there was vacancies when you bought the building too so you understood there was some...there was some loss to income at the beginning of the process...or beginning of the ownership just saying. So you know, again I just think that they...they...if they’re that concerned about it you know, continue the business they would be here also.

Mr. McKelvey: I think if a...as you are the owner of the building you should know what hours they operate.

Mr. Cappello: Well we...we understand the questions...

Ms. Gennarelli: If you...the microphone...? Thank you.

Mr. Cappello: We understand the question you raised, we’re going too stop talking, give you figures and you’ll make a...you know, make a determination.

Mr. Manley: Right and I think at the end of the day the Board needs to know is a thousand dollar loss or is it a seventy-five thousand dollar loss?

Mr. Cappello: Yes.

Mr. Manley: You know, anybody can have a loss but for us to consider relief we need to have documented, you know, proof, dollars and cents of what the loss is because the amount of the loss will determine probably how the Board rules as far as you know the length of relief. You know, if there’s a huge loss well maybe it’s...maybe it is you know, something that you deserve the full three years. If it's a smaller loss maybe it’s only six months, maybe it’s three months. So all of that is going to you know, be based on how we...how weigh our decision and I...hopefully think that you can appreciate that we obviously have your best interests but we also have to have the...the interests of the...of the residents of Town at heart as well.

Mr. Donovan: Well of course, overriding everything is the terms and provisions of the Code which we will strictly adhere to.

Mr. Manley: Bingo.

Mr. Cappello: Thank you very much.

Mr. Michalski: Thanks very much.

Mr. Manley: Thank you. Is there anyone else here this evening with regard to this application?

No response.

Mr. Manley: If not, I would ask the Public Hearing be continued. There will be no Notices sent of the continuation of the Hearing on September 28th but do I have a motion to continue the Public Hearing to...?

Mr. Donovan: Just for clarification, that’s for each application.

Mr. Manley: Correct, for the Interpretation and for the a...

Mr. Donovan: Request for the extension for a (up to) three year period, yes.

Mr. Manley: Correct.

Mr. McKelvey: I’ll make that motion.

Mr. Scalzo: I’ll second.

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

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is continued till September 28th.

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:26 PM)

ZBA MEETING – AUGUST 24, 2017 (Time Noted – 8:26 PM)

ERIC & TRISHA NAJORK 215 OAK STREET, NBGH

(9-1-43.12) R-1 ZONE

Applicant is seeking an area variance for no pool shall be located in a front yard to build an in-ground pool (has two front yards Oak Street and River Road); and area variances for the maximum height of accessory buildings and the maximum allowed square footage of accessory buildings to build a pool house (27 x 56’6” x 25’6”).

Mr. Manley: The last evening...the last item for this evening is the application of Eric and Trisha Najork, 215 Oak Street, Newburgh, seeking an area variance that states no pool shall be located in a front yard to build an in-ground pool (has two front yards Oak Street and River Road); and area variances for the maximum height of accessory buildings and the maximum allowed square footage of an accessory building to build a pool house (27 x 56’6” x 25’6”). Ms. Gennarelli are all the mailings and postings in order?

Ms. Gennarelli: Yes and this applicant sent out sixteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Good evening sir, could please state your name for the record?

Ms. Gennarelli: You’re welcome.

Mr. Kind: Yes, good evening, my name is Lee Kind. I’m from Neave Landscaping and a landscape designer working with the Najorks on this project. We’re joined tonight by Eric Najork, the owner of the property and we are seeking a variance for putting a pool in a “front yard”. They have over fifty acres of land and they join both Oak Street and River Road. You can see from this drone photo that was taken from about four hundred feet up in the air a...the property sits well above the road elevation making the area where the pool is going to be located not visible from either River Road or Oak Street. The area where the pool is going to be placed does sit adjacent to the home in a rather a grand and unusual siting of the house so as you pull down the driveway to what would typically be called the front of the house placing the pool in that area would be unusual at best. There is also substantial rock which would cause unreasonable excavation costs and challenges to construction. So placing the pool not between the house and Oak Street but rather to the side of the house where we specifically did not cross the front plane facing Oak Street we kept that pool and area just back from that line a...addressing the issue from the two roads joining at a corner creating the no front...the backyard and rather two side yards is our first variance request to have permission to place that pool. We don’t think we’re going to be making any impact to the neighboring properties since they won’t be able to see the pool structure or any component of it. The substantial size of the property in our opinion limits any environmental impact and the initial runoff would be absorbed by the land that they own a...and the nature of it being a corner lot has created the hardship. It’s not self-created. The second section or should we take questions about the two separate applications?

Mr. Manley: We have it as just one application for two variances so you can continue with the other part of it which would be the accessory structure.

Mr. Kind: The accessory structure has been designed to complement the grandeur nature of the home a...it’s scaled to be proportional to the home and property. We do understand that the thousand foot maximum allowable is typical in the Town. We did want to point out and wrote so in our application that only about four hundred and fifty square feet of the structure is an enclosed pool house. The rest of it is an open air pavilion allowing light to transcend through the space creating less obstruction or less view letting the green space carry through. So we hope that would be seen as a positive in this application. The height issue and I’m just going to turn this page to a rendering of the project of the pool cabana in the...sorry, of the pool cabana on the back side most of the roofline something like ninety-seven percent of it is close to the fifteen foot height limit. It’s sixteen feet, seven inches to be exact. The only section of it that reaches the height of twenty-five feet is the architectural element of a cupola mounted on the top in the center representing less than three percent of the total roofline and again to reiterate that none of this will be visible from the road, all of it by the heavy vegetation separating River Road and Oak Street. The scale of the home, the nature of the home warrants this type of installation and we designed it to complement that. If I just can take a second and show two more elements, on the site plans that you’ve been given we did leave two elevation call outs. One is down on River Road at a hundred and twenty feet, the other one being up closer to the house at two hundred and seventy-five feet so that hundred and fifty plus feet of elevation change plus the tree division speaks to that element and while this is more of a construction document just letting you see that the roofline, as I talked about, it is only that center cupola that is really reaching at maximum height. The rest of that roof line is nine percent over the fifteen foot accept...a...maximum allowable amount. So in brief, you know, we’re hoping that you’ll see this as a reasonable project for the space, the size of the property and the nature of the home. I welcome any questions. I almost forgot...I did bring with me as an addendum to our application just so you can see some individual renderings of the project and I did bring a copy for each Member so you can see what it would look like from north, south, east and west.

Mr. Kind approached the Board

Mr. Manley: Thank you.

Mr. Kind: Thank you.

Mr. Manley: Now how many acres did you say that property was or is...?

Mr. Najork: Fifty five.

Mr. Kind: The specific amount is fifteen acres.

Mr. Bell: Can you step forward please? To the mic...

Ms. Gennarelli: It is being recorded.

Mr. Najork: Hi I’m Eric Najork nice to see you all, thanks for having us. First thing is fifteen acres our lot that Trish and Eric own but Roseton Ridge which is an adjacent land is another fifty acres that my wife owns and my brother and I own a lot behind there that’s another thirty or forty acres or twenty-nine point nine acres so in total it’s a hundred acres that my wife and I and brother own.

Mr. Manley: But this particular parcel...

Mr. Najork: Fifteen acres.

Mr. Manley: ...is just fifteen.

Mr. Bell: Fifteen.

Mr. Najork: Fifteen

Mr. Manley: One, five. Okay.

Mr. Bell: Okay.

Mr. Najork: But if you take the three lots, four lots in combination it’s exactly a hundred.

Mr. Manley: Okay, because I was looking at some documents from the planning board it appears as if there was a transfer of property and nine...nine point one six acres from...

Mr. Najork: From five point one two so...

Mr. Manley: ...to create fourteen point three-five residential lot which is what this is.

Mr. Najork: Exactly.

Mr. Manley: Okay.

Mr. Najork: So fourteen point three-five...I rounded up.

Mr. Manley: Does the Board have any a...questions for the applicant’s representative or the applicant?

No response.

Mr. Manley: Okay, hold that thought I’ll go to the public. If there is anybody here from the public that has any questions with regard to this application?

No response.

Mr. Manley: There does not seem to be anyone. I’ll come back to the Board.

No response.

Mr. Manley: How many square feet is the a...main...the main house itself...the main structure?

Mr. Najork: Seventy-five hundred.

Mr. Manley: Total square foot living area, right?

Mr. Najork: Seventy-five hundred.

Mr. Manley: Okay. Any possibility in the future you’ll subdivide that fourteen point three-five acres at all?

Mr. Najork: Not while my wife is alive, no. No, no.

Mr. Bell: A good answer.

Mr. Najork: No, absolutely not.

Mr. Manley: Okay.

Mr. McKelvey: It’s a beautiful site; I know I was there with Richard. We had to call you to get in.

Mr. Najork: Oh yeah, sorry about that, I was confused but I’m you got to see it. It’s a special place. We’re very fortunate to live there.

Mr. McKelvey: I don’t see how anybody can see anything in there of the property.

Mr. Najork: It sits well above, as Lee described, a hundred...over a hundred feet above the corner of Oak Street and River Road.

Mr. Manley: Anybody else have any questions?

No response.

Mr. Manley: It doesn’t seem like there’s any from the Board so at this point does the Board wish to make a motion?

Mr. Bell: I’ll make motion to close the Hearing.

Mr. Masten: I’ll second it.

Mr. Manley: We have a motion from Mr. Bell; we have a second from Mr. Masten, roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed. At this point, before the Board proceeds the Board wishes to take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I could ask in the interest of time if you could wait out in the hallway and as soon as we’re ready to reconvene we’ll call you back in shortly.

(Time Noted - 8:37 PM)

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ZBA MEETING – AUGUST 24, 2017 (Resumption for decision: 9:04 PM)

ERIC & TRISHA NAJORK 215 OAK STREET, NBGH

(9-1-43.12) R-1 ZONE

Applicant is seeking an area variance for no pool shall be located in a front yard to build an in-ground pool (has two front yards Oak Street and River Road); and area variances for the maximum height of accessory buildings and the maximum allowed square footage of accessory buildings to build a pool house (27 x 56’6” x 25’6”).

Mr. Manley: The next application, as we are skipping Autumn Sky, the next application that Board will be Hearing this evening the application of Eric and Trisha Najork, 215 Oak Street, Newburgh seeking two variances one no pool shall be located in a front yard to build an in-ground pool, has two front yards Oak Street and River Road; and area variances for the maximum height of an accessory building and the maximum allowed square footage necessary or for accessory buildings to build a pool house (27 x 56’6” x 25’6”). Type II Action under SEQR. Again, the area variance criteria the five criteria being whether the benefit can be achieved by other means feasible to the applicant, whether it’s an undesirable change in the neighborhood character or detriment to nearby properties, whether the request is substantial, whether the request will have any adverse physical or environmental effects and whether the alleged difficulty is self-created. Do we have discussion on the application?

Mr. Scalzo: I appreciate that it was explained very clearly, that the excessive height was related to the cupola; for the most part it was only a minor increase in height over Code for the typical roofline.

Mr. Maher: By roughly ten percent for the remainder of the house...the remainder of the building.

Mr. Scalzo: I thought that it was presented very.

Mr. Donovan: I dare say that a number of professional engineers and attorneys would be well advised to observe the presentation because a picture is worth a thousand words. How many times do we come in and you don’t...they don’t explain exactly why they want what they want and what the implication would be?

Mr. Maher: As far as...as far as the size of the building goes it is large and a quite large request but it is...it seems to be consistent with the a...the existing residence and the...the property.

Mr. Donovan: I didn’t mean to give you a swelled head by the way.

Mr. Kind: I think it’s the guy (Brandon) behind me that gets the...

Mr. Maher: Well I think...I think his bill just went up though.

Mr. Manley: I think the other issue to that you look at is the...the size of the property...

Mr. McKelvey: Yes.

Mr. Bell: Yes.

Mr. Manley: ...being the...the fourteen acres, it does sit very high up, it really isn’t going to have any type of impact a...on any neighbors. There were no neighbors here to...you know, in opposition of it and you know, that...that’s part of, you know where I think this Board has the discretion to grant a variance of that size versus you know, a small piece of property that the person is looking to put a eighteen hundred square foot accessory structure that just doesn’t fit. So is there any other comments the Board wishes to make regarding the application. Do we have a motion?

Mr. Bell: I'll make a motion to approve.

Mr. Masten: I'll second.

Mr. Manley: So we have a motion to approve from Mr. Bell, we have a second from Mr. Masten, roll call please.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried and the variance is approved.

Mr. Najork: Thank you very much.

Mr. Bell: I loved the illustration of the people walking...it was really good. Very nice, very nice.

Mr. Scalzo: It helps, it really helps.

Ms. Gennarelli: Beautiful.

Mr. Kind: In this day and age, everyone should have one...

Mr. Bell: Yes.

Mr. Kind: ...because a rendering does make a big difference.

Mr. Manley: Yes it does.

Mr. Donovan: If he can do it everyone can do it.

Mr. Kind: The joke that I make to people is even their kids are doing 3D rendering in Minecraft. Thank you.

(Inaudible)

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:08 PM)

ZBA MEETING – AUGUST 24, 2017

END OF MEETING (Time Noted – 9:08 PM)

Mr. Manley: Has everyone had an opportunity to review the minutes from the minutes from the prior meeting? Are there any corrections, additions or deletions?

Mr. Manley: Do I have a motion to approve the minutes?

Mr. McKelvey: I'll make that motion.

Mr. Bell: Second.

Mr. Manley: All those in favor say Aye?

Aye - All except Mr. Masten who abstained.

Mr. Manley: We have an Abstain from Mr. Masten. Is there anything else that the Board needs to be apprised of this evening before we adjourn?

No response.

Mr. Manley: Saying nothing, I’d ask for a motion to adjourn?

Mr. Maher: So moved.

Mr. Manley: Second?

Mr. Bell: Second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The motion is carried. The meeting is adjourned.

PRESENT ARE:

DARRELL BELL

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:10 PM)