ZONING BOARD OF APPEALS

MEETING – JANUARY 23, 2014

(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 anyone has a cell phone to please turn it off or put it on silent. And this is being recorded, when you speak, speak directly into the microphone. Roll call please.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 7:01 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 7:03 PM)

GKD PROPERTIES, LLC. 20 BAUER LANE, NBGH

(12-1-6) A / R ZONE

Applicant is seeking area variances for the minimum lot area, minimum lot width, minimum front yard setback, minimum one side yard setback and minimum combined side yards setback for a proposed two-family dwelling.

Chairperson Cardone: Our first applicant this evening GKD Properties, LLC.

Ms. Gennarelli: The Public Hearing Notices for all of the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, January 15th and The Sentinel on Friday, January 17th. This applicant sent out twenty-five letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. Cella: Good evening, I’m Jonathan Cella, engineer.

Mr. Keyer: I am George Keyer I’m a managing member of GKD Properties.

Mr. Cella: Good evening, we’re here for…to request several area variances for a property at 20 Bauer Lane. It’s an existing structure constructed in 1953. The current owners purchased it in November 2012 at which time it was used as a two-family residence. A title search was conducted and there were no open issues that came back. A…in I believe a…2013 the owners a wished to refinance the property at which time they filed another title search and it came back that it was a two-family residence and then a…not legal or not approved two-family residence and they were asked to request these area variances from the Zoning Board of Appeals. We are requesting variances for lot width, front yard, lot area, both side yards. The existing parcel is (30,000) thirty thousand square feet where for a two-family residence (100,000) a hundred thousand sq. ft. is required. The lot width required is (200) two hundred feet we have a (150) hundred fifty feet. Front yard setback (50) fifty feet is required and we have (23) twenty-three feet. Side yard setback required is (30) thirty feet we have a (14) fourteen. Both side yards are (80) eighty and we have (42) forty-two. A…we feel that the…variances requested won’t change the…the…the character of the neighborhood as the building has been used as a two-family residence. It’s already constructed and we’re not proposing any modifications. A…historically it’s been a two…two apartments, two bedrooms each in that’s what we’re proposing. The site plan we provided has a design for a…an expansion septic area as…if it’s ever needed which would be required from the Town Building Department. That’s about it. Are there any questions?

Mr. Manley: Are you, as the engineer, aware that the property doesn’t even meet the minimum lot requirements for a single family home? Are you aware of that?

Mr. Cella: Yes but it’s an existing parcel and as I said it was used as a two-family residence prior to purchase.

Mr. Manley: Correct. But if it was a vacant lot today…

Mr. Cella: We’d have to be here as well.

Mr. Manley: Correct because it doesn’t even meet the requirements for a single-family.

Mr. Cella: Correct.

Mr. Manley: I just wanted to make sure you were aware of that.

Mr. Cella: The lot area is (40,000) forty thousand square feet and the rest of the setbacks are similar.

Mr. Manley: So based on that you are aware that the variance that you are requesting is…is somewhat large based on the fact that a two-family would require a (100,000) hundred thousand square feet whereas a one-family would only require (40,000) forty thousand?

Mr. Cella: Correct again but the…it was existing as…is the problem and it was purchased as a two-family and the…the owner had…had not changed anything on the interior to construct a two-family. It was operated as…as a two-family has done improvements to the property to…to improve the appearance including roofing, siding…

Ms. Smith: A…Jerry, when I was looking over the backup documentation it appears this residence was two-family possibly and then when there were inspections made it was a one-family and somehow along the way it became a two-family again?

Mr. Canfield: Yes, prior to the current owners purchasing the property there was extensive history of it being an illegal two-family. Back in 2007 our office became aware of it. The owner at that time had removed some of the other items such as the kitchen, excuse me and it went back to a single-family and then at a later date went back to a two-family but that was all prior to the current owner. A…also I don’t think that this was mentioned but this was a referral from the planning board as you are aware two-family residences require site plan approval from the planning board which at that point the planning board observed the non-compliance zoning issues and sent it here. I do have a question while I have the microphone, at the planning board there was a discussion with respect to the number of bedrooms. The plan depicts (4) four bedrooms a…and I believe there was conversation of perhaps internally adding some bedrooms. Has that been resolved?

Mr. Cella: At the time…we’re going to…we’re going to leave it at…I’m sorry. Yes, we’re going to a…it’s going to remain two, two bedroom apartments for total. As Jerry stated, I’m sorry I did forget to say this is before…before the planning board I believe in October or November and we tried to come here but the…the agendas have been filled up.

Mr. Manley: Do you have a…a copy of the original title search that came back?

Mr. Cella: I have the a…title search which I provided in the a…application package. It was a…from November 2012. I…I…this I believe everyone got a application package. I don’t know if a…let me a…

Mr. Manley: Here it is.

Mr. Cella: There’s a letter dated a…September 11, 2012 a…signed by Mr. Canfield addressed to a…CPI Abstract Corporation. It’s got the property address on there. It’s date of construction and on the following page a…August, 2013 letter which is different than the original letter.

Ms. Smith: And that’s what raised the red flag?

Mr. Cella: Correct and that’s where we went to planning and then…

Mr. Manley: But you had indicated that initially there was a prior when it was first purchased?

Mr. Cella: In Novem…by the current owner we had that title search which…when the current owner purchased the property it was sold as a two-family residence. It was operated as a two-family residence and the a…

Mr. Manley: And that title search says two-family residence?

Mr. Cella: It doesn’t say two-family residence but it doesn’t say that there’s any problems.

Chairperson Cardone: It said there were no violations that they knew of.

Mr. Cella: So that’s…

Mr. Donovan: And that it had no inspections of the premises at that time.

Mr. Cella: It doesn’t say single-family residence either though.

Ms. Smith: Based on the information of record it had no violations.

Mr. Cella: Correct, correct.

Ms. Smith: Okay.

Chairperson Cardone: Jerry, going back to when it was a…when the kitchen was taken and so forth…was there a reason why they didn’t go for an accessory apartment rather than a two-family?

Mr. Canfield: I believe it’s the applicant’s desires to go for a two-family.

Mr. Cella: (Inaudible)

Ms. Gennarelli: Can you give him the microphone, Jerry?

Mr. Cella: The accessory apartment has to be owner occupied.

Chairperson Cardone: Correct.

Mr. Cella: And that’s not the desire of the applicant.

Ms. Smith: Both rentals?

Mr. Cella: Correct. The applicant also lives in…in the Town of Newburgh at another property.

Chairperson Cardone: Do we have any comments from the public?

No response.

Chairperson Cardone: Do we have any other questions from the Board?

Mr. Maher: It states that the a…the taxes have been…were listed by the assessor as a two-family?

Mr. Cella: A…yes, he’s been paying taxes as a two-family. On the a…county website it’s listed as a two-family, I’ve provided some of that information in the application package. I’ve provided some printouts from the county website and a…that’s toward the end…the rear of the package…

Mr. Donovan: Jerry…

Mr. Cella: …site property class 220, two family residence.

Mr. Donovan: If a…I was going to a…you’re file is open to the public, correct? So if I was going to…if a prospective purchaser was interested in seeing what was in your file they could have come down in September of 2012 and looked in…in the Building Department’s file at that time, correct? And do you know what they would have found at that time?

Ms. Gennarelli: Can you give Mr. Canfield the…? Thank you.

Mr. Keyer: I can speak to… (Inaudible)

Mr. Donovan: That was who my question was directed to.

Mr. Canfield: Thank you. I think what they would have found is, according to the assessor’s records, that it was a two-family which is not an uncommon a…scenario. If the assessor and…and keep in mind they have personnel that does go out into the field and do site visits so they have many means of…of ascertaining what a building is and what’s in it. Most of the time they will send us a memo, an inter-departmental memo, request an investigation. They observe someone building and they didn’t have a permit. Now also keep in mind every permit we issue a copy goes to the assessor’s office. That’s the vehicle that updates the property inventory card at the assessor’s office a…

Mr. Donovan: But in…in the Building Department’s file in September 2012 what…what would somebody have seen if they looked in your file?

Mr. Canfield: They would have seen a lot of violations pertaining to this property all of which has a lot of correspondence, the inspections and you know, what was done. But to finish what I was saying Dave is on occasion and I can’t give you an answer why, on an occasion the assessor’s office does change property to coincide with what the property is being used for. I don’t want to surmise why they do that. I don’t know. Perhaps they feel that the owner or the Town should collect the taxes for what the property is being used for a…but it is a method that has been done. But I can say generally speaking and the correct way to do it is to notify the Code Compliance Department and then we’re…we are required to take the necessary steps to assure compliance, to get the property into the compliance. A…so the property card, the inventory taxes collected are for what it is supposed to be.

Chairperson Cardone: I’ve seen your letter Jerry that was a Certificate of Occupancy for the enclosed porch. So when they came to you for the porch at that time that would be when you discovered the violations?

Mr. Canfield: I believe…

Chairperson Cardone: Since it was constructed before the Zoning Code…

Mr. Canfield: I believe what brought us here was the title search. Okay? What tipped off the last time that it had become a two-family again…a…that’s where that was observed.

Chairperson Cardone: Right.

Mr. Canfield: The porch because there was a permit for the porch, if this structure which doesn’t give the appearance of a two-family from the outside as it’s commonly known today. And again I might add too that’s the reason why it goes to the planning board for them to review the aesthetics of the residence. But at the time when they went and looked at the porch it very well have may have a two-family and if they did not thoroughly inspect the interior of the house and if they didn’t have a reason to they wouldn’t have they could have not seen it. They meaning the field inspector for the Building Department.

Chairperson Cardone: Right.

Mr. Maher: Prior to your purchasing the property was it owner occupied?

Mr. Keyer: Yes, I purchased the property, it had tenants in it. It was owner occupied. They didn’t…they…a…under my impression a…it was a two-family. Nothing…there was no red flag that…

Mr. Maher: I understand that but it was owner occupied at the time?

Mr. Keyer: Yes.

Mr. Maher: So it was owner occupied at the time…

Mr. Keyer: I…let me take that back…

Mr. Maher: Well no…

Mr. Keyer: …the person that owned it was…I…I purchased it as a…a short sale. It was a couple…

Mr. Maher: Well but…

Mr. Keyer: …they had broken…they…he didn’t have ownership…he was…he was a tenant.

Mr. Maher: My point is though but he…but he did live there?

Mr. Keyer: He did live there.

Mr. Maher: Obviously. So I guess my question is if he lived there and the…they had a tenant there why would the…I guess my question is why would the assessor’s office list it as a two family versus a accessory apartment?

Chairperson Cardone: Right.

Mr. Maher: I’m sorry?

Mr. Mattina: For…for the tax department they don’t an accessory apartment rate. It’s a single family or a two-family, there is no in between.

Mr. Maher: Okay, so if you…if you have just an apartment in the house it would be a…it would be rated as a two-family?

Mr. Mattina: Correct.

Mr. Maher: Well that’s misleading.

Ms. Smith: The property record card we’re looking at here, property class 210 is that a single family?

Mr. Canfield: That’s correct.

Ms. Smith: So the…and this comes from the assessor’s office?

Mr. Canfield: That’s correct. I also…I bring to your attention also the accessory apartment regulation had changed in 2008. Grace you may remember that…?

Chairperson Cardone: Right, that’s true.

Mr. Canfield: …prior to that all accessory apartments had to come before the Zoning Board. I believe for a Special Use Permit…

Chairperson Cardone: Right.

Mr. Canfield: …at that point the Town felt that it would be more advantageous a…to streamline that process… I have to be careful with my words there’s a Board Member here. But…but it was the Board’s wishes at that time to streamline the process and…and therefore they removed the requirement for Zoning Board appearance for a Special Use Permit and with special provisions provided such as owner occupied, a thousand square foot maximum (700 - seven hundred maximum) on the square footage a…and some other requirements it could be handled internally by the Building Department.

Mr. Manley: Mr. Canfield, I just want to go over the chronology of how this thing unfolded. It appears from the packet that around 2007 there had been generated a lot of complaints with regard to, probably from the neighbors, that said that this was a two-family. So, your office went out and investigated those complaints, found that to be the case that it was a two-family so at some point you issued an order, your office issued an Order To Remedy at some point the owner had complied, not the gentleman that’s here but the owner at the time complied with the change back to a one-family and then at some point when everything was closed out it somehow became a two-family again? Is that…just so I understand the chronology, is that what appears to have happened in this particular situation?

Mr. Canfield: Yes, that’s correct.

Mr. Manley: Okay, thank you that’s what I needed to clarify.

Mr. Maher: One question just, where does…where does the county get their information for their…I mean if you go on their website in the real property, where do they get the information from?

Mr. Canfield: From our assessor.

Mr. Maher: Okay.

Mr. Canfield: Yeah, our assessor is the one that has access to real property index and they have the capability of changing, they are the only ones, that have the ability to change a…the information on the real property index.

Mr. Maher: So, on the…on the card you pulled from the assessor’s office then that I think, Joe gave us a copy of that…so it does show a 210 on that but the information the county has as a…as a 220, is there… Part of my card is cut off so I can’t see the edge of it…is it…was there a change on the card?

Mr. Canfield: It may have been Mike, I don’t know for sure. I don’t have the current card with us.

Mr. Maher: Do you have a full copy there?

Ms. Smith: Yeah, this.

Mr. Maher: I’m just…I’m just, yeah so it’s really a 210 class. I’m just trying to see how the county would get if from the Town if the Town didn’t list it as a two family obviously they were being taxed on that but where the a…the change could come from?

Mr. Cella: The county has it listed as a 220.

Mr. Maher: No I understand that but if they get their information from the cards the assessor has and the assessor’s still says 210…?

(Inaudible)

Mr. Maher: I’m just curious how the county got it.

Mr. Canfield: The only thing I can offer or say to that, Mike, is that perhaps like Joe Mattina had said that that I don’t believe the assessor has a coding for accessory apartment so realizing that that was…is what was there they may have coded it that way and the county picked it up as a two-family that’s the way they coded it. But for an actual answer I think the assessor would have to give you the factual information how that happened.

Mr. Mattina: (Inaudible)

Mr. Maher: Okay, so they…okay, I understand.

Chairperson Cardone: Do we have any other questions from the Board?

Ms. Smith: I just have one more. I’m going to go back to the information you were possibly considering getting more bedrooms…? No… no longer.

Mr. Cella: No longer.

Mr. Keyer: It was just a…it was an option as…as an investment standpoint a…but it’s not an option now so…

Ms. Smith: So you’re going to keep it, maintain it exactly the way it is?

Mr. Keyer: Exactly the way it is.

Ms. Smith: And no change to footprint?

Mr. Keyer: Nothing at all.

Ms. Smith: Okay.

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

Ms. Smith: I’ll motion to close.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cella: Thank you

(Time Noted - 7:25 PM)

ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:18 PM)

GKD PROPERTIES, LLC. 20 BAUER LANE, NBGH

(12-1-6) A / R ZONE

Applicant is seeking area variances for the minimum lot area, minimum lot width, minimum front yard setback, minimum one side yard setback and minimum combined side yards setback for a proposed two-family dwelling.

Chairperson Cardone: On the first application GKD Properties at 20 Bauer Lane, seeking area variances for the minimum lot area, the minimum lot width, the minimum front yard setback, minimum one side yard setback and minimum combined side yards setback for a proposed two-family dwelling. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: The Building Department’s file is pretty extensive with respect to the history of this property. I just…for me it’s hard to really a…look at this as a two-family when the Building Department was pretty clear and the original owner changed it back to a one-family. How it got back to a two-family and how the current owner purchased it without knowing it was not a two-family I…I have no a…no reason to understand how that…how that occurred. As a two-family it…it certainly is a very, very large variance.

Chairperson Cardone: Do we have any other discussion? Do we have a motion to approve this application?

No response.

Chairperson Cardone: Do we have a motion for a disapproval of this application?

No response.

Chairperson Cardone: Okay, I am going to need some type of a motion.

Mr. Donovan: I was at a meeting once where a member said I make a motion to make a motion.

Ms. Smith: I can add a little discussion, my concern was that the records at Orange County had it listed as a two-family and he’s been paying taxes on the dwelling as a two-family. I know there’s an extensive record with Code a…just seems to me you inherited this problem.

Mr. Keyer: Yes, which I’m…I’m trying to solve this problem. I mean this isn’t something that was done by even the previous owner. This has been operated as a two-family for…you know, I have…you know, I was going to say since the ‘60’s so this isn’t something…it just needs to be clarified and cleaned up. I purchased it as an investment as a two-family. Yes, it…we…we…we found the lease problems after the fact but I’m here to do the right thing and…to bring it to Code and to everything that they…you know, they want. It’s…I don’t feel it’s a…we’re not changing anything that hasn’t been done since the ‘60’s, the property has not been renovated since…since then so…

Chairperson Cardone: I’ll ask once again, do we have a motion for approval on this application?

Ms. Smith: I going to make a motion we approve the application.

Chairperson Cardone: And do I have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: No

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Mr. Cella: Thank you.

Mr. Keyer: Thank you much, very much everybody.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:22 PM)

ZBA MEETING –JANUARY 23, 2014 (Time Noted – 7:25 PM)

RICHARD C. FOWLER & 532 RIVER ROAD, NBGH

PETER M. HANLEY, JR. (43-5-74) R-1 ZONE

Applicant is seeking area variances for the maximum height of accessory buildings and the maximum allowed storage for not more than (4) four vehicles to build a 2-story accessory building (24 x 24 x 21’ 6 ¾” two-car garage).

Chairperson Cardone: Our next applicant Richard Fowler and Peter Hanley Jr.

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

Mr. Hanley: Hi, I’m Peter Hanley applicant.

Mr. Fowler: Richard Fowler and we’re here to request a variance. We want to build a detached two car garage and the variances we are requesting are the excessive heat (height) greater than fifteen feet and our garage would be twenty-one, six and three quarter feet and then the a Schedule 3 private or carport storage for more than (4) four vehicles. And we currently own four vehicles but we do need the extra space for storage. We’re trying to build a garage to complement our property and blend with the existing character of the neighborhood and a…our house. The height, we’re trying to match the roof pitch to the same as our house which is twelve over twelve which is resulting in the…the height over fifteen feet.

Chairperson Cardone: And you currently have a three-car garage and that’s where you would be parking your…

Mr. Fowler: Three cars.

Chairperson Cardone: …three cars, three of your cars.

Mr. Fowler: We have four cars so we’re needing one extra parking space and then the extra area will be used for storage.

Chairperson Cardone: Right so you would not be storing cars in this structure?

Mr. Fowler: No, we would be storing one car in this structure and using the other side for storage.

Chairperson Cardone: And the reason for the height?

Mr. Fowler: We are matching the roof pitch of the garage to the roof pitch of the house so it looks like it was built with the house and matches and complements it. And that’s a twelve over twelve roof pitch so that’s resulting in a twenty-one foot and six and three quarter inch height.

Chairperson Cardone: Questions from the Board?

Ms. Smith: What’s going to be upstairs? No living space?

Mr. Fowler: No living space. It’s…it’s just going to be a floored attic and again storage, we’ll probably put our woodworking equipment up there.

Chairperson Cardone: You’ll have electric?

Mr. Fowler: Yes, we will have electric.

Chairperson Cardone: Plumbing?

Mr. Fowler: No plumbing, no.

Chairperson Cardone: Okay.

Ms. Smith: When I went out to the site it looks to me, correct me if I’m wrong, but you’re fencing area…it’s back towards the back off the corner of your existing residence…

Mr. Fowler: Yes. It’s going to be to the side of the residence. If you saw there’s like a single gate and a double gate?

Ms. Smith: I did, yeah.

Mr. Fowler: It will be in between that. It’s going to be built into the hill.

Ms. Smith: Okay.

Chairperson Cardone: Do we have any other questions from the Board?

No response.

Chairperson Cardone: Nothing else? Do we have anything from the public?

No response.

Chairperson Cardone: Okay, for the record there will be no business operated out of this structure?

Mr. Fowler: None.

Chairperson Cardone: And no living quarters?

Mr. Fowler: No living quarters.

Chairperson Cardone: Okay.

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

Mr. Masten: And I’ll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:29 PM)

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ZBA MEETING –JANUARY 23, 2014 (Resumption for decision: 9:22 PM)

RICHARD C. FOWLER & 532 RIVER ROAD, NBGH

PETER M. HANLEY, JR. (43-5-74) R-1 ZONE

Applicant is seeking area variances for the maximum height of accessory buildings and the maximum allowed storage for not more than (4) four vehicles to build a 2-story accessory building (24 x 24 x 21’ 6 ¾” two-car garage).

Chairperson Cardone: On the application of Richard Fowler and Peter Hanley Jr., 532 River Road, seeking area variances for the maximum allowed height of accessory buildings, the maximum allowed storage for not more than (4) four vehicles to build a 2-story accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application? Okay, the applicant stated that they would not be storing more than four vehicles.

Mr. Maher: I think the variance is…is the height while it is over fifteen (15) foot allowed I think it is consistent with the neighborhood and the residents there. I don’t think it will be outlandish, it is against the hill in the back so obviously only from the front it is visible as far as the height goes, the rear would be obviously less based on the elevation. I’ll make the motion for approval.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

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

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:24 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 7:30 PM)

SANTA MONICA HOLDINGS, LLC. 5268 ROUTE 9W, NBGH

(20-2-30.21) B ZONE

Applicant is seeking an (185-54-A) Interpretation of Sign Regulations - 185-14-C-(2) (a) - The prohibition on illumination which is not diffused or indirect shall not be deemed to include the following: (Amended 5-18-2009 by L.L. No. 5-2009) - (a) Light-emitting diode (LED) and liquid crystal display (LCD) lights which are stationary and constant in intensity and color.

Chairperson Cardone: Our next applicant Santa Monica Holdings.

Ms. Gennarelli: This applicant sent out forty-three letters. All the mailings, publications and postings are in order and that’s for the Interpretation and then for the area variance they sent out forty-three letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Ms. Forest: My name is Nancy Forest and I’m representing Santa Monica Holdings. I am with Gloede Signs and we manufactured and installed the sign.

Chairperson Cardone: You can move that mic down.

Ms. Gennarelli: You can tilt it just towards you; just pull it down a little bit. There you go.

Chairperson Cardone: And we’ll start with the Interpretation.

Ms. Forest: Okay, I…I was here and I’m not sure if it was six maybe seven years ago for both meetings to speak on behalf when they first started with the LED signage for the gas stations. So I sat through all that, answered questions and this was all prior to the a…Ordinance being changed allowing them. And the big question back then was what are they diffused or are they not? And the decision was made a…that they were. So the sign that we have put up is the same thing a…and so I did not feel that there was any issue with that. They do have capabilities of being video displays but I don’t sell them that way. They know that it is being used as a message board only and that it cannot stream or blink. Blink means to open or close rapidly. A…does not flash, does not the video capabilities of fireworks exploding and things like that. A…they are relatively new for businesses. They’re still quite expensive so don’t see a great deal of them. I probably work with at least ten towns so far a…the biggest intent with these signs is to actually clean up the streets. I a…could have proposed many of these to you but I chose just one to give an idea of if a property here in the Town that’s got basically fourteen signs on the property. A…just a modern way of getting a message out there without posting things on telephone poles or in that case, you see there, kind of stacked up with signs wrapped around them, banners across the building, paper signs in the window, stake signs out on the road a…I do know that there is not enough a…time to go out there and…and make all these changes or force them to make the change. So our intent was to use the most modern message energy saving a…type of signage for the client and in most of the towns that I’ve worked with in Orange County, we have Middletown and Wallkill a…New Windsor a…City of Newburgh a…Milton and Marlboro are all now allowing these. But they’ve put restrictions on them as far as hold time. Not that varies, that all started with the Federal DOT a…coming up with a nine second hold time. I would say the average that the towns I’m working with are giving them fifteen to thirty second hold times which regardless of the a…even if they’re doing twenty-five miles an hour, thirty seconds you travel a great distance so the change is automatic, it’s less two seconds a…all DOT studies and anything I can provide for you clearly shows that they do not cause accidents. A…and a…that’s pretty much a…about the sign so when we did the sign and installed it and I applied for a…the Permit, I gave you a cover letter, there when I phoned into the Town, I did meet with Joe. The listings are there, the four items that we discussed, one of them being a…the video display. I explained what I am explaining now to you that a…they were not going to use those capabilities and that they probably would be restricted in time. I gave them a limit of fifteen seconds minimum. The Town may choose to change that. Like I said they’re relatively new so far.

Chairperson Cardone: This issue has come before the Board in the past as I’m sure you’re aware and there was really a concern in the past on the part of the…of the Board to these flashing signs and a…you know, unless I see it differently Joe, I see this as a flashing sign.

Mr. Mattina: Well that’s why I brought it to you guys. You know, the Code doesn’t…the Code doesn’t state whether it can change or if there is a time limit or anything so that’s why we’re here for the Interpretation.

Ms. Forest: They’re static messages that are being put on this one now. They are not flashing, not revolving, not streaming or chasing.

Chairperson Cardone: But they are changing.

Ms. Forest: They’re changing just like…yes which is the same discussion we had on the gas stations when they would change four to five times a day. In fact, a…what’s really confusing to me is a…about six months ago I met with the Planning Board of the Town of Newburgh and the Cronomer Fire Department right here out front for one for in front of the building here. And one of the board members did question and the chairman told him no they’re…you know, they’re allowed you know, in the Code. As long its LED signs so I’m just basically a little bit confused Joe when I submitted last December, the two applications, we had our meeting and we discussed it and I told him the same things that it’s not going to flash, revolve, move, chase. It’s simply going to be a full, constant color, static message that will change intermittently.

Mr. Manley: Madam Chair, I would like to a…enter into the record an article that appeared by a reporter by the name of Matt Herrigan, it appeared in an article on September 13, 2012. In the article it states that by Law gas stations are not allowed to change prices more than once in a twenty-four hour period so the prices will be in effect all day. So that would contradict what the applicant indicated here that a sign may change numerous times for gas stations in one day. I’d just like to pass this down for the Chair to review as well as Counsel. There were also other decisions by this Board…

Chairperson Cardone: That’s correct.

Mr. Manley: …and a…they were provided in our packet dating back to 1994 there was a decision, a request for an Interpretation of the sign Ordinance by at the time Ciro DiLorenzo who was the Building Inspector at the time and it was the decision of the Board that they would not be permitted and then subsequently this Board met in January 25th of 2007 to address the same question again for a variance and it was with another local company and that variance was denied as well for a flashing, changing sign. So there seems to be a history of this Board constantly you know, seeing this come up and it’s been consistent that this Board has denied those requests and denied those interpretations. I really believe that this is an issue if needed that it be addressed at the Town Board level but based on prior history and prior case law of this Board I personally feel that a…my decision would be to stand with the Interpretation as is.

Chairperson Cardone: And I agree with you, Jim. I was on the Board for both of those decisions.

Ms. Forest: So are you saying that a…because it is the same exact type of signage as a gas station? I…I know you know, what you’re reading there about changing but it does. I know they’re not supposed to but this is my job, this is… (Inaudible)

Mr. Manley: And you’re certainly entitled to your…your opinion.

Ms. Forest: Right, right I mean, I…I’ve seen it. I do many gas station signs. But it is in your Ordinance as you amended it after that meeting several years ago a… Are you saying then that they can…if it doesn’t change in a day; it can change the next day? Because it is constant in color, it’s not flash, I mean if the a…description, even in the dictionary of blinking or flashing or revolving a…does not, is not what we are doing. So what you’re saying then, we have the same type of signage as a gas station but that the message can only be once a day?

Mr. Manley: Well the Town Board has…has approved a signing Ordinance with respect to LED lighting…

Ms. Forest: Right, that’s…

Mr. Manley: …the LED and that is my understanding what the Town Board has allowed. This particular type of sign I…I don’t believe that the Town has…has approved this type of sign that you’re…that you’re speaking of. Because there’s writing that you can put on it, you can put messages up there, those messages can change a…and I don’t believe as written that that is the intent of the…of the Code. Now if the Town Board wants to amend that and change that to reflect what you’re looking for or to incorporate it in…in…I’ll give you another example, time and temperature, if somebody wanted to have a time and temperature, right now the Code doesn’t permit that in...in my interpretation of the Code. Now the Town Board might say no, that was our intent but then they need to adjust that to reflect what they want to do.

Ms. Forest: In the…in the Ordinance itself?

Mr. Manley: Correct.

Ms. Forest: Okay, because I know the first one that went up in your Town was in the late ‘80’s at the Newburgh Mall. It is the same type of sign. In fact, it’s an outdated one, each letter flips individually. They carry five lines of copy a…on their sign. I have four people and including Newburgh Mall who wants to update to the more modern style. A…in your…

Mr. Manley: But we’re not here to…

Ms. Forest: Right.

Mr. Manley: …discuss the Newburgh Mall we’re here to…

Ms. Forest: Right well I’m just saying…

Mr. Manley: …discuss your applicant.

Ms. Forest: …that there are others out there that have been approved. I’m…there’s one up the road at Magyar’s a…that was maybe three months prior to this.

Mr. Manley: If you can bring in documentation that shows that they’ve come been before this Board and they’ve were approved I would…

Ms. Forest: They did not come before this Board; they were given a sign permit based on the fact that the signs were not considered flashing. In your Ordinance they’re…

Chairperson Cardone: Excuse me just a minute; I need to run that by Joe. Is that correct?

Mr. Mattina: Yeah the Magyar, the sign that they installed is not the sign that the Permit was issued for. They were issued a Permit for a regular standard sign, there was no LED’s, there was no LCD’s, there was nothing on the sign like they have installed at this time.

Chairperson Cardone: Okay.

Ms. Forest: I have reviewed that which I submitted but I will do that again. A… And I’m confused under 185-14 you have under C-1 flashing signs prohibited and then amended you have light emitting diodes, diodes, LED and liquid crystal display lights which are stationary and constant in intensity and in color so I don’t see where the color comes in and like I said if they change it once a day then it’s no different than the gas station. It’s the identical fabrication and lighting.

Mr. Donovan: If I can, let me…I want to make sure I understand what you request is. You’re requesting an Interpretation, as I understand your application, of 185-14-C-(2)-(a). So I assume that what you are saying is your sign is permitted because it’s a light emitting diode, LED and liquid crystal because those are allowed, lights which are stationary and constant in intensity and color. Is that…is that…you want this Board to interpret that your sign is allowed under that provision of the Ordinance? Is that what you’re asking the Board?

Ms. Forest: A…no I want just an Interpretation of what you are saying here…

Mr. Donovan: Well…

Ms. Forest: …about…

Mr. Donovan: …okay, it’s…

Ms. Forest: …in other words…

Mr. Donovan: …it’s your application to the Board so you’re…

Ms. Forest: Right.

Mr. Donovan: … asking the Board to do something.

Ms. Forest: I want an Interpretation on that…that on what you have in your Ordinance now.

Mr. Donovan: Okay, so, so…

Ms. Forest: Because I’m interpreting it one way and obviously the planning board and yourselves are doing it differently. The planning board is saying that they are allowed and a…

Mr. Donovan: Well this Board has the final say over Interpretations of the Zoning Code.

Ms. Forest: Okay so tonight I would seek an Interpretation then on what you consider a…

Mr. Donovan: Well…  
  
Ms. Forest: I…I know it’s not…

Mr. Donovan: …well we could only interpret whether or not this sign that is in front of us tonight complies with 185-14-C-(2). Right, that’s the issue before the Board.

Chairperson Cardone: That’s correct.

Mr. Donovan: So this Board would have to determine that the a…display on the sign is stationary and constant in intensity and color.

Ms. Forest: Or that it…it can be…at this point it is changing every fifteen seconds. Alright so…

Chairperson Cardone: If it’s…if it’s changing it’s not stationary.

Ms. Forest: Right. Okay, so you don’t consider static…static messages as stationary…because they’re not moving, the only movement to it is when the message changes. Okay? So again, this is open to discussion as to how often it can change so if you’re saying that….

Chairperson Cardone: Well not in my opinion.

Ms. Forest: Right.

Ms. Smith: Mine either. I think the word…

Ms. Forest: Well that’s…that’s exactly it…I can only go by ordinances…

Ms. Smith: …I think the word stationary and constant means that it doesn’t change at all.

Ms. Forest: Well then in like manual changing board they can…

Ms. Smith: Like if you had a message like open 9 to 5 and it’s there constantly…

Ms. Forest: Right.

Ms. Smith: …that’s no change. But I went and saw and it does flip, it flips into different messages.

Ms. Forest: That’s right, it flats and goes up.

Ms. Smith: Right.

Ms. Forest: Right. And…and I understand that that may need to change so I will take the interpretation and that is why I chose to do that and not seek a variance because I will come back with a variance more detailed information and what changes I would make.

Chairperson Cardone: In the meantime, do we have anyone from the public who would like to comment?

Mr. Karitis: Jeff Karitis, do you need my address or anything? Middlehope, we live right around from the sign and I guess one of the challenges and it sounds like the Interpretation is that, you know, this sign is illegal. I’m kind of confused if they were given a Stop Work Order that it’s still working and that was happening in July. I mean, maybe there’s a procedure but from what I read that was given in July I don’t know why the sign is still on. In addition to the wording, I mean, you saw it’s also pictures and things that are…you know it’s…it’s a distracting sign and sounds like it’s also not in the area that it should be based on what was given to them. So am I missing something or is there a reason why it’s still actually even on?

Chairperson Cardone: I would have to refer to the Code Enforcement.

Mr. Canfield: Because a Violation is cited does not give the Code Enforcement Department the authority to go into the premises and shut the sign off. So that’s your answer to your question. A…

Mr. Donovan: Jerry, if I could? There’s also another provision in the Law, if you’re given a Violation and you make application to the Zoning Board of Appeals it generally, it will stay the enforcement of any Code violation until you get a determination from the ZBA. So basically status quo was preserved with an exception for health and safety issues but the Code Compliance couldn’t go to Court until after the Board made a determination. Why there is a lapse of that many months that much I can’t tell you but once the application was made here Code Compliance can’t do anything until it’s finished in front of the ZBA.

Mr. Karitis: So they can basically keep violating the Law as we see it right now until a…you’ve made a determination?

Mr. Donovan: Well until…the stay doesn’t apply anymore once we’ve made a determination.

Mr. Karitis: Okay.

Mr. Donovan: They…they would still, I presume, get to have their day in Court a…and Code Compliance would have to work on that issue but they couldn’t, as Jerry said, just turn it off without some sort of Court directive.

Mr. Karitis: Right, so no fines or anything like that in the…?

Mr. Donovan: Until the Court says so...until the Court says so.

Mr. Karitis: So after this is the next process it goes to the next level.

Mr. Donovan: That’s…yeah, correct.

Mr. Karitis: Okay. I mean I guess there’s…what they’re writing on there all it…it’s a moot point in a sense that if they’re not supposed to be changing as often as it is then a…the actual content in there being pictures of porn stars and things of that nature also. I mean, I know there’s First Amendment rights and such but there are limits to that too in my understanding. What is the limit for the Town to allow them to have those very suggestive pictures of somebody who is selling sex essentially? I mean I understand what the business is but does it need to be pictures of women with that profession which supposedly there’s no sex in the a…gentlemen’s room, gentlemen’s club so…Thank you.

Chairperson Cardone: Thank you.

Mr. Canfield: Just one thing, if I may, Grace? Just for the record, the Order To Remedy or a Stop Work Order was issued by the Code Compliance Department July 9, 2013. It was from then till this time now that the applicant has been instructed to come to this Board and perhaps the applicant can tell the Board why that time took so long to get before the Board.

Chairperson Cardone: I could answer for December, we didn’t meet in December and I think that probably in November the agenda was filled but up to that point I don’t know the reason.

Ms. Forest: Up until that point from July, I thought I have a letter of rescinding of the Stop Work Order that I received a…but yeah, that basically was it. By the time I pulled it together I met, you know, a…was able to get my information and what I needed from Betty was probably a month after that. Started obtaining the information, filing my files, did meet with Betty in October to be on the November a…meeting. So that was from July 9th till October so really it wasn’t that long.

Mr. Manley: Could you provide a copy to this Board of that rescinding of that Order?

Ms. Forest: Yeah, I was just looking for it. I was just looking for it. I thought I had it in this one, it may be in my other file so we’ll look for that.

Mr. Manley: I see.

Ms. Forest: So I did start a…in October, we were full agenda in November and so we were pushed to December and the December meeting was cancelled so we’re on this one.

Mr. Manley: Okay. Cause I…I would think that would be an important document you would want to bring to this meeting if you had that. Right?

Ms. Forest: And…and I did but I have three files like this of information cause I didn’t know really what…a…what I would need out but I will a…I will find that.

Mr. Manley: Mr. Canfield, because we are on the record, do you…could you provide any copy of any rescinding of a Stop Work Order or are you…?

Mr. Canfield: I’ll let Mr. Mattina handle that.

Mr. Manley: Okay. Thank you.

Mr. Mattina: Right, July 9th I issued a Stop Work Order due to three out of four original violations. There has been no rescinding because this is the avenue we need to correct these three items.

Mr. Manley: I see.

Mr. Mattina: So it is still an active Stop Work Order at this point.

Mr. Manley: Okay, thank you for clarifying that.

Mr. Mattina: When I did the original plan review for this application a list was generated with four issues. The first one it wasn’t consistent with the planning board’s ARB review, I was in contact with John Ewasutyn of the planning board, he approved item number one. Items number two, three and four are still Violations that remain open and that’s what the Stop Work Order is issued under. Items number two, three and four from my December 10th, 2012 Plan Review which would be the movement of the sign, the location of the sign from the front street line and the location of the sign within the triangle of a corner lot. The three violations are still open and that’s what the Stop Work Order is issued on.

Mr. Canfield: So essentially, for the record, the notification initially to the applicant that this sign was in Violation was done back in 2012 for the record.

Ms. Forest: 2012?

Mr. Mattina: Right, December 10, 2012 the initial plan review was conducted off her application and these four violations were, you know, sent to Mrs. Forest.

Ms. Forest: Listed in my cover letter there I think is my response a…to that. As I said, I met with Joe, I called for a meeting with Joe a…and I met with him a…again I…I said the same things. The a…item about you a…one of them I believe reads the video display which it’s not. I discussed that with you and I also…I…I think where I’m really confused is once I called and I’m told that my a building permit application was approved that’s usually when I start moving forward and that was, I believe, January 4th on both issue…on both a…signs.

Mr. Mattina: Right I did my December 10th Plan Review you responded in the email on December 19th addressing my four concerns.

Ms. Forest: Right.

Mr. Mattina: The Permit was issued based on…

Ms. Forest: What I stated there.

Mr. Mattina: …what you say to me…

Ms. Forest: Right.

Mr. Mattina: …but you didn’t change anything from my four Violations. You “yes’d” me to death in your email and you didn’t do what you were supposed to have done. That’s why the Stop Work Order was issued.

Ms. Forest: No. The Stop issue…the Stop Work Order was issued after it was put up, yes but you and I did…are you saying you and I did discuss the difference in the video display, that it was going to…the message was going to be up and static and would not be blinking and flashing.

Mr. Mattina: Would be up and static.

Ms. Forest: That was the discussion that we had.

Mr. Mattina: Right, you open your store in the morning, Today’s Special, steak. You close, you shut the sign down. Tomorrow you open it up, Two Beers for $1.99, that’s what the board was supposed to have read, not every fifteen seconds with a new message.

Ms. Forest: I…change that then if that’s what they’re saying.

Mr. Mattina: (Inaudible) I issued it under… (Inaudible)

Ms. Forest: But I’m saying if that’s what… (Inaudible)

Chairperson Cardone: Please address the…

Ms. Forest: …confusing…

Chairperson Cardone: Please address the Board; you should not be addressing each other.

Ms. Forest: Sorry.

Mr. Mattina: I issued the Permit based on the specific items that we addressed before the Permit was issued.

Ms. Forest: Yes. Okay and…

Chairperson Cardone: I believe there was somebody else who wanted to make a comment.

Mr. Kolker: I was just going to a…address but I know that’s...

Ms. Gennarelli: Excuse me, could you just…

Chairperson Cardone: Just for the record…

Mr. Kolker: I’m sorry, my name is Mitchell Kolker, I live at 14 Hopeview Court in Middlehope, Newburgh. I was just going to talk about the…the location of the sign and I…I understand that’s already been a…you know, that’s one of the items that…that a…a…

Chairperson Cardone: Right.

Mr. Kolker: And you know, really as someone that lives in that neighborhood where that’s the only road where we can leave and come in from, you know, it’s a…the location is in a very distracting area. It’s basically not even DeVito Drive anymore. It’s the Mansion Gentlemen’s Steak Club and whatever porno star of the…of the day that they have on for a…whatever is going on there. And obviously content isn’t something we can go after but, you know a the location is right there on that road, very distracting for…we had guests over the other day and…and just to be able to find where the road is because of the location of the sign and I definitely think that should be addressed and I know we can’t really restrict content but a…but it’s you know, certainly something with a, you know in Constitutional terms, you know can be looked into as far as you know what they can put in there and a…really as a community, I mean, I just can’t imagine my hometown on Long Island having this mega sign with a…you know, Lisa Licious is on the stage to a…for to pop a bottle with her. You know, and something I, you know, again it would be more of the legal team to see what in under the Constitution Rights we can…we can somewhat limit on what we could say you know, very close to a Day Care Center and our place we call home. So that’s all I wanted to address.

Chairperson Cardone: Thank you.

Mr. Kolker: Thanks. Yes.

Mr. Friedle: Hi, my name is John Friedle, 1 Midway Drive; I got the house right next door. So I didn’t understand this whole thing about the sign thing when it was Santa Monica and I think I do now. I…I actually felt this was…I have a business, construction business I was going to chuck this because it didn’t say Santa Monica Holdings so I feel this is like somebody is trying to pull something over on me, you know what I mean. It should have said Town of Newburgh or it should have said Santa Monica Holdings not the sign company. Its Santa Monica Holdings that you know is really…owns…owns the property. A…you got Times Square right next to my house now and I’m not talking about Times Square now with Disney. I’m talking about Times Square before Mayor Giuliani cleaned it out. You know it’s ridiculous. I got these porn stars being flashed on the…on the screen, you know, back when the Blue Moon was there before a…we had an issue with a hotdog cart and I know because I was kind of involved in it. It would cause car accidents and stuff like that. You got this stuff…guys aren’t paying attention driving by that, you know, they’re looking at the pictures and all that other stuff. It’s just not necessary, you know, put a sign up there say whatever you got to say, you know, if you want to come in and get a beer. You don’t need pictures flashing and all this other stuff. It changes all the time. It’s so bright there now I got to keep the windows closed all the time. You know it’s…it’s just ridiculous, you know and the sign is that over the top…it’s…the whole thing is over the top. The sign is like really putting it over the top. At first it started a little slow and then they put up, you know, Lisa Luscious or whatever, you know and all these porn stars and you know the pictures. And it’s like, when does it end? You know, yeah, they have a constitutional right but what about my right as a property owner in the Town of Newburgh. You all want to buy my house ‘cause it’s worth nothing anymore. It’s really worth nothing and it’s killing me.

Chairperson Cardone: I…I need to ask, Jerry on the light…the light is shining into his house. There is a regulation on…

Mr. Friedle: The whole…yeah but the whole thing is over…over the top.

Chairperson Cardone: …on that, correct?

Mr. Canfield: That’s why the Stop Work Order was issued.

Mr. Friedle: And now I’m a contractor and I don’t understand this. If somebody gives me a Stop Work Order and I’m working on a house I got to stop. I mean I got to stop that minute. And whatever it is, I got the roof off…whatever; I’ve got to stop until I straighten out whatever it had to be straightened out. How come this is still going on? I don’t understand…it just… These people come in, they do whatever they want and they cry constitutional whatever. It’s like…what about me? What about me? I don’t care about these people. They’re only there for whatever there there…I don’t know what they’re there for but it’s getting really over the top. And this is going to open up a whole can of worms in the rest of the Town. We’re going to have these stupid flashing signs like we’re Las Vegas or something. And, whether it changes every fifteen minutes, one minute, five minutes…it’s a flashing sign, it’s a distraction.

Chairperson Cardone: I don’t disagree with you on that and that’s why the Board reached the decision they did on the other two that came before us…

Mr. Friedle: All right and…

Chairperson Cardone: …because we had a concern about what that would do to the Town and the community.

Mr. Friedle: And I got a question…are you going to do the variance tonight or you’re not going to do the variance?

Mr. Manley: That will be the next item.

Chairperson Cardone: It’s on the agenda that will be the next item.

Mr. Friedle: All right, thank you.

Chairperson Cardone: Okay.

Mr. Manley: Mr. Friedle, I want to address some of your concerns. And you know, I agree with you. I am a resident of the Town. I live here. I have to drive up and down 9W, 300, 32. We all drive throughout the Town and the last thing that I want to see as a resident is flashing signs. Whether it be for this particular gentlemen’s club or it be for a bank or it be for the Newburgh Mall. The Law needs to be enforced consistently. If the Town wishes to make any changes through public input to open it up a little bit more with further regulations that would be the Town Board’s decision because they’re the ones that write the Law. This Board has to interpret the Law and determine what the intent of the Law is and…and quite frankly you know, I don’t want to see flashing signs. I mean prior to the Town changing the Code and allowing the gas stations to have their…their prices up there in LED this Board ruled that that wasn’t allowed. So it wasn’t until the Town loosened it a little bit but see what happens is when you loosen things then other places decide that they want to push the envelope. So now all of a sudden you have, not only this gentlemen’s club, but they mention Magyars and other places these signs start to pop up like weeds. And now we have to, you know, the Town and the Building Department does a great job at trying to enforce it but then it becomes an enforcement nightmare. And that’s why we’re here tonight. And that’s why, you know, previously this Board historically has ruled that those type of signs are not the type of signs that the residents want to see in this Town, period. So a…I agree with Mrs. Cardone. My interpretation is, it is what it is right now with the Law and it’s…it’s…that’s not what it was designed to do...to change, flash whatever.

Mr. Friedle: I got to say I don’t see another sign in this Town, I mean, tell you the truth I don’t get down Magyars. My mother used to live down there and she moved to New Windsor so I don’t go that direction anymore but other than that I don’t see another sign that changes like that anywhere else.

Mr. Manley: There is another one but it’s not in the Town of Newburgh…

Mr. Friedle: No, I’m talking about the Town of Newburgh.

Mr. Manley: Right, in the Town of New Windsor if you go all the way down the end of 300 where it goes into 208…

Mr. Masten: 207.

Mr. Manley: …or 207, make a right or a left, straight ahead of you the Town of New Windsor…

Mr. Friedle: The Town…Town, you’re right, Town of New Windsor.

Mr. Manley: …the Town of New Windsor has a sign and that’s very distracting. It flashes and…

Mr. Masten: Oh.

Mr. Friedle: And I don’t understand the purpose of that too but I think...

Mr. Manley: So but that’s the Town of New Windsor but not the Town of Newburgh…

Mr. Friedle: Right.

Mr. Manley: …so, I mean if…if this particular club wants to put something up in the Town of New Windsor they probably could have all the flashing signs they want but in the Town of Newburgh that’s not the Code.

Mr. Friedle: Okay, thanks.

Chairperson Cardone: Thank you. Do we have anything else from the public?

Ms. Forest: Just to respond to a couple of them, I personally have a question. You said, planning board writes the Laws…

Chairperson Cardone: Not the planning board, the Town Board.

Mr. Manley: No, I said the Town Board. The Town…the Town Board is the legislative body.

Ms. Forest: Okay. And I just want to clear up an issue, I mean; he does not just do whatever he wanted to do. He spent almost two years a…through your planning board following what they wanted to see and all. A…as far as the sign goes, his business had existed. For those of you that live there, it did have a changeable board also announced comings and goings of people or whatever. A…if they’re…if they’re offended certainly by certain copy that’s being shown on there I have a…seen all of his software that’s being used I’ve never a…seen anything a…as far as photo wise except for like here up. A…so if it’s something offensive again that’s something that a…that Board’s…Zoning Boards can…can limit…a…a lot of it is a…sports related as well, food related as well a…for the restaurant so a…and the Stop Work Order was issued after the sign, you know, was up I wasn’t installing at that time a…because the sign was installed in April a…a…end of April beginning of May and the Stop Work Order as I said issued after that. A…as far as the a…distractions there are numerous studies of this starting with the federal government that started using the signs initially and it…and as far as the brightness the sign is built to automatically dim down to 30% at night. So what you’re seeing at day a…is full brightness and at night it dims down to the 30% a…so that it is not a…that bright and a…yeah the community events ones a…as I said, planning board and Cronomer Fire…they invited me over. We brought the demonstration truck right here. They saw it in person, saw how it a…all worked and a…both were interested in getting one and then when all the controversy with the Mansion started a…communications were disrupted and…and the last notification I had from a board member was that the sign was…that the board was re-writing their Ordinance. So a…I want to go on record as saying that I’ve been doing signs in this Town for thirty-six years now a…I’ve never put up a sign that I felt was illegal. Joe can attest for the amount of years he’s been here I’ve never done anything intentionally out of line a…I read your Ordinance; I was here when they changed it. I think that was probably close to eight years ago maybe a…with the discussion because they came to me for information about the electronic reader boards and the lighting and we provided them with what they wanted. So as I’m reading this, the type of sign I have put up follows this Code, changing I’m…I’m looking at a…you know, actual a…meanings of the words. And you’re looking at it differently. Understood but that can be worked with. It…it’s really a matter of getting the interpretation from you of what changing and flashing will be and as I said I’ll stand by that and then I would a…submit…

Mr. Maher: So…so you would the sign more of a changing sign than a stationary sign? I mean it does…

Ms. Forest: It has the abilities to do everything.

Mr. Maher: I know but I’m saying but…but you’re saying it does change every so often so it’s really not stationary…

Ms. Forest: We program it.

Mr. Maher: Right, it’s really not stationary. So I mean it does change I mean so it’s not stationary.

Ms. Forest: But it doesn’t blink or flash.

Mr. Maher: No, I…I understand. I understand what you’re saying but my point is it does change.

Ms. Forest: Same as a gas station.

Mr. Maher: No, no, well I…I would think a little more often.

Ms. Smith: No it changes every ten seconds.

Ms. Forest: Well I’m saying if it…if…if…if it were to change to change once a day as a gas station then it would be equal to the gas station sign. As far as build and…and exactly what that sign is.

Mr. Maher: Well, yeah, I think if it changed once a day no one we wouldn’t be here right now for that.

Ms. Forest: And as (Inaudible) said this is all…as they were only gas stations as they mentioned because of the cost many people can’t afford them. They’re coming down in cost because more people are getting them and like I said more towns, they’re reasons for approving them to clean up the streets. To get, you know because you can go out and put posters on the streets and whatever and nothing happens with that and a…

Mr. Maher: Well if it’s consistent hopefully…

Ms. Forest: …you know its progress…

Mr. Maher: …if it is consistently abused then obviously you would hope that the, you know, there would be violations that are…that are issued, I mean...

Ms. Forest: It would be nice because you could make a lot of money. I could help you make a lot of money if I were the one to go out and…and it…and it’s true it’s all concise there. Again because it’s new boards have to make certain regulations and I’m doing that with about six towns right now. We’ve had meeting after meeting and meeting and they’ve asked me for information for DOT studies, for videos for you know, everything and that’s how they’re basing their decision to allow them but only a…one of the important things like emergencies, a lot of fire departments use ‘em for that. It’s a fast way to get information out. A…you know, town emergencies, they’re automatically hooked up to Amber alerts and things like that so…

Mr. Maher: But one other question on…on the a…when you say no video display, I mean, by video display you mean actual moving pictures or…or…?

Ms. Forest: A…yeah it…it…it can function as…as a TV would a…I did one in New Windsor and he did not listen to me a…about what he was allowed to do and he had…it was right around the Fourth of July and you know, the fireworks were going off and it…it was actually moving and he got himself in trouble with that.

Mr. Maher: But in essence when this sign was installed you generally speaking you… it’s going to be letters going across or letters…you know… (Inaudible)

Ms. Forest: Letters or…or a static picture.

Mr. Maher: Right, so oh, the picture part was back into it? As I’m looking at it yeah, so...

Ms. Forest: Yeah, no…

Mr. Maher: So there’s pictures now…

Ms. Forest: Right.

Mr. Maher: I mean they…you could have more of a…the video feature that you do, you know, dinner for two or whatever the case may have or who’s appearing…

Ms. Forest: Right.

Mr. Maher: …so once the pictures get involved it…it’s not just the letters going across now you have pictures involved that could change every fifteen seconds?

Ms. Forest: It could change every three seconds, it could change once a…

Mr. Maher: But right now you have a fifteen second…

Ms. Forest: I think it’s at…I think it’s at fifteen to seventeen seconds right now.

Mr. Maher: So basically you have the picture change every fifteen seconds technically? Picture to picture…

Ms. Forest: Right, black out of less than two second change…

Mr. Kolker: It’s not every fifteen seconds, it’s every five…

Ms. Gennarelli: Could you stand up…could you come up to the mic?

Ms. Smith: Could I just ask a question? When…when these signs are installed who is in charge of programming it? So, in other words, you install the sign, is it the proprietor who can go into his software and throw up on that sign anything he wants?

Ms. Forest: That is correct.

Ms. Smith: So if we were to say, for instance, no it has to stay constant, one picture all day long if we were to say that it would fall to the poor gentleman in Code to go past there every couple of days to make sure it’s in compliance because…is there a mechanism you can go in to cause it not to do that anymore? To…you can a…disable something?

Ms. Forest: Right, we can program that for the owner but I’ll be honest with you he’s had enough issues with the Town that he just wants to…

Ms. Smith: Well I saw it. And it did…it does have pictures…

Ms. Forest: Yes, it does…

Ms. Smith: Yes, it has words, it has pictures…

Ms. Forest: It has…

Ms. Smith: …and it changes a lot? I was there for a while.

Ms. Forest: Every fifteen seconds it’s set for.

Mr. Maher: Did you…did you program it?

Ms. Forest: We set it up with him but he…I don’t know that he’s programmed it differently. I know I stopped on my way down tonight…

Mr. Maher: At…at the time you programmed it it was every fifteen seconds?

Ms. Forest: But what we do is when we set it up and we put the antenna from there that we go in and we give them a basic lesson on…on how to use it. It comes with a…lifetime guarantee a…a…what do you call it…tech support a…and so they can program it a year in advance. You know they…they can a…yeah, they can program what they want it to say every day and limit on that. Do I have some little thing that will not allow them to do that? No. I don’t.

Ms. Smith: So there is no mechanism that can be disabled so that it could be a daily, stationary…

Ms. Forest: No…

Ms. Smith: Non changing picture?

Ms. Forest: No but I think he…he’s willing to comply. Like I said we’re in an open field here, interpreted it, it was the type of sign he was told he could have. There was nothing in here about either pictures, colors…it just said the lighting and remaining constant. So that’s…that’s where we are. That’s where we need to decide a…what it would be allowed as…as a message center.

Chairperson Cardone: Okay. Do we have any other comments? Do I have a motion to close the Public Hearing on the Interpretation?

Mr. Maher: I’ll make a motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:12 PM)

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ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:24 PM)

SANTA MONICA HOLDINGS, LLC. 5268 ROUTE 9W, NBGH

(20-2-30.21) B ZONE

Applicant is seeking an (185-54-A) Interpretation of Sign Regulations - 185-14-C-(2) (a) - The prohibition on illumination which is not diffused or indirect shall not be deemed to include the following: (Amended 5-18-2009 by L.L. No. 5-2009) - (a) Light-emitting diode (LED) and liquid crystal display (LCD) lights which are stationary and constant in intensity and color.

Chairperson Cardone: Our next applicant Santa Monica Holdings, 5268 Route 9W, seeking an Interpretation of Sign Regulations - The prohibition on illumination which is not diffused or indirect shall not be deemed to include the following: - (a) Light-emitting diode (LED) and liquid crystal display (LCD) lights which are stationary and constant in intensity and color. This is a Type II Action under SEQRA. Do we have discussion on this application? Okay, stationary to me means that there is nothing moving.

Ms. Smith: Correct.

Chairperson Cardone: And I don’t care if it’s moving every five seconds or thirty seconds, we have moving parts.

Mr. Maher: Yeah, I would concur. I…I believe that stationary it doesn’t mean semi stationary, it doesn’t mean partial stationary it means stationary. You know, whether the…again, whether the sign changes once a day as a gas station may the prices I don’t think we…we’d have this discussion right now but I think it changing every fifteen seconds, thirty seconds, a minute, five minutes it doesn’t follow the a…the a way the Law was written by staying stationary. It doesn’t say what length of time but I believe…I interpret to mean a period of time longer than the fifteen seconds by all means.

Ms. Smith: I have to agree. It states stationary and constant in intensity and color and every time the screen changes so does the color and how intense the color is shown to the public. A…so I have to agree also.

Mr. Manley: Well in 1994 this Board, I wasn’t here, heard the same issue and came to the same conclusion, thirteen years later in 2007 this Board, again some of the same people aren’t here but a different make-up of the Board made the same decision in 1994 and this is 2014, seven years later and I feel the same way that they did in 1994 and 2007 and I think that’s pretty consistent with. And I feel that way not for just this applicant but anybody that would come before this Board with a similar type of sign I would be opposed to interpreting it any different unless the Town Board were to change the Law. That’s my…that’s my decision. With that I’d make a motion to deny the Interpretation.

Mr. Donovan: And that…and that would indicate that this sign does not comply with 185-14-C-2-(a).

Mr. Manley: That’s correct.

Ms. Forest: Could I just clarify as to one question? Does that mean based on what Michael said that if it’s one message a day it adheres to the Law?

Mr. Donovan: No.

Chairperson Cardone: No.

Mr. Donovan: The Board’s decision…you’ve made a request for an Interpretation. The Board is….the decision of the Board, assuming they vote on it, is that this sign does not comply with the requirements of Section 185-14-C-2-(a) in that the sign is not stationary nor constant in intensity and color. That’s the determination of the Board.

Ms. Forest: Right, and then somebody said that means like (Inaudible) message on it?

Mr. Donovan: No, that’s…that’s no, you’ve made a request for an Interpretation…

Ms. Forest: I’m sorry; I just wanted to make sure I understand.

Mr. Donovan: I don’t know that I can make you understand. I can tell you what the Board…the Board’s decision is, the sign doesn’t comply with 185-14-C-2-(a).

Ms. Forest: Okay, so what would my next step be if I wanted to leave the board and just have one message?

Mr. Donovan: We’re not in the position to give you advice. We can just rule on your application.

Ms. Forest: Okay, all right. (Inaudible)

Ms. Smith: And with that I’ll second the motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: I’m sorry, who was the first? You were the first, okay.

Ms. Smith: I was the first.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Mr. Canfield: Ms. Chairman.

Chairperson Cardone: Yes?

Mr. Canfield: A question.

Chairperson Cardone: Yes.

Mr. Canfield: Then with the action the Board that has just taken you determined that the sign as an existing state is non-conforming and does not meet the intent of the Code?

Chairperson Cardone: That is correct.

Mr. Canfield: The action of the Code Compliance Department at this time will be now then to order the applicant to remove the sign.

Chairperson Cardone: That’s correct.

Mr. Canfield: That’s understood. So the applicant understands that. Should the applicant chose to come back before the Board for another issue that’s the applicant’s decision to make but at this point the Code Compliance Department will take the necessary action and contact the owner that the sign is to be removed.

(Inaudible)

Ms. Gennarelli: Excuse me; if you’re going to speak you have to go to the microphone.

Ms. Forest: And then, for Code Compliance if I want to submit it to be a message board that does not, as you call it, change in intensity or color, switch message, going to use it simply as a message board with a single message a day. Do I come to you and fill out another application?

Mr. Canfield: Yes, you do.

Ms. Forest: Okay. Thank you.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:29 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 8:12 PM)

SANTA MONICA HOLDINGS, LLC. 5268 ROUTE 9W, NBGH

(20-2-30.21) B ZONE

Applicant is seeking area variances for 185-14-B-1-(c) - Freestanding sign may not be located closer than 15 feet from any street line and 185-17-B- Corner lots (all street intersections) - No obstructions (signs) permitted within the (40) forty foot triangle. (Route 9W and DeVito Drive) to keep prior built sign (B.P. #24936 Rescinded by Stop Work Order Issued 7-9-2013).

Chairperson Cardone: Okay, our next applicant again Santa Monica Holdings, this is for area variances. And just again for the record state your name.

Ms. Forest: Nancy Forest, I’m representing Santa Monica Holdings and I’m with Gloede Signs.

Mr. Maher: So you’re here for three variances for the a…within the 40 foot triangle…I’m sorry, two for this.

Mr. Donovan: Yeah, I think two for this Mike.

Mr. Maher: Sorry, my mistake. Fifteen foot and then the forty foot triangle, those are the two?

Ms. Forest: Correct, the forty foot triangle is because of the initial setback from the highway on 9W.

Chairperson Cardone: Could you go into the history of how the sign got to be located where it is instead of where it should be?

Ms. Forest: Absolutely. As Joe mentioned when he sent the…when I submitted it in December and he sent me back the four items, a…one of them was the setback of the sign. I a…called and asked to meet with Joe because I wanted to be sure that it was positioned right because I didn’t see a…that it was ten foot back when I…when I sat with Joe and we both looked at it I think the determination comes back as far as edge of the road…must be fifteen foot back from the edge of the road. A…anywhere I’ve ever been to get to the road including all the signs that exist and have been recently put up I measured back and they are measuring from what is the edge of the road where it meets the sidewalk. When I went and met with a…Joe, we also had some snow on the ground so that was a concern of mine. We both looked at the same site plan that was signed by the planning board for the location of it as well a…and marking back from the edge of the road it was eighteen feet. It wasn’t until I believe in July, when Mr. Canfield a…brought it…had…we met again and Mr. Canfield told me that the Town definition of the a…edge of the road was not the edge of the road but basically the property line so to speak. So that put us a few feet different there. And that few feet then also where 9W would actually intersect with DeVito Drive normally you go to one road down 9W where it actually comes in and the two meet at that point is your forty foot mark back…or thirty or twenty, whatever the Town has.

Chairperson Cardone: It’s forty.

Ms. Forest: Then when I met with Joe there didn’t appear to be a problem a…both using the same survey a…I think we’re both looking at the property or the edge of the road as the edge of the road.

Mr. Manley: So presently it’s only setback ten feet, is that correct?

Ms. Forest: No it’s further back than ten, I believe. It’s not marked on my paper (Inaudible).

Ms. Smith: So you have eighteen feet from 9W and twenty feet from DeVito Drive?

Ms. Forest: That was a…

Ms. Smith: The street line from the side?

Ms. Forest: Yeah, that’s what (Inaudible) street line…

Mr. Donovan: Ma’am, ma’am…

Ms. Gennarelli: Excuse me, could you take the… Excuse me…

Mr. Donovan: You have to the microphone.

Chairperson Cardone: You have to use the microphone.

Ms. Gennarelli: …take the microphone with you.

Chairperson Cardone: It’s being recorded. It travels you can just take it off.

Ms. Forest: I believe you have the site plan there; it was part of the package.

Mr. Maher: Well it’s a little harder to read there.

Ms. Smith: Oh yeah, that, that one, yeah.

Mr. Maher: According to Joe’s report it says ten point two feet off of a…the street versus fifteen (inaudible) off 9W.

Ms. Forest: I’m going to use the a…first site plan that was provided a…because this is the one I sat with with Joe. I want to get it to the part you need to see. I made a copy of this and it was in the applications too, as well.

Mr. Maher: Yeah, it’s…

Ms. Smith: It’s so small.

Mr. Maher: …it’s tiny there.

Ms. Smith: It’s really hard to read.

Ms. Forest: Oh that’s not the one I used…a…here we go. Right here, this is the one that I…I sat with this marking the street line as here which gave me my setback when we met it appeared to be fine. But actually the counting the setback or the street line is on the other side on the inside of the sidewalks themselves. It’s not the edge of the street. I can tell you that Quick Chek, M&T they are both signs that have gone up in the last year obviously felt the same way as we did because they are not fifteen feet back from the property lines. So everybody is interpreting, I believe, the edge of the street to be the edge of the street and I know any of the others that I have done…

Mr. Manley: Okay, when you make claims that somebody else has something, I need some sort of proof that indicates that what you’re saying is a fact. So I mean, you’re making a statement but do you have something to back that up as it being a fact?

Ms. Forest: I did not bring anything but I mean I…I can certainly do photos and…and measures for you because I know the M&T there’s a hydrant like.

Mr. Manley: I would…I think the Board would need…

Ms. Forest: Sure.

Mr. Manley: …some sort of fact to show that is the case.

Ms. Forest: I will bring back anything you would like to see. Sure.

Mr. Manley: Well I mean it should be here tonight for us because if we are going to make a decision tonight we need to really have the…the documentation to make that decision.

Ms. Forest: Am I…am I able to adjourn it to the next meeting to provide more information?

Mr. Manley: That’s up to the Board.

Ms. Forest: Okay.

Mr. Manley: The one issue that I have is coming out of DeVito Drive if you’re going to make a left hand turn or if you’re even going to make a right hand turn and certainly one of the things I look at is safety and with the sign where it’s at you can have blind spots as a result of the sign being positioned so closely to the road and if a car pulls up they may be forced to edge out further into the roadway, potentially out onto 9W creating a hazard for themselves or others. So…

Ms. Forest: There actually a full car length in front of the sign when you get (Inaudible)

Mr. Manley: Well it depends where your car stopped and positioned.

Ms. Forest: Well I mean if you come up to 9W and stop at the end of DeVito Drive (Inaudible)…

Mr. Manley: I…I was there, I am familiar the site and I did have an issue when I looked out. If you’re a little too far back seeing to the left with the sight line. That’s just the…that was my experience.

Ms. Forest: Okay, I…we…I’ve been in and out of it, I did not see that. I see, you know, Quick Chek being even closer to the highway although that one is on the right if you’re exiting but a…it’s…

Mr. Manley: Unfortunately I wasn’t…

Ms. Forest: …it’s…it’s still when you get up there look to the right to pull out and make a left, you need to see that it’s clear.

Mr. Manley: Right. I wasn’t actually there to look at Quick Chek so I didn’t. I was looking at this particular file.

Ms. Forest: I go in and out the driveway there a lot over it since the sign has been done and the base of the sign coming up is…

Mr. Manley: The question I have is for our Code Compliance, is one of the reasons why the setback for the sign is further back is to create a safety issue? Is that one of the factors that we have to keep signs further back from the road?

Mr. Canfield: Yes, that’s exactly right. That’s exactly right. And also if I may add? I don’t recollect ever speaking with you about this sign at all. I…I think you had stated that you come in and I advised you where the edge of pavement was and all of that.

Ms. Forest: No, I did not say you did.

Mr. Canfield: Oh, what did you say you met with me about?

Ms. Forest: Joe and I first talked. We met; the three of us were outside the office there. We sat down in the little chair by the big tree palm, palm tree thing…

Mr. Mattina: (Inaudible)

Mr. Canfield: Please wait a minute. Excuse me. We sat down outside?

Mr. Mattina: (Inaudible)

Ms. Forest: I sat down. Oh, it was…I’m sorry, it was Jim. I’m sorry.

Mr. Canfield: Okay, for the record, it wasn’t Mr. Canfield.

Ms. Forest: No, I’m sorry.

Mr. Canfield: And also, just to clarify, I don’t believe the Code Compliance has ever at any point in time had any confusion of what the dimensions should be and the applicant was advised of it, early on. It was in your e-mail that you implied to us that you were aware of the requirement and that the sign…

Ms. Forest: Yes.

Mr. Canfield: …would be put where it was supposed to be put…

Ms. Forest: Yes (Inaudible)…

Mr. Canfield: …and the sign did not end up where it was intended to be put and that’s why you’re here.

Ms. Forest: And Joe, when you and I, when I came to you and asked, remember I called you, I had a concern about the setback because when you asked it being ten foot back I was like, I’m not understanding…the…the survey I’m looking at is showing me that I am…

Mr. Canfield: Excuse me, can I interrupt you for a minute?

Ms. Forest: …further back which is why I called to meet with him and look at it.

Mr. Canfield: You’re here before this Board? Right?

Ms. Forest: Yes.

Mr. Canfield: Okay, I’m just stating stuff to clarify what you had said.

Ms. Forest: Right.

Chairperson Cardone: And you need to address the Board.

Mr. Canfield: Your concerns should be directed to the Board.

Ms. Forest: Sorry, I keep doing that.

Chairperson Cardone: Everyone needs to address the Board not each other.

Ms. Forest: I have it, yup.

Chairperson Cardone: Joe, I’m not quite following what this lady is saying that…you were not actually at the site and said that this is where it should be? Correct?

Mr. Mattina: Correct, I’ve never been to the site for this…this particular project.

Chairperson Cardone: Right. I just wanted to clarify that.

Mr. Mattina: For the sign, right, I’ve never been there for the sign.

Chairperson Cardone: Right.

Mr. Maher: So the conversation that you had Mr. Mattina was not actually on the site looking at the…

Ms. Forest: It was not on the site. It was looking at the print that I just gave you in determining where the edge of the road was.

Mr. Manley: And who determined where that sign pylon was going to go? Who was the one who actually said this is where it is going to go? Was that yourself?

Ms. Forest: Well we did in…in addition to the planning board where they put the electric based on where the planning board said they were able to site the sign.

Mr. Manley: But I…I’m asking who actually was there and actually was the contractor or the person that oversaw the job…?

Ms. Forest: My company, yes.

Mr. Manley: Your company was on the site…?

Ms. Forest: Yes…

Mr. Manley: …when they dug the hole.

Ms. Forest: …I told them where to put it after I met with Joe and staked it.

Mr. Manley: Okay, was there…?

Ms. Forest: To be sure the electric was where it was supposed to be.

Mr. Manley: And who staked it out? Was it…was it the Town of Newburgh or was it you or who was it that actually put the stake and marked where…?

Ms. Forest: Well, they put the power in first and we stake next to the power, once I cleared where the edge of the road was…

Mr. Manley: Okay.

Ms. Forest: …and that we were eighteen foot back.

Chairperson Cardone: But obviously it was not clear where the edge of the road was.

Ms. Smith: That’s right.

Chairperson Cardone: Because Joe is saying something that is conflicting with what you are saying.

Mr. Mattina: I just want to…for the Board…we had a meeting the office, Ms. Forest, myself and Jim Campbell, it was after the Stop Work Order was issued. So the sign was already put up before we had our in-office meeting.

Ms. Forest: I’m talking prior to that when just you and I met.

Mr. Mattina: I don’t remember you and I ever meeting before that.

Ms. Forest: Yes, yes we did. We sat right outside…

Chairperson Cardone: Well just…

Ms. Forest: …and that’s my question ‘cause I also mentioned that there was a fill berm…

Chairperson Cardone: Well there’s a difference if you’re sitting down and looking in a vague way than if you’re right there on the site and actually saying this is where it should be.

Mr. Maher: Well I have one question. You said you staked it out next to the electric.

Ms. Forest: Correct.

Mr. Maher: So the electric was installed prior to you staking it out.

Ms. Forest: Correct.

Mr. Maher: Who staked it out for the electric?

Ms. Forest: I would imagine the electricians that did that based on the approved site plan approval and drawing.

Mr. Maher: Okay, so in essence they measured back from the line and installed the electric service to it.

Ms. Forest: And I agreed with it because it was exactly eighteen feet where I was from the edge of the road.

Mr. Maher: But the electric was already installed prior to you staking it out?

Ms. Forest: Correct.

Mr. Maher: So you weren’t there when they started the…the process as far as electric goes?

Ms. Forest: No. But I did clarify for my own purposes where the sign would go. I didn’t just see the electric and put it in there.

Mr. Manley: At any time did you contact the surveyor that did the initial survey to you know, come out and actually measure and double check it to make sure that you were putting the sign in the proper place or have that surveyor mark out where that sign needed to go? Did you ever contact anybody to do that?

Ms. Forest: No, once I met and we determined the edge of the road and where that setback was and based on the plans, I came back from the edge of the road at eighteen feet. Thinking I was doing good because now I’m not fifteen feet, I’m eighteen feet back.

Mr. Manley: Okay but you never had contacted a surveyor or had the surveyor…

Ms. Forest: Absolutely not, no.

Mr. Manley: …that did the survey for the property come out and actually…

Ms. Forest: No.

Mr. Manley: …mark the spot for you?

Ms. Forest: No, because we had already had conversations that I staked that, the electric was right, this is where it’s going.

Mr. Maher: In the past, you said thirty-six years in the Town?

Ms. Forest: Yes.

Mr. Maher: Have you ever had a surveyor stake a location of a sign?

Ms. Forest: No.

Mr. Maher: Never?

Ms. Forest: No. And I’ve always marked them back from the edge of the road.

Ms. Smith: But in your mind the edge of the property was the edge of the sidewalk or the curb cut or whatever was there?

Ms. Forest: Right, edge of the road.

Ms. Smith: So you went back from…?

Ms. Forest: That’s how Central Hudson does it, all your Dig Safe people.

Ms. Smith: Okay.

Ms. Forest: Edge of the highway is where the curb meets the road.

Ms. Smith: Okay.

Chairperson Cardone: Do we have any comments from the public?

Mr. Kolker: Hi, Mitchell Kolker again, 14 Hopeview Court, Newburgh, a…we’ve already petitioned the Town Board in trying to allow us to egress through Filiberti Lane and McCall to get on to 9W. Making a left a…both my wife and I…a…you may have done it a lot but we do it every single day and every day is a risk to our pretty much lives in the sense trying to make a left. If you can imagine the traffic on 9W at 7 o’clock in the morning, 7:30 a…and especially when there’s snow and it’s not paved well and we’re trying to get into traffic and I know 9W is a State road and…and really the Town has no control but they’re trying to do studies to help us out because we have a large community there. Now that they’ve put this big sign here that really is difficult and distracting to make that left, you know, I think the most important thing of the Town is protection of their residents and it is a dangerous left turn, very dangerous. I invite any of you to come at 7 o’clock in the morning when there’s a huge amount of traffic going south and north on 9W and try to make a left without…you know, hitting the gas as fast as you can to cut through and just pray that no one’s…no one’s going to hit you. And it’s getting worse and worse because the traffic is getting more and more. And, I’ve tried to encourage the Town Board to really look at something, either putting a light and that’s why we looked at McCall, but still Filiberti is one-way and the only way to get out is DeVito Drive. So what I’m…what I’m requesting is that you help us out as residents to try to, I mean at least, the most…the most we could do is move that sign for the safety. And even if it was up to Code and everything, if they found out it was a safety issue I can imagine that can be petitioned in front of the ZBA…maybe it’s the ZBA or the Town, I’m not sure. I don’t know much about local politics but some way to get that to move and to study that area so maybe we can encourage either to get a light there or McCall and allow us to egress through McCall. A…but at least now we could get that sign out of there or at least moved enough that we have a direct visualization of the a…north bound traffic coming up at us and easily be able to see the southbound and be able to make that left turn to arrive safely, you know, to our jobs or wherever else we’re going. So, that’s the one thing, you know, that I’d like to…I know that there’s a certain Code where the footages but I really think it should be studied from a safety point of view.

Mr. Manley: Sir, are you saying that the physical characteristics of where that sign is located is causing an environmental condition for you…

Mr. Kolker: Yes.

Mr. Manley: …and the residents of your area that is creating a potential traffic hazard for you pulling in and out or actually mostly out if you’re making a left…

Mr. Kolker: Mostly out, mostly out.

Mr. Manley: …or a right?

Mr. Kolker: Right.

Mr. Manley: Is that…is that your…pretty much your testimony?

Mr. Kolker: That’s…that’s what I’m saying. I’m saying that because of that sign it’s causing a visual hazard for making a safe left hand turn in that area. Thank you.

Mr. Manley: Thank you.

Ms. Forest: A…I know we just said that the a…sign is set back approximately ten feet and then we have the almost five foot sidewalk and then a little bit in front of that so it’s fifteen foot back. If it’s, you know, the Board determines they do not want to issue a variance for these three feet then we have to move it. The sign is…will still remain on that corner, it’s legal to be there provided its back where it belongs…it needs to be.

Ms. Smith: Am I wrong in…in…I’m listening to what you just said but you’re including the sidewalk?

Ms. Forest: Well the sign is ten foot back.

Ms. Smith: From the sidewalk? The edge of the sidewalk?

Ms. Forest: The…yeah, the inside…

Ms. Smith: Right.

Ms. Forest: …towards the building so we’ve got ten foot from the sign to where the sidewalk starts and then the sidewalk is four to five feet…

Ms. Smith: Right.

Ms. Forest: …in width so it’s over fifteen from the base of the sign to…

Chairperson Cardone: Is that sidewalk five feet, Joe?

Mr. Canfield: I believe it is.

Ms. Smith: It’s wide and that would be included in the a… the a…twenty feet to go back?

Mr. Canfield: The sidewalk isn’t on their property.

Ms. Smith: That’s what I thought so it technically it’s at ten feet off the sidewalk. It should be ten more feet back, correct?

Ms. Forest: Yes.

Ms. Smith: To acquire the twenty feet that is required.

Chairperson Cardone: Fifteen.

Ms. Smith: Fifteen? So it would have to five more, I’m hearing so many feet I’m getting confused.

Ms. Forest: Four feet.

Mr. Maher: Four foot, ten inches.

Ms. Smith: Four feet, ten inches? Back towards the…?

Ms. Forest: (Inaudible)

Ms. Gennarelli: Please use the microphone.

Mr. Friedle: John Friedle, 1 Midway Drive. What’s the…for my clarification, what’s this forty foot triangle? Is that just twenty feet from the property line thing? Because that seems less…less than the fifteen feet…

Chairperson Cardone: Joe, could you give an explanation for that, please?

Mr. Donovan: Or maybe, maybe I can just show him in the Code?

Mr. Mattina: Right. Oh, okay.

Mr. Donovan: Because I happen to have a diagram.

Mr. Mattina: Right.

Mr. Friedle approached and Mr. Donovan showed him the diagram

Mr. Donovan: So in that hatched area, you’re supposed to be out of that hatched area.

Mr. Friedle: Oh, that’s even further back?

Mr. Donovan: Well, that…that was actually going to be my…I’m sorry, you guys are on the hot spot tonight. How far is the sign in the…the forty foot or how far back does it have to be moved to get out of the forty foot triangle? Because I wasn’t smart enough to figure that out.

Mr. Mattina: (Inaudible)

Mr. Friedle: (Inaudible)

Ms. Gennarelli: I’m sorry, John can you just use the microphone?

Mr. Friedle: So, if I understand this…this is now that’s even further back than what it’s already supposed…what we’re…we’re discussing now?

Chairperson Cardone: Yes.

Mr. Friedle: It is kind of in the way and it’s a distraction and a…sometimes I pull out of there and…I mean, you come out of the road it’s like a jump to get out of there. And people aren’t looking because they’re looking at the sign and I’m trying to pull my truck and a trailer out of there at the same time and it’s pretty hairy sometimes. A…it’s a distraction, it does kind of block the view ‘cause sometimes if you get another car in front of you the way that traffic is there ever since they put that light in on Carter Avenue, it’s even worse now, on the other side. Because you don’t only get backed up at Fostertown, now you’re backed up Carter Avenue and it’s just like a non-stop flow of traffic so when you get an opening…

Mr. Manley: You’ve got to go.

Mr. Friedle: …you’re like, I’m going. You know and it sometimes you’re like oop I didn’t see that car and now you’re like…everybody is holding onto their last right prayer, you know, or something like that. And I think…I think the sign needs to go back a…further than what it is. That’s just, you know, and from my own experience it’s kind of a hazard. Anything there is a distraction and hazard but the sign, especially from that a triangle…it seems like it should go even further back and that may alleviate some of the problem.

Mr. Manley: Well, then that’s…I think that was the intent of why they had that…that intersection triangle there was…what Mr. Mattina said was…

Mr. Friedle: Right.

Mr. Manley: …for the…you know, the safety a…and, you know, Mr. Kolker even said that if, you know, it’s very difficult to see when you’re pulling out and making a left turn and I…I…

Mr. Friedle: Even making a right turn though a…

Mr. Manley: Correct.

Mr. Friedle: …because, you know, you’ve got the Red Rock it’s a little bit of a pain too.

Mr. Manley: All you have to do is have somebody…

Mr. Friedle: Even making a right turn, sometimes I’ll make a right just so I can make the left ‘cause...

Mr. Manley: If they’re in that blind spot when you pull out.

Mr. Friedle: …just can’t get out of there, you know, it’s ridiculous so.

Mr. Maher: Joe, let me ask a question.

Mr. Mattina: Yes.

Mr. Maher: Am I to assume the fifteen foot…

Mr. Donovan: Hey, hey can I have my question answered first? You’re jumping ahead of my question.

Mr. Maher: All right. Was there one pending?

Mr. Donovan: Yeah, Joe’s ready with his…I don’t want him to forget.

Mr. Maher: I don’t want to encroach on that.

Mr. Mattina: Basically with the layout of the street corner with the street line and then the…the Town’s definition of the street line and the edge of pavement…if the sign was put fifteen setback from the property street line it would have been out of the twenty foot…

Mr. Donovan: Okay.

Mr. Mattina: …requirement of the triangle due to the extension of the street line beyond the property line. So if it was setback fifteen foot it would have been out of the triangle.

Mr. Donovan: Okay.

Ms. Smith: Okay.

Mr. Mattina: Because the property line and the street lines are two different dimensions so the street line extended is different than the road line extended.

Mr. Donovan: All right, thanks Mike.

Mr. Mattina: Right.

Mr. Donovan: Thank you.

Ms. Forest: For…for the record want to show that there are sidewalks here. I thought I was dreaming.

Chairperson Cardone: We’ve all been to the site.

Ms. Forest: I know, someone just said there were no sidewalks there.

Mr. Maher: No, that that…I think someone said you didn’t actually own the sidewalks.

Ms. Smith: Right.

Mr. Maher: Santa Monica didn’t actually own the sidewalks.

Ms. Forest: Right, okay. I was just talking in terms of the width of the sidewalk and then the setback and how far back it was.

Mr. Maher: Let me ask you a question.

Ms. Forest: Yeah.

Mr. Maher: The sign…the sign itself is it just a round pole base?

Ms. Forest: A…in…inside the a…aluminum skirting we deco…we kind of put a decorative skirting around the pole so you don’t have steel beams.

Mr. Maher: So, about how wide do you think it is?

Ms. Forest: I believe its thirty-six inches.

Mr. Maher: So, it’s three foot wide so it’s a significant width there.

Ms. Forest: Yes.

Mr. Maher: Okay, so obviously if you had pulled up next to it and you try to look to the left and with a pole it would be a little bit easier to see down the street rather than a thirty-six inch, a thirty-six, you know a three foot area that’s blocking the a…that could block your view or…or make it more difficult to see south on 9W.

Ms. Forest: Do you have the picture of the sign now?

Mr. Maher: I have a…a distant one.

Mr. Manley: There’s one here to, I believe.

(Inaudible)

Mr. Manley: There is one in there in there.

Ms. Forest: It’s a little clear…clearer vision of the…not far enough back, the other one is too far back, this one is too close but that’s giving you an idea of a…the sign that is facing south. I would be happy, if the Board wishes would want to do another site view, there seems to be discrepancy on the pulling out and making a left hand turn how much distance there actually is. If a…Mr. Manley would like me to get photos and proof of other ones or give them to you so that you can also look at their setbacks from the highway and their exits on 9…9W, I’m more than happy to come back and do that, whatever the Board prefers.

Chairperson Cardone: Every site is different though, you know, in terms of what’s generally around it.

Ms. Forest: Right, but the setback is the setback of fifteen feet a…along 9W, I’m just making a point that a…some of them are closer and do not seem to be creating an issue. Perhaps they got a variance. I don’t know. I can check the record but I can get that information for you.

Mr. Manley: But we’re here specifically for this particular…

Ms. Forest: I understand.

Mr. Manley: …site and I’ve been out to that particular site and there’s been some testimony tonight from two residents and I’m sure if there were more people here there may be more testimony from other residents that they can’t…they have a hard time seeing when they pull out and make a left turn and just as hard a time when they make a right turn. So if I’m taking their…their testimony as being honest, which everybody is when they come here, right? That…they’re having a problem seeing.

Ms. Forest: No…I…I’m saying in fact of comparisons because when you exit Quick Chek there’s a lot of people exiting there as well.

Mr. Manley: Right.

Ms. Forest: So, I’m just saying that you know, you’re viewing and pulling out, it…it does for a comparison it is basically kind of the same.

Mr. Manley: And there may be a problem with Quick Chek but we’re here specifically for this particular application.  
  
Ms. Forest: Okay so you don’t need me to do that for you, okay.

Mr. Maher: Well again, I guess the point is that that will address 185-14-B-1-(c) but you still…Quick Chek I don’t believe is on a corner lot and neither are some of the other ones that still address…

Ms. Forest: No but…

Mr. Maher: 185-17-B also.

Ms. Forest: Right and as Joe said, if the street line issue had not come up and it was back its fifteen feet we wouldn’t have the triangular issue.

Mr. Maher: But we do.

Ms. Forest: We do.

Chairperson Cardone: Do we have anything else from the Board or the public? Yes, the gentleman in the back.

Mr. Karitis: Hi, Jeff Karitis, 29 Hopeview Court, Newburgh, as reiterating the danger, we’ve lived there for seven years and that road has always been a dangerous road to pull out of. This sign not only is it three feet wide it’s also got pink neon all up and down the sign. So it’s also distracting in that sense. You know, the mailboxes they put up are also a distraction. My wife complains about that all the time. I don’t know if that’s a U.S. Postal or however they decide that but she has trouble…she has trouble seeing over that also in her SUV. Lampposts, they also put…the way they did the street…the curb cuts, the way the DOT I was told a…made that other entrance, exit is very close to DeVito and also is very dangerous. Someone is pulling out of that a…is a challenge. So to give a variance for this, to me, I…I just I think would be the wrong message and would be against safety. At least they have to be within the Town Law, moving back to whatever that is four feet, ten inches, or whatever. Otherwise, I mean it…it’s a very challenging road to get out of and you can’t…if it’s icy and you don’t have 4-wheel drive you can’t pull out of that road neither ‘cause the plows since they built that…the Mansion have not been cleaning that road well. I don’t think they know where the curb cuts are and so that’s been even narrower whenever we do have snow and we do have those things. The sign is making it even worse and a…I don’t know if we’re going wait for someone to get hurt or how many people have gotten hurt already but a…we didn’t do a study on that, but to give a variance I think would be against the public good and I guess I have a question too. In terms of those other things, I know the DOT decides what goes on 9W but in terms of that road…that’s just…is that the Town Board that would handle fixing DeVito or making that…it’s a very challenging hill to go up to start with and you’re like a sitting duck when you’re sitting to make a left turn, cars coming in its…they’re coming right at you when they’re turning on to DeVito. So you basically are a sitting duck there.

Chairperson Cardone: DeVito is a Town road. 9W is a State road.

Mr. Karitis: That would be the Town Board then that would…or is that the Zoning Board or, I guess…?

Chairperson Cardone: Not the Zoning Board.

Mr. Karitis: So it’s a Town Board thing where they would have to address that. Because it’s…the sign makes it much worse. People get distracted, people looking up, whatever is on the sign, you know, that was previously…but this is something to give a variance would be to me again not in the public good and a…you know, have the sign where it is. I…I thought the sign was going to be on the wall of the building initially and maybe that…and obviously that’s changed but initially the plans when they first did this were going to be on the wall of the building not that close to the street. There was never a sign that close to the street or in that spot for the previous building that they used to put this building in that was all the way by that other building and that sign was changed by hand not by any kind of mechanics which is the other one. But a…I would just, you know, this sign in general we feel is just a bad thing for the Town of Newburgh. We think it’s bad for the community and makes a road that’s already very dangerous more dangerous.

Chairperson Cardone: Okay, thank you. Do we have anything else from the Board or the public? Do I have a motion to close the Public Hearing?

Ms. Smith: I’ll make a motion.

Mr. Maher: I’ll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Ms. Forest: Thank you.

(Time Noted - 8:43 PM)

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ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:29 PM)

SANTA MONICA HOLDINGS, LLC. 5268 ROUTE 9W, NBGH

(20-2-30.21) B ZONE

Applicant is seeking area variances for 185-14-B-1-(c) - Freestanding sign may not be located closer than 15 feet from any street line and 185-17-B- Corner lots (all street intersections) - No obstructions (signs) permitted within the (40) forty foot triangle. (Route 9W and DeVito Drive) to keep prior built sign (B.P. #24936 Rescinded by Stop Work Order Issued 7-9-2013).

Chairperson Cardone: On the application of Santa Monica Holdings, 5268 Route 9W, seeking area variances for a freestanding sign may not be located closer than 15 feet from any street line and corner lots - No obstructions permitted within the (40) forty foot triangle which is at the corner of Route 9W and DeVito Drive to keep prior built sign. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: Well part of the balancing test is is it self-created? And certainly just on its merit self-created isn’t barring the applicant from having the sign there but that is, you know, one of the factors, one of the five in the balancing test. But where I see it to be a problem which is also part of the balancing test is the environmental factors or the physical relative to the sign and Code Compliance testified this evening that the intent of having a setback is for safety reasons and there were three members of the public that testified to the Board that, in fact, they have problems pulling out and being able to see. I personally went to the site and I…I concur with the other three individuals here that there is an issue in pulling out with the sign where it’s located. A…so…

Chairperson Cardone: And if we go through all of them Jim, undesirable change in the neighborhood or character to nearby properties whether it’s substantial and whether it would have adverse physical and environmental effects and if it can be achieved by other means.

Mr. Manley: And it can be achieved by other means by moving it.

Chairperson Cardone: It seems to me on each count.

Mr. Masten: And Grace and along with that I was up there at that site today, myself, and I’ll go along with Jim and the two a…statements from the other people because when I went to pull out from there I had to edge up to the road and it’s crazy.

Mr. Maher: I have one question for the applicant. The…the setback that we discussed earlier was from the road or from the property line.

Ms. Forest: The setback that I did was the actual edge of the road which your definition in your Town Code is not the actual edge of the road it’s where the property line meets the a…sorry…

Mr. Maher: It’s the property…

Ms. Forest: …but basically…Yeah.

Mr. Maher: ….the property line versus edge.

Ms. Forest: Right in most places it would say X amount of feet from the property line or from the road, edge of the road.

Mr. Maher: Okay, I’m going to read from your e-mail to Joe on the 9th of December, 2012. Hello John…I’m sorry, to a…John from the planning board, hello John, attached are the final drawings for both the freestanding and the building sign. I have attached a letter from Joe and addressed the points below. Please advise me how to proceed I believe item 1 is the only issue I must deal with. Item 1 was do drawings to be reviewed and approved by the architectural review committee…architectural review at the planning board. Number 2 is my point; the freestanding sign is at least fifteen foot back from the property line.

Ms. Forest: Correct.

Mr. Maher: Okay. So my question, that in your email to John you noted that it must be fifteen foot back from the property line. So your testimony earlier you said you had measured from the edge of the road instead by it.

Ms. Forest: Yes, then that…I’m sorry, then that is incorrect because that’s where I met with Joe which he doesn’t seem to remember that looked at the actual edge of the road and where it was marked on the site map, it was actually eighteen feet. So I was saying it was at least eighteen feet back from the edge of the road is what that should have meant.

Mr. Maher: Okay.

Mr. Forest: That’s what was my calculations.

Mr. Manley: So what you’re saying then is that when you wrote the e-mail you were wrong?

Ms. Forest: Yes. Oh well, I wasn’t wrong I didn’t mean to say property line that’s where the confusion is coming in because anywhere I go edge of the road and I know Joe says he doesn’t remember it, I did sit with Joe prior to sitting with him and Jim. Because I did have that concern when he said it was only ten foot based on the site plan so I took the signed site in purposely to speak with Joe. And we sat right outside and we both were looking at the same edge of highway which is why it was determined that it was eighteen feet actually from the road. So what I was saying there was it is at least fifteen feet when I shouldn’t have said property line it should have said edge of the road. But we were both looking at the same one.

Chairperson Cardone: Okay do we have any other discussion from the Board? Okay, do I have a motion to approve this application?

No response.

Chairperson Cardone: Do I have a motion for disapproval of this application?

Mr. Maher: Based on the concerns of the a…the residents and regarding the safety issue, the fact that 185-17-B is pretty clear that anything within that triangle obviously meant for a corner for visibility and the fact that a…it’s very plain to state that nothing is permitted in excess of two feet within the triangle, the issue is that if this was just a pole I don’t think there would be much of a problem but the fact that it’s three foot wide a…I think that does create an issue there and ultimately I think it can viewed as a safety issue. Obviously the testimony of the residents, it was obvious that it was a concern to them, the ones that attended this evening a…I think in essence the setback part was an error made obviously based on whatever communication issues there were between yourself and…and…and the Town apparently or even from the fact that the electric was put in place prior so I’m just thinking that there’s a possibility that was…it’s about right so we’re going to put a stake here so I just think there were some errors made that…that shouldn’t have been made and I think it is creating a safety issue. So for that reason I am going to make a motion for a Disapproval.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for Disapproval is carried.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE (Time Noted – 9:37 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 8:43 PM)

STANLEY THOMAS III 212 SUNSET COVE ROAD, NBGH

(51-5-48) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling.

Chairperson Cardone: Our next applicant Stanley Thomas III.

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

Mr. Thomas: Good evening Members of the Board…

Ms. Gennarelli: Could you just tilt that up a little bit more? You are a little bit taller. Thank you.

Mr. Thomas: Good evening Members of the Board, thank you for hearing us. My name is Stanley Thomas III and I’m here with my wife Cynthia. And I’m here in consideration for variance as listed. I believe it’s a side variance, a rear yard variance and a combination side rear yard as it pertains to the height of the house. This is a 1920 dwelling originally laid at Orange Lake. It’s been modified many times over the years. I purchased it in 1986 and I have made several repairs myself over the years but now it seems like a larger renovation was in order. And the side of the house that is facing the street which you call the front yard away from the lake cause us people that are on the lake consider the sort of the front yard but it’s different for how you consider it. The side that’s facing the street, away from the lake, is currently a six foot shed roof and in looking at that renovation that really didn’t comport with what more modern standards for a room would be. It’s currently a shed roof as was common for the age of the home and I’m not considering changing the footprint rather I’m just looking update the living space to more modern standards, specifically an eight foot interior ceiling with a gable roof instead of the shed roof that is there. This gable will seek to match the roof pitch of the lake side of the house that exists as well. Obviously most Orange Lake properties do not meet modern Codes for setbacks however, I do not believe this will change or impair my neighbors and it is more than in keeping with the character of the neighborhood. The footprint of my house is approximately seven hundred and fifty (750) square feet and a ratio of that to the property that I have is, I believe, smaller than most of the properties around me. That being said, my request is to try and get the variances to allow me to raise the roof from a second gable.

Chairperson Cardone: Do we have questions from the Board?

Mr. Maher: So you’re…you’re keeping the same square footage of the house, correct?

Mr. Thomas: Exactly.

Mr. Maher: Just raising the roof to be more consistent.

Mr. Thomas: On the rear of the house. Or what you would consider the front of the house.

Ms. Smith: The front (rear) of the house.

Mr. Thomas: And that gable would kind of match the pitch of the portion on the lake side of the house.

Mr. Maher: The existing, right.

Mr. Thomas: But since it’s only sixteen foot wide there, it’s twenty-two foot wide, it will be about a foot higher.

Chairperson Cardone: Do we have any comments from the public?

Mr. Langer: Hello, Greg Langer I have a property at 279-281 Lakeside just down from Stan. And I’m representing here the a…Board of the Directors of the Orange Lake Civic Association and the Board is in favor of somebody improving the old cottages and it’s not interfering with anybody’s rights by expanding the a…a footprint we’re a building so we’re a…we have…

Mr. Thomas: I’m not expanding the footprint.

Mr. Langer: …problems. Yeah, right. It’s not expanding the footprint so we’re fine with it.

Chairperson Cardone: Thank you. Anything else from the Board? Do we have a motion to close the Public Hearing?

Mr. Donovan: Mr. Canfield has a…

Chairperson Cardone: Mr. Canfield?

Mr. Canfield: Just one question, if I may, for the applicant? The peak roof that you intend to put on this will not interfere with any viewshed a…?

Mr. Thomas: Of…of other residents?

Mr. Canfield: …of the lake or…?

Mr. Thomas: No.

Mr. Canfield: It will not. And the Orange Lake Homeowner’s Association is aware of that?

Mr. Langer: Yes.

Mr. Canfield: Okay, the reason why I ask this is that that is a sensitive area and the viewshed of the lake is always a consideration and as soon as someone starts to bang a hammer out there I phone starts ringing so...

Mr. Thomas: I completely understand and that’s why it matches the pitch and the gable of the…

Mr. Canfield: …of the existing room.

Mr. Thomas: That’s already over the lake.

Mr. Canfield: Okay, thank you.

Chairperson Cardone: Usually when the people are noticed they come here so…I said usually when the people are noticed they are here to find that out.

Mr. Thomas: I found several other things out there that… (Inaudible)

Mr. Maher: Don’t say that.

Mr. Thomas: (Inaudible) those have all been…

Mr. Canfield: You should stop talking.

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 8:49 PM)

ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:37 PM)

STANLEY THOMAS III 212 SUNSET COVE ROAD, NBGH

(51-5-48) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling.

Chairperson Cardone: On the next application Stanley Thomas III at 212 Sunset Cove Road, seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: They are not really increasing the size of the structure and the applicant testified that they’re not going to at all obstruct the viewshed of the lake, no residential concerns. I…I would go ahead and move for approval.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

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

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:38 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 8:49 PM)

GEJ NEWBURGH LLC. 52 ROUTE 17K, NBGH

(TARGET PLAZA) (97-2-7.22) I/B ZONE

Applicant is seeking area variances for the maximum allowed one free standing sign per lot and the maximum allowed square footage of signage to erect a free-standing sign.

Chairperson Cardone: Our next applicant GEJ Newburgh LLC.

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

Ms. Manning: I’m Liz Manning, I work for Lewis Sign Company and we’re speaking for Juster Development who owns the Crossroads Plaza. They wish to install a third free-standing sign on the property to allow all the tenants to have a…have a panel on a free-standing sign. I have some fresh renderings showing the proposed sign I’d like to share them with the Board.

Ms. Manning approached the Board.

Ms. Manning: The proposed sign is about thirty-two point five (32.5) square feet a…it will allow representation of all the tenants and currently there is a large pylon sign at the entrance to the a…shopping sign however, there’s no allowance for additional tenants to be added to that sign or to increase the size of it so this is our proposal to remedy that situation. A…the rendering that I just passed out shows the location…proposed location. That island is a hundred and ten (110) inches wide, the sign…proposed sign will be seventy-eight (78) inches wide so it’s well within the a...plan of that landscape island.

Mr. Maher: So this is more of a directional sign?

Ms. Manning: No, not directional, it’s a tenant panel sign. It won’t have arrows or anything.

Mr. Maher: Okay.

Mr. Manley: Are those a…tenants that would be on these panels are they currently represented with signs on their businesses presently?

Ms. Manning: On the walls of the building.

Mr. Manley: Up above?

Ms. Manning: Yes.

Mr. Manley: That are lit, right?

Ms. Manning: A…yes, in…in…

Mr. Manley: Like Payless Shoes and…?

Ms. Manning: Yes, generally they’re illuminated signs.

Mr. Manley: Mr. Canfield, the sign calculation because it always comes down to the sign calculation, the sign calculation that they have here does that include the main pylon sign close to 17K and also all of the signs that are above all of the businesses that exist?

Mr. Mattina: Yes, according to the signed, we have a…last time they were before the planning board in 2006 we have a signs chart for the entire site. The numbers represented on my thing…on my sheet include free-standing, allotted signage per storefront and everything associated with that site. So these numbers are one hundred (100) percent correct, total signage.

Mr. Manley: So that twenty-six eighty-two (2682) includes the big pylon sign out front and it also includes all of the signs that represent Juster in that plaza?

Mr. Mattina: Correct because variances were previously granted for twenty-seven hundred and fourteen (2714) so there is twenty-seven hundred square foot of signage on this property. So the variance would only be thirty-two point five feet over, you know, what was already variance approved. So this variance is only for thirty-two square foot for the signage and a second...

Mr. Manley: And that of course doesn’t take into account Target ‘cause that’s a separate parcel of property that was kind of split off, correct?

Mr. Mattina: It’s a different parcel but when the signage and everything was done, it was done under the same S-B-L.

Mr. Manley: Okay.

Mr. Mattina: This 50 Route 17K and 52 but the signage is all on 52 Route 17K. Target has no free-standing sign on their lot.

Mr. Manley: Got you.

Mr. Maher: Is…is I-Hop part of that parcel?

Mr. Mattina: I-Hop is part of that parcel, yes.

Mr. Maher: So you said the review was done in ’06?

Mr. Mattina: A…my signage chart I have, right, January 13th ’06.

(Inaudible)

Mr. Mattina: Right, that was all included from the planning board and the variances were received from the ’06 site plan.

Mr. Maher: All right, that was my question.

Chairperson Cardone: There are actually two issues. It’s not just the thirty-two point five (32.5) square feet of variance but also that the Code only allows for one freestanding sign.

Mr. Mattina: Correct. The free-standing sign, you’re allowed one, there’s two existing and they’re asking for a third.

Chairperson Cardone: Right.

Ms. Smith: Will this sign be lit?

Ms. Manning: No, no.

Chairperson Cardone: Do we have any questions or comments from the public? Questions from the Board? Do I have a motion to close the Public Hearing?

Mr. Manley: So moved.

Mr. Masten: I’ll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you. Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask you in the interest of time if you would wait out in the hallway and we’ll call you in very shortly.

(Time Noted - 8:56 PM)

ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:38 PM)

GEJ NEWBURGH LLC. 52 ROUTE 17K, NBGH

(TARGET PLAZA) (97-2-7.22) I/B ZONE

Applicant is seeking area variances for the maximum allowed one free standing sign per lot and the maximum allowed square footage of signage to erect a free-standing sign.

Chairperson Cardone: On the application of GEJ Newburgh LLC., 52 Route 17K, seeking area variances for the maximum allowed one free-standing sign per lot and the maximum allowed square footage of signage to erect a free-standing sign. This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declarations?

Mr. Maher: I’ll motion.

Mr. Manley: I’ll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Manley: Now I understand the a…intent of the applicant, my concern is there’s already a decent amount of signage that’s been previously approved by the planning board. We had a similar issue with the Vitamin Store a…wanting to add additional signage. I just a…

Chairperson Cardone: Well, I think they’re different issues though Jim because they’re not...they’re not asking for a large amount of extra signage as far as the extra signage goes and also everything there is already built up…

Mr. Manley: Right.

Chairperson Cardone: …the other case they were still building.

Mr. Manley: Correct. And I guess where I have my concern is although the variance isn’t a large variance, my concern stems from there’s already two signs there where one’s allowed so now we have two, we’re going to three. And my concern is again starting that precedent for other…other built out areas to…to add additional signage. A…

Chairperson Cardone: But it’s also unique in that there are really two lots but counted as one.

Mr. Manley: Right.

Ms. Manning: May I show a site plan showing two lots?

Mr. Maher: We’ve have it.

Chairperson Cardone: We’re familiar with it.

Mr. Maher: I think that we do have some prior approvals for this whole marketplace for pylon signs throughout the property, directional, you know…

Mr. Manley: But directional aren’t counted in the…in the calculation, correct? If they’re directional they’re not counted in the sign calc?

Mr. Mattina: Right, as long as they’re within the…the allowable square footage they’re not and they’re not counted as free-standing either. As long as they’re with under the three square foot.

Mr. Donovan: You guys are very indecisive tonight.

Chairperson Cardone: Right. I think everybody is tired. Well, do we have a motion for approval?

Ms. Smith: All right, I make a motion to approve it.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: No

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:42 PM)

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

ZBA MEETING – JANUARY 23, 2014 (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.

Chairperson Cardone: If there is anyone here this evening for the Martin Milano, I have a letter:

I write with respect to the above referenced matter, which is scheduled for a Public Hearing this Thursday, January 23rd 7 PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on February the 27th. The reason for the adjournment request is that we would like additional time to gather information responsive to the ZBA’s request and to make a further submission prior to the Public Hearing. Very truly yours, Joseph McKay

Do we have a motion to adjourn this matter to February the 27th?

Ms. Smith: I'll motion.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried. So if anyone is here on the Milano matter we will be meeting and having the Public Hearing on the 27th of February 27, 2014. You will not be re-noticed.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 7:03 PM)

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

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 7:01 PM)

MARTIN MILANO 1292 ROUTE 300, NBGH

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

Applicant is seeking area variances for the rear yard setback of Lot #1 and also the rear yard setback of Lot #2 to have the restaurant as a principal use on a stand-alone lot of a proposed subdivision.

Chairperson Cardone: If there is anyone here this evening for the Martin Milano, I have a letter:

I write with respect to the above referenced matter, which is scheduled for a Public Hearing this Thursday, January 23rd 7 PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on February the 27th. The reason for the adjournment request is that we would like additional time to gather information responsive to the ZBA’s request and to make a further submission prior to the Public Hearing. Very truly yours, Joseph McKay

Do we have a motion to adjourn this matter to February the 27th?

Ms. Smith: I'll motion.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried. So if anyone is here on the Milano matter we will be meeting and having the Public Hearing on the 27th of February 27, 2014. You will not be re-noticed.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 7:03 PM)

ZBA MEETING – JANUARY 23, 2014 (Time Noted – 9:16 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: The Board is resuming its regular meeting. We had a Reserved Decision from October the 24th for C D & Sons Construction Corporation, 12 Bannerman View Drive. And I have a communication from Charles Brown

Regarding the application for 12 Bannerman View Drive, C D & Sons, I met with Jim Osborne, PE and John Platt of the Town Water Department last Wednesday, 1/15/14, on another job and discussed this project with them at that time. Based on that discussion I will be preparing the plans and application for the Health Department for the waterline extension to service both of the proposed lots and Jim will submit same to the Health Department as the formal submission must be made by the Town. Obviously based on this I will not have approval for the water service to those lots by the ZBA meeting tomorrow night therefore I am on behalf of my client requesting that the decision of this application be reserved for another month. At this time, I am re-stating that my client has waived the sixty-two days. If you have any questions or need additional information please call on me. Sincerely, Charles Brown

Okay and do I have any comments on this from the…from the Board? Okay the client is, I understand, is willing to waive the sixty-two days. Yes? He’s here tonight, yes. So is it the wish of the Board then we can reserve the sixty-two days and hopefully next month, February the 27th, we will have the documentation that we are looking for.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:18 PM)

ZBA MEETING – JANUARY 23, 2014

END OF MEETING (Time Noted – 9:42 PM)

Chairperson Cardone: O.K. You have the minutes from the last month? Do we have any corrections, additions or deletions?

Ms. Smith: Two months ago.

Chairperson Cardone: Two months ago, I’m sorry, two months ago.

Ms. Gennarelli: November.

Chairperson Cardone: November, right. Do we have a motion to approve the minutes?

Ms. Smith: I'll make a motion to approve the minutes.

Chairperson Cardone: And a second?

Mr. Maher: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Do we have any other business to bring before the Board?

Mr. Manley: No other business.

Chairperson Cardone: Okay. Do we have a motion to adjourn?

Ms. Smith: I’ll make a motion to adjourn.

Chairperson Cardone: Do we have a second?

Mr. Masten: I 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

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:45 PM)