ZONING BOARD OF APPEALS

MEETING – NOVEMBER 26, 2013

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: 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. 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. The Board will try to render a decision this evening but may take up to 62 days to reach a determination. And, I would ask if you have a cell phone to please put it on silent or turn it off. And when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:01 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Time Noted – 7:01 PM)

MARTIN MILANO 1292 ROUTE 300, NBGH

(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking Use variances for Section 185-27 - Hotels, motels and accessory restaurant. C - Site Planning Standards. (1) That the site have its principal frontage on a State or County Highway; And also for 185-27 D-3 (b) Hotels or motels with more than 100 rooms are permitted a restaurant with bar facilities, which may be located either in the principal building or in an accessory building to allow the restaurant as a principal use on as stand-alone lot of a proposed subdivision in the IB Zone.

**Same minutes used for both the use variances and the area variances**

Chairperson Cardone: Our first applicant Martin Milano for the Use variances.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, November 15th and in the Mid-Hudson Times on Wednesday, November 20th. For the use variance this applicant sent out nineteen letters. All the mailings, publications and postings are in order. And also for the area variance this applicant sent out nineteen and all mailings, publications and postings are in order.

Chairperson Cardone: For the record please identify yourself.

Mr. Mackay: Good evening my name is Joe Mackay I’m from Catania, Mahon, Milligram & Rider. We’re the attorneys that are representing the applicant Martin Milano with respect to the area variances and also with respect to the use variances. I’m here this evening with Justin Dates from Maser Engineering.

Mr. Dates: Hi, my name is Justin Dates with Maser Consulting. What I’d like to do is just take the Board through the plan that I’ve put over here. Just to orient everyone to the project on the bottom of the page is Route 300...a…to the south or the right that’s Palmerone Farms a…the retail development with some restaurants and retail stores in there. To the east would be the exit ramp from 87 it comes down around and then to the north is a…really vacant land a…at this point. The project site a…is about eight point six acres in size and comprised of three tax lots and is within the a…I/B Zoning District. What the applicant is looking to do is to a…with a couple of lot line revisions a…create two proposed lots. Currently on the site along Route 300 here is the existing Gateway Diner which is currently vacant and a…it’s parking area and improvements and then directly behind that is the existing Hampton Inn hotel…again with a…parking improvements a…on that site. The both of these are exited through a…there’s an entry road that comes off of Route 300 to the east a…and then there’s a driveway that peels off for each of the two projects as well as going into the a…Palmerone Farms. What we’re proposing is a…like I mentioned is a lot line revision where Lot 1 would be this front lot and would encompass the existing diner and its improvements. A…that lot would be about one point nine acres in size then the remaining area of the a…the lot about six point six acres would be Lot 2 which we’re calling, would encompass the hotel and its improvements. Now the a…a…the parcel is within the I/B Zoning District as mentioned, we do meet all the Bulk Requirements a…with the following a…exceptions. On Lot 1, the diner lot a…we do not meet the sixty foot rear yard setback a…the existing building is about forty-seven point one feet from the rear lot line and that’s right in this area. It is also a…it would becoming a stand-alone restaurant which is not permitted within the I/B District so we’re here for that Use variance as well. Lot 2 a…the hotel lot, again we do not meet the sixty foot rear yard setback. This corner in the a…northwest of the…the lot here the…the hotel is only forty-nine point five feet from that rear lot line and also a…hotels for the I/B Zoning District must have a principal frontage on a…a State or County Highway which we do not have a…by way of this subdivision, our frontage a…then only becomes off of a…we’re calling the entry road into the a…the site.

Mr. Mackay: With respect to the area variances I have submitted a memorandum to the Board in support of the application. I’m going to touch on a few of the basic points if the Board has any questions please feel free to ask. As Mr. Dates indicated there are two…two area variances which are required here. The most important thing to remember is that these buildings are already constructed; they’ve been constructed since the early 1990’s the only issue before the planning board right now is a lot line change or lot line changes. So this is not any proposed development, no proposed change in any structures or any uses it’s simply moving lot lines on the tax map. As Mr. Dates indicated there are two area variances required. One is approximately a twelve foot, nine foot (inch) variance and the second is approximately a ten and one half foot variance and that is because in the I/B Zone the sixty foot rear setback is required by your Code. In determining whether or not to grant the area variances this Board has to determine whether they will produce a undesirable change in the neighborhood or in the character of the neighborhood or a detriment to nearby properties. As I’ve said there’s not going to be any physical alteration here whatsoever. These are simply changes on the…on the lot lines a…no physical changes to the structures and their use. They are in the same condition as when they were constructed and there’s no changes proposed. For that reason, we would say that there’s not going to be any impact on the neighboring properties and it’s not going to have any change whatsoever on the character of the neighborhood. This Board also needs to determine whether or not the applicant can achieve through some other feasible means the changes that are required other than by seeking the variance. For some of the same reasons there’s really no feasible alternative for the applicant here. Again the variance is sought solely to separate out the diner lot which I think the Board probably knows has been vacant for some time to separate that lot from the current lot. There is no feasible alternative. This is in a sense a…an all or nothing at all proposition meaning that there’s really no…no feasible alternative. To separate the diner lot from the a…hotel lot a…these setback requirements would need to be met, per your Code, so that we must seek those variances. With respect to the variances this also needs to consider whether or not those variances are substantial. As Mr. Dates indicated one variance is for approximately twelve point nine feet, the second area variance is for approximately ten and a half feet. Do (So) we submit to the Board that quantitatively they are small variances certainly given the size of the lot which is a little more than eight acres, also a…quantitatively they are a…small variances, one of twenty-one percent and one of seventeen point five percent. And…and again, you’ll hear me say this a lot, again there’s no change proposed to the structures of the buildings or their use and we feel that the lot line changes are not going to have any…any impact on the neighboring properties. This Board also has to determine whether or not the proposed variance will have an adverse effect on the physical or environmental conditions in the District. This property is located in the I/B District a…it’s surrounded by other commercial establishments. I think the Board is aware that in the past several years at least five a…national change restaurants have been developed on the lot adjacent to the hotel and diner lot. We have submitted or Mr. Dates has submitted to the Board a short form EAF which I think clearly demonstrates that there are not going to be any environmental impacts with respect to this Board granting the variances, no changes sought with respect to water resources, sewer, noise, light or any other potential adverse environmental impacts. Also this…this use will be consistent with the uses that the adjoining lots are…are put to. Again, no changes proposed. This Board also needs to consider whether or not the proposed variance was self-created and I think in this case it’s…it’s pretty safe to say that this is a…a…that it is self-created. Again it goes to whether or not these lot line changes are made or not a…it is self-created. Of course as the Board is aware the simple fact that the a…difficulty is self-created is not necessarily a reason a…to deny the variance applications, it’s simply one factor be considered along with the other factors. In this regard we point out to the Board that there are benefits a…by way of approving these variance a…we’ve discussed the adjoining lot has been substantially developed in the last several years. There are also other properties along Route 300 which also have free-standing restaurants and this would just be one more a…in that vein. The primary goal here is to provide a…or to separate out the lots so that the…the diner lot and the diner building itself can be properly marketed. I’m sure as the Board is aware the diner has been vacant for a long period of time. There are a substantial number of jobs approximately fifty jobs, local jobs, were lost and are…are being lost by virtue of the diner being closed and this is…this is an attempt to separate out a…that parcel so that an economically viable a…restaurant be it a chain restaurant, a national restaurant or something like that a…can occupy that space, compete with the a…five newly developed restaurants on the adjoining…adjacent lots a…and we think that overall the fact that this would allow the diner building to be properly marketed, renovated and occupied that this has overall benefits to the Town and to the Town’s residents. With re…should I go on to the Use variances or does anybody…?

Chairperson Cardone: Would you please.

Mr. Mackay: Okay, with respect to the Use variances, two…two use variances are being sought here. Chapter 187 (185) of your Code requires a…that a…the hotel fronts on a State Highway. Now of course it’s adjacent to that State Highway, however, there is a road that leads from Route 300 to the main entrance of the…of the hotel. Based upon the reconfiguration of the lot lines a…the hotel will now not be considered having frontage on Route 300 so we would require a variance with respect to that Section of the Code and also as a…Mr. Dates pointed out in his opening comment, Chapter 185-27 requires that the restaurant only be in an accessory use to the hotel. By separating out that lot from the hotel lot it will no longer be an accessory use to the hotel, it will be a standalone use. This Board needs to a…make some determinations when considering the use variance request. This Board needs to determine whether or not the property can realize a reasonable financial return a…absent the variances a…and whether or not this is a hardship that is unique to this property. The Board also needs to consider the impact that the variance may have on the character of the neighborhood and it also must consider whether or not this was a self-created hardship. With respect to the first factor which is whether a reasonable financial return can be obtained in the absence of these lot line changes I would respectfully refer the Board to the memorandum I submitted in support of the variance request and I would just like to point out to the Board that the variance the applicant is seeking a…is required by current economic conditions. As I said earlier there has been substantial development along Route 300 specifically adjacent to this lot. There are at least five national chain restaurants that have been developed and opened and approved by your planning board within the last several years directly adjacent to the lot. So this presents this property…this property which had this pre-existing diner use a…in a somewhat unique position and it has created a hardship for the ongoing profitable use of the diner building on that lot. A…these changes in the intensity of use of the adjoining lot makes this a unique a…situation. As I indicated before there has been a loss, the diner has been closed now for a year or more, there’s been a loss of approximately fifty local jobs and the applicant comes to this Board because it’s very difficult, actually it’s been impossible a…for a lengthy period of time to put that parcel to use, to put the diner parcel to a viable economic use. By definition it’s vacant, the applicant has not been able to entice either a lessee or a purchaser to purchase that lot and it has to do with the way that the financing is structured on…for these uses. Of course, in this particular case you have the…the hotel use itself and you have the diner structure on one lot. Anytime an applicant be it a lessee or a potential purchaser wants to come in they look to the financing on the overall lot and not just to one or other of the buildings. So every time that this a…a potential lessee is identified a…the applicant is required to work with the lessee and work with their lender to finance any new construction on the lot or remodeling or something that would give this property some type of an economic edge given the a…the adjoining businesses and that has been proven impossible at least for the last year or so. Also we submit to the Board that over a period of years, maybe the last ten years or so, there have been a number of lots which have been developed which have restaurants which we believe or at least appear to be standalone restaurants. Some of them would be the Cosimo’s Restaurant on Route 300, the Denny’s Restaurant, Perkin’s and…and others. We submit to the Board that by granting the use variance to the applicant you would simply be bringing the applicant’s property into conformity with the use of other properties in that same general commercial area. And we ask you to treat this applicant in the same manner that either this Board or the planning Board has treated those other restaurants which also appear to be a…standalone uses. We ask this Board to grant the variance so that the diner parcel can be separated off and the restaurant…the diner use can be a separate, independent use and so that it does not…it is no longer required to be an accessory use to the hotel itself. Two of the factors are duplicative with respect to the area variances so I’ll just touch on them briefly. As I indicated before we don’t believe these lot line changes are going to have any impact whatsoever on the neighboring properties. No physical change whatsoever is proposed. The buildings and structures will remain as they have been for decades so we see the…we believe there’s just simply no…no a…physical impact or adverse impact on…on the neighborhood. Also you need to determine whether or not this is a self-created hardship and as I indicated before this is certainly a matter where the hardship is self-created. Again it’s a…a matter of moving the lot lines or not, so, it is a self-created hardship and I would just a…remind the Board that in that regard as indicated earlier a…whether or not the matter is self-created a…is not necessarily a reason to deny the application, it’s just one factor to be considered with all the others.

Chairperson Cardone: For a use variance you must meet all four of the criteria unlike the area variance.

Mr. Mackay: Well the…what I’m saying is the overall benefit is not only to the applicant, the benefit is to the Town and we have a concern that the other properties along 300 are being…have restaurant uses which are essentially standalone and that if this Board were not to grant this particular variance then this property would not be treated similarly with those.

Mr. Manley: You indicated that the property has been vacant but you weren’t really specific as to how long. You said, a year or more. Can you get this Board an exact date as to when?

Mr. Mackay: I can and my client was unable to be here this evening. I am approximating. That’s why I didn’t want to give the wrong information so I did approximate. Yes, we can supply you with the exact dates.

Mr. Manley: The…the other thing is a…what attempts have been made by the applicant to lease that property and do you have a…something that you provide this Board to show as to how many attempts were made, how long it had been listed for for a lease, whether or not you had any offers? And then the last question that…that I have a…and if you could, going back to that second question, provide a copy to the Board of the listing that was placed for that space. The other question would be with respect a…the loss of income that you’re saying has occurred over time a…does the applicant have any financials or anything to support the fact that there’s been a loss of income to the property as a whole and that he hasn’t been able to, you know, obtain a reasonable return from the property based on that loss.

Mr. Mackay: We can provide the Board with supplemental information to answer those questions. Of course, we…we submit that the diner obviously has not been a…rented for a substantial period of time and that’s obviously a dire economic impact with respect to the parcel as a whole but we can provide you with the…with more specific financial information.

Mr. Manley: And…and, you know, the fact that it has been vacant for…for some time, you know, with the economic conditions as they are today they are not the only location in the Town of Newburgh that’s vacant because of, you know, economic times. There’s plenty of buildings, you know, in the Town that have been vacant for over a year because of the, you know the economic, you know factors and the factors that new places open up you know for example, everybody wants to be where the new…the new place is so you know, unfortunately due to the success of the Town sometimes you…you know, you wind up unfortunately with…with vacancies. A…you know, and that’s just you know unfortunately what sometimes what happens. I think that information if you can supply it may be helpful.

Mr. Mackay: We’ll get you that, sir.

Mr. McKelvey: You say that this is on the market. Have you had anybody interested in it?

Mr. Mackay: Well I think that that’s the similar what Mr. Manley asked for. We can provide the Board with some more specific information concerning how long the…the property has been on the market for lease, etc. We can provide you with that.

Mr. McKelvey: I’m just curious, is it going to remain the same building or is it going to take it down and put another restaurant in?

Mr. Mackay: I have no way…my client has not said that to me at all a…I…I…I’ll find out from…from the applicant.

Mr. Manley: This would be a question for Mr. Donnelly but a…with a use variance it’s getting a reasonable return for anything within that particular I/B Zone so it doesn’t necessarily have to be a diner, it could be something else within that Zone that could go into that spot.

Mr. Donnelly: Correct. Yeah, let me…let me just focus in if I could? Joe it would be our advice to the Board that 267 B-2 of the Town Law requires that you demonstrate that for each and every use in the Zone you cannot receive a reasonable return on your investment and that you can for this use. So you need to go through the Table and there’s about twelve or fifteen uses I think listed in the I/B Zoning District and demonstrate in some fashion that for each of those a reasonable return of your investment is impossible. And you’ll need to demonstrate that for the use that you propose a standalone restaurant on its own lot a reasonable return is possible and that’s important on that factor and that proof needs to be, as Mr. Manley has pointed out, dollars and cents proof numbers that show that analysis with assumptions for what a reasonable rate of return is, etc. On the self-created hardship a…factor, as the Chair has pointed out to you, that is fatal for a Use variance unlike for the area variance. And I think you may have conceded it a little too soon. If in fact this property has been in this configuration and use since the early 1990’s or perhaps earlier I have no idea what the Code said then but if at the time the prohibition on standalone restaurants did not exist you may be able to argue, I…I…I’d have to look at it further and advise the Board and the Board would ultimately have to decide it that it is the change in that Code, if there was one, that has resulted in the hardship and not the lines on the piece of paper. But if you can’t fashion an argument of some kind that demonstrates that this is not a self-created hardship I would have to advise the Board that they would be duty-bound to deny the use variance part of the application. The self-created hardship is just one factor for the Board to consider on the area variance. And if I could one last comment just to make sure that I understand it and the Board does the lot line creates no new Bulk non-conformity on either side?

Mr. Mackay: Right.

Mr. Donnelly: And the only non-conformities that exist now in the rear yards are pre-existing and you’re not altering those in any fashion?

Mr. Mackay: That’s correct.

Mr. Donnelly: Okay. But I think the Board would need to have that additional proof on the use variance and I think it makes sense that they not decide the area variances till they have all the proof before them, it would be my recommendation.

Mr. Mackay: We can supplement with the financial information that the Board has requested and I can address the a…issue that Mr. Donnelly a…raised.

Mr. Maher: You say that the a…the restaurants popped up such as Denny’s, Perkin’s are consistent with standalone restaurants, correct?

Mr. Mackay: I believe.

Mr. Maher: Are they located in the same Zone? The same I/B Zone as far as consistency goes?

Mr. Mackay: I believe that they are. I can get a…specific information as to whether or not they are in the I/B Zone.

Mr. Donnelly: Restaurants are allowed in conjunction with certain other uses in the I/B Zone most notably shopping centers and I think at least some of the ones that Joe mentioned are in fact, in conjunction with shopping centers and therefore permitted.

Mr. McKelvey: Yeah, Palmerone is a shopping center.

Chairperson Cardone: Do we have any questions from the Board or comments? Do we have any comments from the public? If so, please step to the microphone; state your name for the record.

Mr. Cordisco: Good evening everyone, I’m Dominick Cordisco and I heart the question as to how long the Gateway Diner has not been there. A…I just know this because I actually had an important business meeting that I was supposed to coordinate and set up and I a…did that and invited clients that were coming in and traveling to Stewart Airport and I invited them to the Gateway Diner on November 5th of 2012 only to pull up that morning and find that the doors were closed a…so…

Mr. Manley: How did that meeting go for you? Good?

Mr. Cordisco: A…well, you know, so but it…it…it’s been at least a year a…it…it may have been a…shortly before that but a…it was right around that time.

Chairperson Cardone: Thank you.

Mr. Manley: Thank you.

Chairperson Cardone: Any other comments from the public? I have the report from the Orange County Department of Planning. Do you have that in your possession or not?

Mr. Mackay: No, I do not.

Chairperson Cardone: Oh, because there are several items there that really don’t maybe pertain to what we’re discussing but I’ll read a little bit of it and then you could get a copy of this because they are things that probably have to be addressed at the planning board level.

Although the subdivision in itself is not the subject of the ZBA’s scrutiny, County Planning would like to offer the following guidance for the Board’s consideration as deemed appropriate. Additionally we would like to inform the applicant of potential issues identified that may need consideration prior to any approval by the planning board. These comments are informational only because this variance is expected to be an early action leading to additional referrals and to fuller review. County Planning will expect to comment specifically on the subdivision and other next actions when referred to us under the GML process. 1) There is an existing waterline on proposed Lot #1 that provides water to the existing diner as well as a fire hydrant on proposed Lot #2. The proposed easement may need to be expanded to include the portion of the existing waterline on proposed Lot #1. Portions of the existing storm water drainage system on proposed Lot #1 include the infrastructure on proposed Lot #2 including but not limited to underground piping, catch basins, vegetative swales and a storm water management pond. Our office recommends that the applicant determine in appropriate drainage easements, I think they meant to say if appropriate drainage easements are needed on proposed Lot #2 along the north side and east side of the existing development as well as around the existing storm water pond. And they say this is a matter for Local Determination. But these were just some guidelines that they sent.

Mr. Mackay: I understand that those were comments that were made with respect to the planning board application, are you asking that we address them?

Chairperson Cardone: No, this was a…this was sent to us when we sent the referral to them.

Mr. Mackay: Okay.

Chairperson Cardone: And they also stated that even though this, you know, this was not subject our scrutiny they felt that they should mention it since you’re in the early process.

Mr. Donnelly: Give you an early start.

Mr. Mackay: Okay.

Chairperson Cardone: Right, a head start right.

Ms. Gennarelli: Grace, was that the one for the area variance or the use variance, because there were two?

Chairperson Cardone: This was for the use variance.

Ms. Gennarelli: Okay.

Chairperson Cardone: Right. And the one for the area variance said the same thing.

Ms. Gennarelli: Okay.

Mr. Donnelly: And in both cases Local Determination.

Chairperson Cardone: Yes.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Okay. You can have this copy because I have another copy.

(Mr. Mackay approached)

Ms. Gennarelli: They are both posted on our website also.

Chairperson Cardone: Am I understanding that the Board would like to hold the Public Hearing open on this?

Mr. McKelvey: I think so.

Chairperson Cardone: Do I have a motion to that effect?

Mr. McKelvey: I make a motion we hold the Public Hearing open.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Mr. Donnelly: I would advise that you either announce the date and time or we’ll have to have the applicant re-notice.

Ms. Gennarelli: Well we do have a difficulty…

Chairperson Cardone: We do have a difficulty, we don’t know if we’re going to have a December meeting.

Mr. Donnelly: Okay.

Chairperson Cardone: As it stands right now we only have three Board Members which would not give us a quorum.

Ms. Gennarelli: For December 26th.

Chairperson Cardone: For December 26th.

Mr. Donnelly: Well why don’t we say it’s continued to the 26th unless its otherwise re-noticed?

Chairperson Cardone: Right.

Mr. Mackay: That’s fine, that’s fine to us.

Mr. Donnelly: December 26th?

Ms. Gennarelli: 26th.

Mr. Donnelly: At 7PM unless re-noticed and then we’ll have to let you know and you can re-notice.

Mr. Manley: Will they be able to get the information that will be needed by then?

Mr. Donnelly: That…that’s another question. Is that realistic?

Mr. Mackay: Well first you need to tell us whether or not you believe you are going to have the meeting on the 26th.

Mr. Donnelly: Why, you need a deadline to work?

Mr. Mackay: I mean, we do have deadlines for a reason but assuming it’s a ten day time frame…

Ms. Gennarelli: Right, we’re going…we’re going to know…

Mr. Mackay: Are we talking about the first meeting in January?

Ms. Gennarelli: …we’re going to know by December 3rd I believe.

Chairperson Cardone: Yes.

Ms. Gennarelli: We need one more Board Member.

Mr. Manley: Would it be better just to give them the January date?

Ms. Gennarelli: Why wouldn’t we give them the January date?

Mr. Mackay: It might be.

Mr. Donnelly: It might be.

Chairperson Cardone: It might be better to hold it over to January.

Ms. Gennarelli: January 23, 2014.

Mr. Mackay: That’s the first meeting in January?

Ms. Gennarelli: Yes.

Mr. Donnelly: The 23rd?

Ms. Gennarelli: Yes. It’s the fourth Thursday.

Mr. McKelvey: I think that would be the best decision.

Mr. Manley: This way either way they are protected, they have a date.

Mr. Mackay: It doesn’t sound like you’re really going to have that December meeting anyway.

Ms. Gennarelli: It’s doubtful.

Chairperson Cardone: I doubt that.

Mr. McKelvey: We doubt it.

Chairperson Cardone: And you understand the information we are looking for?

Mr. Mackay: Does the Board have a specific timeframe? I know this is going over to January, ten days or so before the meeting is that acceptable, two weeks?

Chairperson Cardone: Yes, ten days before the meeting.

Ms. Gennarelli: So I can distribute it to the Board Members.

Chairperson Cardone: Keeping in mind that there are two of the criteria under the use variance that we really need to look closely at, one of them being the self-created difficulty and the other being the financial hardship. So if there is anyone here that was interested in that particular application we will be discussing that on January, in January at the January meeting. Okay, thank you.

Mr. Mackay: Thank you very much.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:36 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Time Noted – 7:36 PM)

GILL MACKAY, SANDRA L. MACKAY 70 & 72 COLDEN HILL ROAD, NBGH

& CHRISTINA A. MACKAY (47-1-8.2 & 47-1-8.3) R-1 ZONE

Applicant is seeking area variances (SBL 47-1-8.2) for the minimum lot width, the minimum lot area and the minimum one side yard setback; (SBL 47-1-8.3) for the minimum lot width, the minimum one side yard setback and the minimum combined side yards setback for a proposed lot line change.

Chairperson Cardone: Our next applicant Gill Mackay, Sandra Mackay and Christina Mackay.

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

Mr. Mackay: My name is Gill Mackay, I’m here on behalf of my wife and also my sister-in-law but basically what we’re trying to do is effect a lot line change which would effectively transfer two acres from my sister-in-law to myself on my parcel. And in so doing this would create six variances because of it. Some of these variances are already in existence between the two properties but basically what’s in question are the two acres that are on the back side of both properties and a…the variances are created a…in between the property lines. Just giving a little history, my sister-in-law’s property was my a…original homestead, my mother and father bought it back in 1955. They have since passed on, they’ve left the property to my brother and his wife, my brother passed on four years ago so my sister-in-law lives in the house at this point in time. She has multiple sclerosis and is bedridden and my wife and myself take care of her. We anticipate that sometime down the road it might be a necessity for her continued medical care to sell the house to provide continued support for her. It’s my wish that and I’ve talked to her and she is in full agreement obviously that we keep the two acres that are in back of her house that are presently part of her property and transfer it over to myself so I can continue to have the use of the property if her house is ever sold. A…the a…variances in question are a…I’ll put my glasses on so I can see…a lot area variance, a lot width, side setback and a side setback both. I don’t know how much detail you want me to go in with these or what the Board’s desire is. As far as, just to pick up on the previous applicant there’s no adverse effect to adjoining properties because it is what it is at this particular point. We’re just doing a land transfer from one property to the other. It’s vacant land a…that’s about it.

Mr. Maher: The reason for the a…access driveway, easement what you want to call it between the properties obviously that…that goes…is there going to be a…the current dotted line on the a…on your plan are the ones that are going to be deleted?

Mr. Mackay: Yes, this one right here…

Mr. Maher: Okay.

Mr. Mackay: …that’s my existing property line…

Mr. Maher: Okay.

Mr. Mackay: …which is going to be deleted. We’re basically moving the property line to the right there and it’s going to take into effect the two acres in the back of the two properties.

Mr. Maher: So in essence you’re not creating a driveway there? You’re actually just…

Mr. Mackay: No, no.

Mr. Maher: …taking…one parcel the center parcel then put the rear.

Mr. Mackay: Right, the existing driveway…or both houses have an existing driveway a…this is landlocked property in the back. And as I say, some of these variances already exist and I guess there must have been some change in the Zoning somewhere after the houses were built that a would in fact cause the variances to exist now.

Mr. Maher: Right, so the existing…so you’re existing house now has a very…probably a ten foot setback currently?

Mr. Mackay: Yes.

Mr. Maher: And you’re going to twenty-six point nine so you’re increasing yours…or actually eleven foot…you’re increasing yours but decreasing the one to the right?

Mr. Mackay: I was sort of distributing the property so there’s a…equal margin between both houses but also sort of follows the physical a…status that exists right now, there’s a hedge there, there’s a couple of large trees so that sort of follows that a…physical boundary.

Chairperson Cardone: Do I have any questions from the Board?

No response.

Chairperson Cardone: As it stands right now before you made the lot line change, am I to understand that neither of the two parcels meets the lot width variance…the lot width variance, the hundred and fifty feet at the present time, neither one has one hundred and fifty feet, is that correct?

Mr. Mackay: That’s correct, both…

Chairperson Cardone: Right, both did not meet that.

Mr. Mackay: …didn’t meet that requirement. That’s why I say that some of the variances were already in existence…

Chairperson Cardone: Right.

Mr. Mackay: …before anything. And in terms of the lot area, mine didn’t meet the requirement beforehand and now my sister-in-law’s will be I think, nine thousand square foot short…

Chairperson Cardone: Right.

Mr. Mackay: …after the fact so it’s shifted, the variance shifted from one property to the other.

Chairperson Cardone: Right and the same thing on the side yard variance.

Mr. Mackay: Yup, yes.

Chairperson Cardone: Do we have comments from the public?

No response.

Chairperson Cardone: Do we have anything else from the Board?

No response.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

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

Ms. Smith: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:46 PM)

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ZBA MEETING – NOVEMBER 26, 2013 (Resumption for decision: 8:25 PM)

GILL MACKAY, SANDRA L. MACKAY 70 & 72 COLDEN HILL ROAD, NBGH

& CHRISTINA A. MACKAY (47-1-8.2 & 47-1-8.3) R-1 ZONE

Applicant is seeking area variances (SBL 47-1-8.2) for the minimum lot width, the minimum lot area and the minimum one side yard setback; (SBL 47-1-8.3) for the minimum lot width, the minimum one side yard setback and the minimum combined side yards setback for a proposed lot line change.

Chairperson Cardone: All right then at this time we will discuss the applications in the order heard and Milano was held open. So we will move on to Gill Mackay, Sandra L. Mackay and Christina A. Mackay, 70 and 72 Colden Hill Road, seeking area variances (SBL 47-1-8.2) for the minimum lot width, the minimum lot area and the minimum one side yard setback; (SBL 47-1-8.3) for the minimum lot width, the minimum one side yard setback and the minimum combined side yards setback for a proposed lot line change. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Maher: It doesn’t appear to be large changes. It is consistent with the area obviously and the setbacks are pretty much pre-existing just moving some lines around. I don’t see an issue with it. I will make a motion for approval.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:26 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Time Noted – 7:46 PM)

AUTUMN SKY DEVELOPMENT 254 ROUTE 17K, NBGH

(86-1-86) I / B ZONE

Applicant is seeking area variances for the maximum amount of allowed signage; signs shall be setback minimum 15 feet from the street line and directional signs shall not be greater than three (3) square feet to erect a new free-standing sign, a directional sign and signage on the building.

Chairperson Cardone: Our next applicant Autumn Sky Development.

Ms. Gennarelli: This applicant sent out fifteen letters. All the mailings, publications and postings are in order.

Mr. Cordisco: Good evening everyone. For the record I’m Dominic Cordisco from Drake, Loeb on behalf of Autumn Sky Development which is owned by Steven Michalski. Steven is here with me tonight and we are seeking a signage variance. Steven and his company bought the West Wings office building which is located on Route 17K a…adjacent to Racquet Road and a…just up from the Pilot Travel Center across the street on 17K. It’s an existing office building and a…it has…this picture is a blow up of the proposed main sign. It shows the frontage and this sign here, which is an existing sign, which is to be removed. The sign…excuse me the building is known as the West Wings office building. This is the front of it. I’m sure many of you’ve seen it because of the distinctive clock that it has on…on…on the site. A…when Mr. Michalski bought the building he wanted to rebrand the building and also increase its visibility. A…the site, the way that it is oriented and also given the topography of the road of 17K and the a…the overgrowth that happens on the adjacent lots and the rise in the hill there makes it difficult to see down into the site. So as part of the rebranding Steve is going to a…change the name to Autumn Sky Plaza and he would like to erect a new free-standing sign that would take the place of this existing sign that would be removed and this is the design. This is a little bit deceiving because this is not an accurate, to scale rendering and a…but it gives you a sense of the location and the design of the sign. A…the a…signage exceeds…exceeds the required, excuse me, what…what is allowed in the Zone which is one hundred and fifty feet of signage which is allowed in the Zone. The site itself has three hundred feet of frontage along Route 17K so half of that is the allowed signage a…and that a…would be a…right now would…would be an allowed signage of a hundred and fifty feet. This is not the only sign that we’re proposing. What we’re trying to do is do a comprehensive signage across the site so we’ve included in our variance application all of the signage not just the stand alone sign but also the new sign here that would say Autumn Sky Plaza at Exit 6. It also would include all of the signages for the existing buildings that are located as well as directional signage so that as people pull into the parking lot and if you’re familiar with the site, it has two levels. It has a lower level and then you drive around back. So the directional signage would provide arrows as to an indication of which offices are located where throughout the building. The signage, the total of the variance that we’re requesting is three-hundred and eight square feet which sounds like a lot but a…a…to be quite honest its consistent with other variances that the Board has granted in the recent past. For instance, for the Hilton Garden Inn, the a…allowed signage for that site was forty-six square feet and the Board granted a variance for a total of four hundred and twenty-one square feet or three and seventy five square feet above what was allowed. The proposed Holiday Inn, which is the a…Hudson…I think the current name is Hudson Valley Hotel and Conference Center a…had an allowable signage of only twenty-nine square feet. A…the Board allowed up to four hundred and forty-two square feet of signage for that building which was an increase of four hundred and thirteen. Here we’re asking for less than that, we’re going from a hundred and fifty allowed for a total variance of three hundred and eight. The sign itself or the free-standing sign I should say is also proposed to be closer to the front yard line a…because of the Route 17K right-of-way. The right-of-way extends deep into the lot. So if you’ll see from the plot plan, which was included, you can see the property line and the right-of-way actually exceeds quite deep past the curb and onto the grassy area of the lot. We’re proposing to locate the free-standing sign the closest it would be to the front yard lot line would be a…one foot a…rather than the minimum of fifteen that’s required under the Code. To ameliorate that a…Mr. Michalski has proposed having a sign that has a clear a…see-through section so that it’s not solid at the bottom. One of the things that that does is obviously it cuts down on the square footage of the sign but as drivers also pull up they’ll be able to see through the sign as well. They do pull beyond here as you can see that the edge of pavement is here and you can see the white line here for Route 17K so they actually pull up and stop and queue further past the sign so I don’t believe that the sign will create and impediment for traffic along that area but the thought was that since it will be clear, you can see through it that could only aid as people are pulling up and looking at traffic coming in both directions. And that’s really it as far as the summing…

Mr. McKelvey: The sign is going to go on to the right-of-way to the highway?

Mr. Cordisco: No, it will be one foot set back from the right-of-way.

Ms. Smith: Is that…does that indicate where that one foot is, where you have that pylon…?

Mr. Cordisco: This does not unfortunate it’s a…

Ms. Smith: Inaudible.

Ms. Gennarelli: Roseanne, I’m sorry, could you talk into the mic?

Ms. Smith: I’m sorry, I was asking if the visual indicates where the one foot would be and he said it did not.

Mr. Cordisco: It would be about here.

Mr. Michalski: Inaudible (from the audience)

Mr. Cordisco: Yeah.

Ms. Smith: Okay.

Mr. Cordisco: But it…it’s not mark…ed on the…?

Mr. Michalski: Inaudible.

Mr. Cordisco: It is…it is on the site plan that we had submitted…

Ms. Smith: Right.

Mr. Cordisco: …so but…but as far as the picture it would be approximately here.

Ms. Smith: On the site plan it looks like…is that illuminated?

Mr. Cordisco: Yes, it would be interior illuminated.

Ms. Smith: (Inaudible)

Ms. Gennarelli: Roseanne, Roseanne, just pull your microphone in…

Ms. Smith: I’m sorry.

Ms. Gennarelli: …that’s okay, I know.

Ms. Smith: Would the one on the wall be illuminated also where it says Autumn Sky Plaza?

Mr. Michalski: A…

Ms. Gennarelli: Mr. Michalski, if you could come up to the mic please?

Mr. Michalski: Can I see the a…the one over here would this be illuminated? A…I’m not sure. I…I’d have to let you know.

Mr. Cordisco: I don’t believe it’s proposed to…

Mr. Michalski: I don’t…I don’t think so.

Ms. Smith: I only ask because the…the picture we have here has two different prices so I was wondering if you…

Mr. Michalski: Oh, don’t look at the prices.

Ms. Smith: …it was going to be illuminated. No, I’m not concerned about the price, whether it’s going to have illumination; it was a concern about that.

Mr. Manley: Dominic, any…is the applicant willing to assume the responsibility with the sign being so close to the right-of-way, in the event that the State needed to take property and needed to go two or three feet in if they widened Route 17K at some point do you understand…?

Mr. Cordisco: That…that Mr. Manley is always a risk, you know, and fortunately the State has a process where they do attempt to offer a compensation a…for any takings, for the road takings that might be required as part of that. If the sign would be need to be relocated we would suggest that that cost for relocating that sign further back, if the roadway was to be extended further, a…that…that sign a…that the cost of that relocation be borne by D.O.T. but that would be a, I’m sure, a multiyear process a…unfortunately.

Mr. Manley: And then you’d be coming back for another variance.

Mr. Cordisco: Well unless…unless…

Mr. Manley: More than likely.

Mr. Cordisco: …well unless it was moving further back, you know, at that point and if it was consistent with the variance of whatever variance may be granted by the Board. We would argue that it would be no more incumbersome at that time; it would merely be a replacement, in kind. If that’s what the situation is.

Mr. Manley: Now the other question is, would the number of tenants that you have on the main sign, closest to 17K, is that going to…I noticed there’s a…six…six spots. There’s probably more than six offices, yes, or no?

Mr. Cordisco: There…there are more than six offices and this is designed to be representational only. This is the...

Mr. Manley: Okay.

Mr. Cordisco: …we’ve taken the entire square footage and this is all modular so as…as tenants come and hopefully they don’t go a…we’ll be able to replace these to reflect the…the a…the tenants.

Mr. Manley: So the thought is you may have to split that in half so that you have instead of six, twelve?

Mr. Cordisco: Either six or…or shrink them down so that you could fit perhaps eight on there…something along those lines. This would be the overall size and we’re not asking for any additional square footage regardless of the number of businesses.

Mr. McKelvey: The nice thing you have there is all that land around there was cleared.

Mr. Cordisco: Correct, that was actually a welcome neighbor gesture a…because we don’t own that property and we don’t control it and so the neighbor was willing to allow that to be cut down to increase the visibility.

Mr. McKelvey: There is a big improvement.

Mr. Cordisco: Mr. Michalski is, you know, hopeful that a…to make this a more vibrant location a…he pointed out to me and I think that he’s absolutely right is is that there’s very few retail operations between a…the Route 300 intersection and all the way to Scott’s Corners in Montgomery and this might provide Exit 6 a location for more retail and that would only come if they have the visibility and people know that’s there so they can drive…busi…or people there to the business.

Chairperson Cardone: Do we have comments from the public?

Dr. Tedford: Hi, I’m Dr. Michael Tedford, I am the Ophthalmologist who is leasing one of the offices on the a…second floor and every day we have difficulties giving people directions including taxi drivers, ambulance, we have a number, a large number of elderly and disabled patients who get rides from a…public services and friends, neighbors and they have difficulty finding the right place to turn. Okay? The visibility of the…that whole stretch there has improved since the a…trees have been taken down in the neighboring lots but even so there are a lot of big signs up and down the road that get people’s attention more than our…our office building. And I…it would be a…a relief…a great help to…to folks coming in. Thank you.

Chairperson Cardone: Thank you. Do we have any other comments from the public? Just identify yourself please.

Dr. Milizia: Yes, good evening, my name is Dr. Carol Ann Milizia, my practice; I’ve been a practicing Chiropractor at this location for nearly six years. I will tell you that strictly from a standpoint of comfort knowing that when clients come to our practice particularly those that have been traumatized in car accidents there’s always that concern to make sure that they wait until the appropriate time to leave as well as to come. Unfortunately the only visibility right now that the building has regarding where our location is is affixed to the building. And very often you have to come at least to the point of entrance or past it when a client will see the visibility of the sign. However, if they were coming down 17K and there was an opportunity for them to see it in advance I dare say that we could all conclude that this from a safety standpoint would be so much more prudent especially for younger drivers because in our practice we have a very high propensity of high school age sports athletes that are starting to drive. And again, I’m sure as parents and as a…as well as a…we have elderly that come into our practice. We see anywhere from eighty visits a day so if we have eighty cars that area coming both in and out the same entrance it would be particularly helpful if the signage was…had a greater visibility so that people could anticipate better coming in and out. The last thing that you want to hear is that screeching sound which unfortunately one of my clients was involved in a motor vehicle accident at that entrance and they said that they just didn’t have time because the building didn’t have appropriate signage. And that’s just the last thing that you want to hear when you’re part of a profession that wants to help people regain their health from a more natural standpoint. So I would greatly appreciate any consideration whatsoever that the Board may consider from the fact that we have great viable businesses to contribute to the community but again visibility from the signage, from a safety standpoint is merely where I come from a…to hopefully help the a…situation at hand a…perhaps be considered. It would greatly be appreciated from a safety standpoint.

Chairperson Cardone: Thank you.

Ms. Badgley: Good evening my name is Tracey Badgley, I’m a partner with GKGC CPA’s, we’re also a lessor…a…a lessee from one of the offices spaces in Autumn Knoll or Autumn Sky, I’m sorry. Mr. Michalski has been doing amazing work there. I mean you saw from the clearing of that, he’s trying to improve the property immensely and we’re very appreciative of it. A…part of the problem what they’re trying to do is put some signage inside to lead people around the building. If you know the building, you come in if you go to the left it’s one-way. Some people go left and it’s coming the other way so we want to not have that problem anymore. So they’re planning to do something to lead you that way and lead you to the businesses around the back. A…another thing is I got mail today, they didn’t know where our office was and I got mail today that said up the hill around the back. So nobody knows where the offices are located. They don’t know how to get to us so this would be greatly if you could approve the sign variance.

Chairperson Cardone: Thank you. Do we have any other comments from the public? Do we have anything else from the Board? Mr. Canfield?

Mr. Canfield: I just have a question a…the other tenants, are there other tenancies that are occupied and if you could give us those?

Mr. Michalski: The other tenants are a…Dr. Tedford is here, there’s also Radio Shack has a corporate office, a divisional office. There’s a…Mr. McGillicuddy, the attorney, there’s the Hanna Spa in the back, there is a…Zimmer which is an orthopaedic company, they have their regional sales office there and there’s two vacancies. And a…a doctor is looking at taking one of the spaces right now but want to see the sign up. It’s actually a a GI doctor, she wants to see the sign before she’ll consider leasing it.

Chairperson Cardone: Thank you. Did that answer your question? I have the report from the Orange County Department of Planning and their recommendation is Local Determination. Anything else from the Board? Do I have a motion to close the Public Hearing?

Mr. McKelvey: I’ll make a motion we close the Hearing.

Ms. Smith: I’ll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:06 PM)

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ZBA MEETING – NOVEMBER 26, 2013 (Resumption for decision: 8:26 PM)

AUTUMN SKY DEVELOPMENT 254 ROUTE 17K, NBGH

(86-1-86) I / B ZONE

Applicant is seeking area variances for the maximum amount of allowed signage; signs shall be setback minimum 15 feet from the street line and directional signs shall not be greater than three (3) square feet to erect a new free-standing sign, a directional sign and signage on the building.

Chairperson Cardone: On the application of Autumn Sky Development seeking area variances for the maximum amount of allowed signage; signs shall be setback a minimum 15 feet from the street line and directional signs shall not be greater than three (3) square feet to erect a new free-standing sign, a directional sign and signage on the building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I live in the area and I…I can see their point.

Ms. Smith: I agree it’s difficult to see that building…

Mr. McKelvey: Very difficult.

Ms. Smith: …from Route 17K.

Mr. Manley: The applicant demonstrated through testimony of numerous tenants that visibility was a huge issue.

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

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:28 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Time Noted – 8:06 PM)

EUGENIA FERRARI-FALIN 35 ODELL CIRCLE, NBGH

(51-2-25) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling (has two front yards Odell Circle and Old South Plank Road).

Chairperson Cardone: Our next applicant Eugenia Ferrari-Falin.

Ms. Gennarelli: This applicant sent out fifty-six letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Ms. Ferrari-Falin: I’m Gina Ferrari-Falin, Eugenia. Hi, I purchased a home in Orange Lake this past summer and one of the things that I wanted to do was be able to put additional room, bedrooms upstairs. The first floor bedroom is going to be used for my Dad a…who is eight-nine years old and he really can’t get up the steps anymore. We are not looking to change the footprint of the house per say. We’re just going to add headroom in the back of the house so we could put bedrooms up there basically. From looking at the neighborhood other people have fixed up their houses. We understood that most of the houses originally were cottages and obviously, you know, there were different a…a…Codes back then and I…I realize now that I require this variance. I’m really, I was kind of very surprised that this happened but it’s okay. I hope we can go ahead and put our bedrooms upstairs. Right now it’s just a long space a…the people owned it from 1958, they built a house on it and over the years they made upstairs actually a…a rental. And so we have to pretty much…we knew right away we were going to have to gut it because we’re not…we’re not keeping it a rental. It’s our family home and so upstairs generally is going to have to be a…renovated anyway. We are hoping to make the house a…it will be…keep in character with the neighborhood. We love the neighborhood and a…I…I want to make it look nicer, hopefully. It’s nice already but we want to make it look nicer, so…that’s it.

Chairperson Cardone: So, you’re not going any closer to the street than it is currently? Currently you are twenty-five point two feet from South Plank and also being a corner lot twenty point three from Odell Circle and that will remain the same.

Ms. Ferrari-Falin: Yes, yes we’re putting a shed dormer; there is already a dormer on the back where the bathroom is…

Chairperson Cardone: Right, I saw that.

Ms. Ferrari-Falin: …but we’re just blowing the back out and I’m putting a dormer in the front where they had put an addition to actually balance the house out.

Chairperson Cardone: So you’re making the windows large enough for escape, that’s a very good safety feature.

Ms. Ferrari-Falin: Yes.

Ms. Smith: More headroom.

Ms. Ferrari-Falin: Right.

Ms. Smith: From the slanted interior…

Ms. Ferrari-Falin: The whole thing that’s slanted...

Ms. Smith: …second floor.

Ms. Ferrari-Falin: …except for the…there’s one bathroom upstairs now and that’s where they put a dormer. I found the original house plans and evidently that was in there from the very beginning but you really can’t put anymore bedrooms up there. It’s just like the one side, that’s it. It needs a lot of work but it’s…it’s great.

Ms. Smith: Nice view.

Ms. Ferrari-Falin: We wish we could have bumped out the front but it would have ruined, to me, it would have ruined the appearance of the house so…I’m just putting my dormer in the front.

Chairperson Cardone: Do we have any questions from the Board? Do we have any questions or comments from the public? If so, step to the microphone and identify yourself.

Mr. Somogyi: My name is Steve Somogyi, I live few doors down and I just a…thought I might see some blueprints as far as the project. I get a little concerned because the fellow next to me years ago was going to replace his little stone bungalow and he wound up with like a three-thousand foot castle on a fifty foot lot. So, you know, it would be nice to see a blueprint of the a proposed addition or a…dormer.

Chairperson Cardone: This is the front elevation.

Mr. Somogyi: The front. Okay.

Chairperson Cardone: Okay, thank you.

Mr. Somogyi: Thank you.

Chairperson Cardone: Any other comments from the public?

No response

Chairperson Cardone: Any other comments from the Board?

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

Mr. Masten: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:13 PM)

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ZBA MEETING – NOVEMBER 26, 2013 (Resumption for decision: 8:28 PM)

EUGENIA FERRARI-FALIN 35 ODELL CIRCLE, NBGH

(51-2-25) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling (has two front yards Odell Circle and Old South Plank Road).

Chairperson Cardone: On the application of Eugenia Ferrari-Falin at 35 Odell Circle seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling which has two front yards. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Smith: Well they’re existing lots that have been there for such a long time and from what they propose to do to the house it’s going to look beautiful and mold in very well with the other improvements within the area. I would make a motion to approve.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:29 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Time Noted – 8:39 PM)

C D & SONS CONSTRUCTION CORP. 12 BANNERMAN VIEW DRIVE, NBGH

(22-4-6) R-3 ZONE

Applicant is seeking area variances for Lot #1 (Building Permit #13-0428) for one side yard setback and the minimum lot width and for Lot #2 for the minimum lot width for a proposed Two-lot subdivision.

Chairperson Cardone: On the application of C D & Sons Construction, 12 Bannerman View Drive, the Public Hearing was closed on this. I was not at the meeting but in reading the minutes there were some things that were requested which I don’t have in my hand at this time that were supposed to be given to the Board Members. Mr. Manley had asked for a copy to show that this was definitely in the Consolidated Water District and a…and also that would be something on the Town paper with a letterhead from the engineer, the Town engineer or the Water Department letting us know whether or not this is in the Water District. I have not received that.

Mr. Brown: Well I, sorry Charles Brown for the applicant. I did submit the a…a…paperwork from the Water Department that a…says that this property is in the Water District. That was submitted.

Ms. Gennarelli: Who did you submit it too?

Mr. Brown: Actually I think we submitted it to Jerry’s office.

Ms. Gennarelli: I don’t believe so.

Mr. Brown: I do have a copy of it here.

Ms. Gennarelli: I don’t believe so.

Mr. Brown: Okay, as far…as far as the Town engineer I did meet with him a…out on the site a…based upon that meeting we’re going to be extending the waterline a hundred and eighty feet and moving the hydrant which actually a puts the hydrant in a better position to service the neighborhood. A…he a…I met to him on Monday, November 11th and he assured me that he was going to get correspondence to this Board by tonight a…if he didn’t do that then a…

Ms. Gennarelli: We have all your emails and they (the Board) have copies of your emails as well.

Mr. Brown: Okay, so what we just keep this open again until next month and…?

Chairperson Cardone: This is not open. The Public Hearing was closed.

Mr. Brown: Understood.

Chairperson Cardone: And, even if we were to meet in December it would be beyond the sixty-two days.

Mr. Brown: We’re…we’re willing to waive the sixty-two days.

Mr. Donnelly: That’s permissible. If he’s going to waive it then you have additional time to act.

Ms. Gennarelli: Can I see what you submitted to us? I don’t think this is right; this is for the other piece.

Mr. Brown: It’s all one piece.

Ms. Gennarelli: I think this is what was brought into Jerry and he (Mr. Dominguez) was told he needed another letter. Jerry?

Chairperson Cardone: Your first email to the a…to the Town engineer was on the 18th of November, this meeting…the last meeting was held on the 24th of October a…

Mr. Brown: Correct.

Chairperson Cardone: …perhaps if you had asked in a more timely fashion maybe he could have…

Mr. Brown: Again, I…I…

Chairperson Cardone: …got something to you.

Mr. Brown: Again, I…I had a meeting with Jim in his office on the 11th a… and we went over the plan and at that point we a…we agreed to extend the waterline and I…I amended the plans as such and moved the hydrant. A…the a…

Mr. Manley: You said that you met with him on November 11th but your letter…

Mr. Brown: At 9AM yes.

Mr. Manley: …your letter dated November 18th says per our meeting today regarding the Town water service so that would have meant that your meeting was 18th correct?

Mr. Brown: You know what I’ll have to check my schedule you may…you may be right it was…is that a Monday? It was definitely a Monday and it was 9AM.

Mr. Manley: I don’t remember what day November 18th is.

Chairperson Cardone: It was a Monday.

Mr. Brown: Okay, I apologize it was the 18th then. A…I had been trying to get ahold of Jim, he told me he was very busy because of the a…a…the new sewer line that they’re putting over there on North Plank…Plank Road a…Stone Street so he’s been very involved with that. They’re trying to get that thing signed off so that a…a tap can be put on a…you know again, I…I’ve made a diligent effort to meet with him and a…you know, right…right after our meeting a…I can’t help that you know, the Town a…personnel are unavailable a…you know, in…in that note you know, we’re the ones that will be waiting. I…I…we agreed to waive the sixty-two days a…and a…you know, the next meeting is in January I assure you I will get the information from Jim. A…as far as the proof of…

Chairperson Cardone: I would like to have it before January.

Mr. Brown: Okay.

Ms. Gennarelli: And that…that paper that you just gave to me, I just showed to Mr. Canfield, he said it was not applicable that was for the first parcel.

Mr. Brown: Which first parcel, this is all one.

Ms. Gennarelli: Before it’s divided.

Mr. Brown: This is all one parcel.

Chairperson Cardone: Lot 4, Lot 6.

Ms. Gennarelli: This is from June.

Mr. Canfield: That a…

Mr. Brown: This is still one parcel it hasn’t been subdivided yet.

Ms. Gennarelli: That’s understood.

Mr. Brown: That applies to the parent parcel.

Chairperson Cardone: Mr. Canfield could you address that please?

Mr. Canfield: Yeah, Charlie, that’s not necessarily correct. Do you have the map up there? The…the document that you are talking about was the Water Permit that was issued to the applicant for this first lot. You might want to step aside and let the Board look at it. The first lot, this at that time was one parent parcel. The application before the planning board was to subdivide this parent parcel into two. Again because of the availability of water greatly is a…it enhances the lot size requirement if water is available. What Mr. Brown is telling you is that he has met with the Town engineer a…through our questions at the last Board Meeting a…that we had raised if there is not water to this lot then the lot size would be much greater and therefore it wouldn’t allow it to be subdivided as such. I believe, Mr. Osborne and Mr. Brown has met and rather then what was originally proposed which was a water service from back at this point to serve this lot the Town has indicated that they would like Mr. Brown or the applicant to extend the main and of course, extend the fire hydrant. A…in doing so, this is no longer just a service line, you’re increasing the length of a eight inch water main which needs County Water Authority approval, which Mr. Brown has indicated by his email that he has such sent an application to Orange County for their approval. It’s not just the Town of Newburgh approval that’s needed, its Orange County Water Authority’s approval that’s needed. Once that is done, the Town can sign off on it and say yes, water is available through acceptable means to the Town to this lot.

Chairperson Cardone: Would the County require something in writing from the Town prior to approval?

Mr. Canfield: The application would…

Mr. Donnelly: The Town has to make the application.

Mr. Canfield: Right.

Mr. Brown: Yeah a…I emailed to Jim I would fill out the application but the formal application, the submission to the County Health Department has to come from the Town because the…the waterline is owned by the Town.

Chairperson Cardone: Now I thought that you stated you had already made application to the County?

Mr. Brown: No, no I said I made contact with the...with the a…Water Department. We had the application; I have the application with me. I said we’d be willing to fill out the application however the application must come from the Town because we don’t own the waterline, the Town does.

Chairperson Cardone: Right.

Mr. Brown: So the Town has to make that application.

Chairperson Cardone: So we really would not have an answer in any case until we hear from the County, is that correct, Mr. Canfield?

Mr. Canfield: Yes, I believe that’s correct.

Mr. Brown: Back…back to the previous thing, I think maybe Mike could comment on this because what I provided for…what I provided there was documentation that…again this has not yet been subdivided, that the entire parcel that’s subject of this application is in the Water District.

Mr. Donnelly: And let’s assume that’s true for a moment, what Jerry is saying is just because it’s in the Water District doesn’t mean there’s water available to serve the lot and you need both for the lot size to kick in.

Mr. Brown: Right, I…I understand that Mike. In other words we were asked to do two things, one provide proof that it’s in the District, which I believe that’s the proof. The second thing was provide proof of serviceability a…I would like to get you know, number one it is in the District out of the way a…and then we will proceed with two which is serviceability which is us agreeing a…by my client’s expense to extend that waterline and move that hydrant a hundred and eighty feet down Bannerman View.

Chairperson Cardone: But the point that I think that Jerry was making also is that, yes, before it is subdivided it’s in the District but we’re looking at subdividing it, then once it is subdivided then it no longer is in the District…

Mr. Brown: That’s not true.

Chairperson Cardone: …because…

Mr. Brown: That’s not true. A parent piece if you subdivide it is all in the District.

Mr. Donnelly: That depends on where the map draws the line. I don’t…I have never seen the map so I don’t know. But it sounds like that’s not going to be an issue if the a…approval is granted by the County Health Department…

Mr. Brown: Correct.

Mr. Donnelly: …extend the water main.

Mr. Brown: Right.

Mr. Donnelly: But being in the District in and of itself if not sufficient.

Mr. Brown: Understood.

Mr. Donnelly: And this letter while it may be correct in terms of the first checkmark…

Mr. Brown: Right.

Mr. Donnelly: …the second one says water service is available and we know that it is not at least not yet so the wrong box is checked there but it seems to me the two are coupled. One without the other doesn’t get you anywhere so it needs to be held in abeyance until that piece is satisfied.

Mr. Brown: Okay, I mean have…again, I don’t have problem providing the proof of serviceability we will take care of that a…maybe Jim is off this week, I’ve been trying to get ahold of him a…and, you know, we will again at our expense extend that waterline once we get approval from the County.

Mr. Donnelly: It would also be helpful that Jim Osborne’s letter also inform the Zoning Board that the Town will be making application to extend the water main and ask him to give his best estimate as to how long that might take so the Zoning Board can understand how long it needs to consider keeping this application open.

Mr. Brown: Okay, we’re okay with that.

Chairperson Cardone: Thank you.

Mr. McKelvey: So we keep it open till January?

Chairperson Cardone: Well the applicant has…

Mr. Donnelly: He’s waived the sixty-two days.

Chairperson Cardone: …he has waived the sixty-two days.

Mr. McKelvey: He’s waived it.

Chairperson Cardone: Now my only concern, Mr. Brown, my only concern is that we get this in a timely fashion and you know, so that we have this in our hands well before the meeting.

Mr. Brown: Okay and I will get it to you.

Chairperson Cardone: Thank you.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

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END OF MEETING (Time Noted – 8:49 PM)

Chairperson Cardone: O.K. Do we have any other business to go before the Board? As we mentioned before at this point, we only have three people that will be able to attend the meeting unless we have another person appointed between now and December 3rd we would not be able to have a meeting in December.

Mr. McKelvey: And I don’t think that’s going to happen.

Chairperson Cardone: I did try to check on that. I haven’t received an answer to it yet.

Mr. McKelvey: You’re talking next week.

Chairperson Cardone: Right, talking next week. Okay, otherwise we will not be meeting until January. Everyone has the minutes from the last month; did you have any additions, corrections, deletions?

Chairperson Cardone: Do we have a motion to approve those minutes?

Mr. McKelvey: I'll make a motion.

Mr. Masten: I’ll second it.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Do we have a motion to close the meeting?

Mr. Maher: So moved.

Ms. Smith: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. The meeting is adjourned.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

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(Time Noted – 8:52 PM)