ZONING BOARD OF APPEALS

MEETING – NOVEMBER 22, 2016

(Time Noted – 7:05 PM)

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

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by Darrin Scalzo

And a moment of silence for those Members in the Military that have lost their lives as well as Police Officers that have been killed this year in the line of duty.

(Time Noted – 7:07 PM)

ZBA MEETING – NOVEMBER 22, 2016 (Time Noted – 7:07 PM)

CHEN GROUP LLC.-XIANG ZHEN CHEN 101 N. PLANK ROAD (RTE 32), NBGH

(75-1-8) B ZONE

Applicant is seeking an Use variance for the Bulk Table - Schedule 7 - Allows existing single family dwelling units and 185-19-A-4 - A non-conforming use shall not be re-established if such use has been discontinued for 1 year to keep a Prior Built 3 Bedroom dwelling unit (living space) above the proposed restaurant.

Mr. Manley: The first application being heard before the Board this evening is Chen Group LLC., 101 North Plank Road (Route 32) in Newburgh seeking a Use variance for the Bulk Table - Schedule 7 - which allows existing single family dwelling units and 185-19-A-4 - A non-conforming use shall not be re-established if such use has been discontinued for 1 year to keep a Prior Built 3 Bedroom dwelling unit (living space) above the proposed restaurant.

Ms. Gennarelli are all the mailings in order?

Ms. Gennarelli: The Public Hearing Notices for all of the new applications being heard this evening were published in The Sentinel on Friday, November 11th and the Mid-Hudson Times on Wednesday, November 16th. This applicant sent out eighty-nine letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

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

Mr. Parino: Good evening, Sirs and Madam Secretary, my name is Peter Parino. I’m here today to apply for a zoning variance at the restaurant, I think most of you here probably know it, it’s been there (Inaudible) for a very long, long time at 101 North Plank Road. We purchased it about a year ago and are in the process of renovating it. We thought that it was legal as a three bedroom apartment and then we found out that the zoning expired. We’re here to apply for a renewal basically of the zoning so it may be a three bedroom apartment, a residential apartment again. Some of the reasons; the security reasons, we’ve been there, we’ve started working and we have break-ins, a lot of illegal dumping, there’s graphettis. It’s just really, really bad. The owner want…want to live there with his family, four kids and if he’s unable to live there it’s going to be a real hardship on his part. There’s nothing else you really can do with the place. It’s…it’s in the back, it accesses in the back and it can only…it can only be an apartment. Other than that it’s just wasted space. The taxes there is thirty-three thousand dollars a year which is a lot of money if we can’t use the place for a living facility and basically the owner wants to live on the property for a…to look after his property, to look after security for one. It’s a…just want to make sure the…the place is secure, people are not coming in vandalize the restaurant, break-in, steal or you know, commit other crimes. It was a substantial investment that’s definitely going to improve the neighborhood. The restaurant has been sitting there for a very long time. I think almost four or five years vacant and now we’re going to turn it around. We’re going to, you know; provide a lot of employment for the local residents. It’s going to be a big change. It’s going to be a nice beautiful restaurant and of course, it’s going to be even better if we can live upstairs and have a…you know, look after our investment. And one of the reasons that we purchased it was within intent…we intend to move there. This is what the problem was and then we discovered when we applied for the Building Permit we discovered then that the zoning expired. So it was always a three bedroom apartment. Whoever had it before always had the use of it…of it, there were no objections. I don’t see anyone here objecting to it. So basically that’s it.

Mr. Manley: Okay, you indicated that the applicant had intent to move into the a…into the a…building. How long has the building been vacant? I’ve known it to be vacant for a number years but can you give me a timeline?

Mr. Parino: Well we were told about a year and we were told that right from the broker it was…it was a legal apartment.

Mr. Manley: Okay, do you have anything from the Town that shows that that was a legal apartment that existed in that particular building? Do you have a Certificate of Occupancy or something that shows that prior to the expiration of the use that it existed and that it was legal?

Mr. Parino: No I don’t have that but if you…I probably could get that from the Building Inspector but it was legal at one time as I was told but we don’t have any documents as to that effect…presently.

Mr. Manley: Okay, from what I understand there are no records that show that it was a legal use unless you have something…

Mr. Parino: No I don’t have anything. I’ll…I’ll check with the Building Inspector and get back to you on that.

Mr. Manley: Do any of the Board Members have any questions for the applicant?

Mr. McKelvey: As far as the restaurant goes, you’ve really done some nice work on it already.

Mr. Parino: Thank you very much, appreciate that.

Mr. Donovan: Mr. Chairman if I could? I think there’s a bit of a problem. If you want me to just kind of…? So you’re obviously not an attorney, good for you, the issue that you confront though is you’re asking for a use variance and there’s very specific criteria that the law imposes for you to achieve a use variance and you know, not your fault but you haven’t presented any of that information to the Board. And…and Town Law, New York State Town Law sets forth the criteria and I’ll just go through them very briefly. You have to demonstrate that you can’t realize a reasonable economic return from the property unless you have this apartment and you got to do it by what the law calls dollars and cents proof. You’d have to have some…an appraisal or a real estate broker or some expert testimony so that’s…I know it’s very difficult for you and it’s not what you bargained for when you bought the property but that’s what the law requires before the Board can give you a use variance. You have to be able to demonstrate that you didn’t know that this was a problem that you thought you could use it as an apartment and you have to give some kind of you know, better for the Board, for affidavit proof, some sort of sworn testimony and the point I want to make it’s extremely difficult to get a use variance and I’m sorry that you got to this point without knowing that but as the Board’s attorney you know, anything the Board does there’s a precedential affect so I could not indicate to the Board that there’s enough information presented this evening to be able to give you a use variance.

Mr. Parino: Well actually I did mention a hardship and so, by mentioning a hardship that will insinuate that economic loss and I mentioned the taxes that if we cannot use it definitely will be very, very impossible to pay the taxes. And we can’t turn a profit on the place if…if you can’t live there because if the owners can’t live there we’ll have to seek residence elsewhere thereby spending more money. And what will become of the space it will just be wasted space so you know, these things were never mentioned, a hardship is basically what it is and it’s that we’re just going to lose for the guy, we’re not going to make it. So, I’m quite sure you…you would want to see this restaurant would be successful. We want to see the taxes will come in and we’re making as…as a…as John said, we’re making a very beautiful place so there will definitely be a big draw and we hope to make a couple a million a year, hopefully, which will be a very substantial tax for you folks and a…the apartment would definitely be helpful. And if would be…be very hard to make it if you can’t live there and look after our investment.

Mr. McKelvey: Dave, if he…if he proved that it was used for an apartment before when the restaurant was there would that help?

Mr. Donovan: Well I think…no, it really wouldn’t.

Mr. McKelvey: No? It wouldn’t?

Mr. Donovan: Because he, if in fact he’s lost his protected status…

Mr. McKelvey: Oh, yeah, yeah.

Mr. Donovan: …which, it would…it doesn’t really make a difference anymore.

Mr. McKelvey: Okay.

Mr. Donovan: He’s got to meet the use variance criteria. If he was able to demonstrate that it was abandoned for less than a year then that would be a different scenario.

Mr. McKelvey: Yeah, that…I know why they’re here, that’s why they’re here.

Mr. Maher: Dave, let me ask you a question. So based on the information supplied by the Building Department back in 1998 there was a…there was a notice in there for an investigation for illegal apartments above the actual restaurant. So basically the note here says that is being used by the property requiring a…a Remedy to be sent to the property owner Charles Spina requiring a Special Use Permit. So if that was done in 1998 that they were required to obtain a Special Use Permit. I don’t see that being done after that.

Mr. Donovan: Right, correct, there’s a lot of information here…

Mr. Maher: So basically…

Mr. Donovan: …I don’t see that either.

Mr. Maher: …so there is, there…basically in essence from ’98 when it was identified it was an illegal apartment at that time. Correct?

Mr. Donovan: That’s what it would appear to be. We don’t have anything from Code Compliance but…

Mr. Maher: So I think that’s where the issue is that while there was an apartment there I don’t believe that it was ever a legal apartment to begin with. That’s part of the problem so that’s why you’re again…what was requested back in ’98 was for the owner at the time to go for a Special Use Permit which is where you are today so that’s where the issue…like Mr. Donovan said as far as the requirements that be met. While you say it’s a hardship again you’ve provided nothing as far as evidence to show it’s a hardship other than your statement today.

Mr. Scalzo: Something else I see in the notes that I have here, back in 1989 Michael Pomarico the architect apparently that was working on the building they were in discussions with the Building Department as far as the residential occupancy. Now this is coming from the design professional not from our…

Mr. Donovan: Right.

Mr. Scalzo: …representatives that at that time in 1989 the upstairs was used for a multitude of things but one of them being the chef’s residence. I’m not sure if that helps, hurts or just stating what I read.

Mr. Donovan: Well I mean if…if you could track that forward and you know, this is November and it was abandoned in August well that makes it relatively easy. I understand it’s getting to us because more than one year has lapsed so whatever protection, assuming that it ever had protection, and I don’t think there’s proof in front of us that it did. We have what Mike has eluded to, we have what you have eluded to and I don’t…we don’t have Code Compliance here so I can’t say that it was ever a permitted use but let’s assume that it was if the requisite period is lapsed then it’s not anymore and they need a use variance. And you don’t have the…you don’t have any…

Mr. Scalzo: Okay.

Mr. Donovan: …you know, have any evidence that would satisfy the criteria.

Mr. Manley: There’s also a letter in the file here, 2011, June 8th from Code Compliance, apparently they were trying to reopen the Elvedge Restaurant and it says a Permit will be issued with the following conditions that must be completed before a C.O. is issued; and number two is the old apartment cannot be reoccupied this will violate the Zoning Ordinance.

Mr. Parino: Well gentlemen maybe we’re here now in 2016 this is very, very long time ago you’re speaking of. Times are different, things have changed, the whole geographic of the area has changed. You know, there’s a lot of hardship going on right now and we just want to make a go at it and the only way we probably can do this is by using the apartment to live in and it’s not going to be rented out or anything. It’s going to the owner’s that’s going to live there and now for it is security basically and hardship. Newburgh as you know is not a…very…a lot of crime is going on. Since we’ve been there, I mean, I could show you Police reports that we already have incidents. We’ve already called the Police there to curb crime and a lot of illegal dumping is happening, lot of breaking in, lot of graphettis, people come at night, where they come from I don’t know but the spray up the wall and they, you know, they create a lot of problems for us. And that’s mainly because there’s no one there to watch the place.

Mr. Manley: I think the Board would like to consider your…your request however, how as Mr. Donovan has indicated and a couple of the other Board Members have indicated we’re bound by State Law and we have to rule consistently with the four criteria that are required in order for us to approve a use variance. If we don’t have the required evidence that you submit we can’t…we can’t even consider to rule on it. Now if you’d like we can hold your case open until next month, we can give you an opportunity to retain counsel if you wish to have, you know, an attorney to assist you with putting together those four items that we would need to consider but barring that or barring these four items that we need to consider for a use variance there’s very little that this Board has as far as leeway. It’s not like an area variance where, you know, we can just take you know, the preponderance of what you submit and make a ruling. We have to have all four of those items in order for us to make a ruling.

Mr. Parino: Okay, so…

Mr. Manley: So it’s not a matter of this Board doesn’t want to consider it. We’re barred from considering and even approving it if we don’t have that documentation. So I’ll…I’ll leave it up to you as you would like the Board to proceed.

Mr. Parino: Well I…I…I appreciate it if you would hold it open…

Mr. Manley: Okay.

Mr. Parino: …and we’ll come back next time.

Mr. Manley: Okay. I would recommend that you, you know, if you’re not going to use an attorney there are some available…information available on the State’s website if you go and you know just Google search use…use variance requirements for a use variance State of New York. They’ll give you a whole host of those four items that I discussed that we need and then, you know, you can put together, you know your case and with that information the Board then can consider it. Doesn’t mean you’re going to get it but at least we have something that we can consider it.

Mr. Parino: Okay, alright, thank you.

Mr. Manley: Alright, do we have a motion from the Board to hold the Public Hearing open until our December…

Mr. Maher: I’ll make a motion.

Mr. Manley: …22nd meeting?

Ms. Gennarelli: 22nd, yes.

Mr. McKelvey: I’ll second it…

Mr. Maher: I’ll make a motion.

Mr. McKelvey: …I’ll second it.

Ms. Gennarelli: Mike was the first and John was the second?

Mr. McKelvey: Yes.

Ms. Gennarelli: Okay, thank you. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: We also received correspondence from the Orange County Department of Planning and it was their recommendation - Local Determination.

Ms. Gennarelli: And that’s December 22nd a Thursday.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:23 PM)

ZBA MEETING – NOVEMBER 22, 2016 (Time Noted – 7:23 PM)

JAMES REDNER 741 ROUTE 32, WALLKILL

(4-2-39.1) R/R ZONE

Applicant is seeking an area variance for front yards setback abutting all State roads shall be 60 ft. in depth to build an open deck (6 x 8) on the residence.

Mr. Manley: The next item before the Board this evening is the Public Hearing for James Redner, 741 Route 32, Wallkill seeking an area variance for front yard setbacks abutting all State roads shall be 60 ft. in depth to build an open front deck (6 x 8) on the residence. Ms. Gennarelli are all mailings and posting in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

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

Mr. Redner: Good evening, my name is James Redner. I am looking to replace some existing steps on the front of my house a 6 x 8 porch with three to four steps. Because of the concrete steps that were, they were deteriorating because of the salt, the wrought iron railings started to rot at the base so it’s becoming a safety issue and that’s pretty much why I’m here.

Mr. Levin: In the plan that you provided for us your septic system is in the front of the house?

Mr. Redner: Right.

Mr. Levin: You’re not building on top of that are you?

Mr. Redner: No, sir.

Mr. Manley: And the parcel is elevated from Route 32…

Mr. Redner: That’s correct.

Mr. Manley: …so the house sits a little bit higher than and 32 is a little bit further down and you have that…is it a stonewall in the front?

Mr. Redner: Right.

Mr. Manley: So that is acting between your…pretty much a buffer between 32 and…and the a…the front of the house?

Mr. Redner: That is correct, yes.

Mr. Manley: I think in consideration of that being a State highway I believe that one of the reasons why the setback is so far back is they want to keep the houses further enough from the roadway for one, safety and two, if they ever wanted to expand 32.

Mr. Redner: Yeah.

Mr. Manley: Probably unlikely but…does anybody else have any questions for the applicant?

Mr. McKelvey: You definitely…you definitely need something to get out of the house there.

Mr. Redner: Yeah.

Mr. McKelvey: High step.

Mr. Redner: Got to stretch in the morning when I leave the house.

Mr. McKelvey: Yeah, high step.

Mr. Manley: This was referred to the County Planning Department and the Planning Department reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues and balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that inter-municipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. County recommendation is Local Determination. Are there any questions from the public with regard to this application?

Mr. Feder: I’m Bill Feder, Rockwood Drive. I’m just curious what materials, building materials.

Mr. Manley: Okay. Could you address what…?

Mr. Redner: It will be consisted of Trex decking, the…I guess it will be….it’ll be Trex decking and a…

Mr. Maher: If I might, based on the plans you submitted, basically a treated a…

Mr. Redner: Exactly that’s the word I’m looking for.

Mr. Maher: …treated lumber for the frame and then a composite decking on it.

Mr. Redner: Correct.

Mr. Manley: I might add that Mr. Feder that would also comply with the NYS Building Codes and would be inspected by our Building Department. Are there any other questions from the public with regard to this application?

No response.

Mr. Manley: If not, I’ll ask the Board if they have any further questions. If not, I would look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

(Time Noted - 7:25 PM)

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ZBA MEETING – NOVEMBER 22, 2016 (Resumption for decision: 8:51 PM)

JAMES REDNER 741 ROUTE 32, WALLKILL

(4-2-39.1) R/R ZONE

Applicant is seeking an area variance for front yards setback abutting all State roads shall be 60 ft. in depth to build an open deck (6 x 8) on the residence.

Mr. Manley: The Board is reconvening its meeting this evening. The first application that the Board is going to vote on this evening is the application of James Redner of 741 Route 32 in Wallkill. The Board has had an opportunity to hear the testimony of the applicant and keeping in mind the balancing test for the area variance criteria does the Board wish to discuss the following criteria? The first being whether the benefit can be achieved by other means feasible to the applicant?

Mr. Maher: Obviously he needs an entrance on that part of the building so…

Mr. McKelvey: Yeah.

Mr. Manley: The requested variance will it cause any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: Does any of the Board Members have concerns or would like to talk about whether the request is substantial in nature?

Mr. Levin: I don’t believe it is.

Mr. Manley: The next is whether or not the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. Levin: I don’t think so.

Mr. McKelvey: I don’t think so.

Mr. Manley: And the last is whether the alleged difficulty is self-created? It is relevant but it’s not determinative. Does the Board feel at all that it’s self-created?

Mr. Maher: Well he’s not moving the house, it’s pre-existing.

Mr. Scalzo: Yeah.

Mr. Maher: He needs an entrance of a…

Mr. Donovan: Just having knowledge that buying the property that he would need a variance for this it’s technically self-created but again as the Chairman has indicated it’s not determinative.

Mr. Maher: What Dave said.

Mr. Manley: Going through the five tests does the Board at this point wish to make a motion for approval or disapproval on the application?

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

Mr. Masten: I’ll second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried. The variance is granted. I will note this is a Type II Action.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:54 PM)

ZBA MEETING – NOVEMBER 22, 2016 (Time Noted – 7:25 PM)

CHRISTINE REYES 29 ALBANY POST ROAD, NBGH

(43-5-43) A/R ZONE

Applicant is seeking area variances for the front yard setback to build a covered front porch (4 x 18) and increasing the degree of non-conformity of the side yard setback to build a rear open deck (20 x 14) on the residence.

Mr. Manley: The next application before the Zoning Board this evening is the application for Christine Reyes, 29 Albany Post Road in Newburgh, seeking area variances for the front yard setback to build a covered front porch (4 x 18) and increasing the degree of non-conformity of the side yard setback to build a rear open deck (20 x 14) on the residence. Ms. Gennarelli are all the postings and mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

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

Ms. Reyes: Good evening Board Members and residents of Newburgh. My name is Christine Reyes; I stand before you respectfully requesting an area variance to build a 4 x 18 covered porch and a 14 x 20 rear deck for my property. I purchased and have been residing at the house since ’03, 2003. It’s taken me a few years to fix up the house for a variety of reasons. This year I’m afforded the opportunity to do so. With regards to my front porch I originally had a cement walkway that led from the house, the entryway to the house extending to the edge of the road. Throughout the years the cement had started deteriorating and it became a hazard for…myself and visitors. That walkway was not only a eyesore but it caused a hardship like I said for myself and the guests. It was also dangerous for my small dogs. Whenever I opened my front door my concern has always been and to have extra caution you know, not letting them run out. You know, avoid the possibility of them getting injured or killed. The new front porch would help put a little bit of a barrier for the dogs and also if I have guests who have small children and it’ll avoid you know any incident. In addition, the new porch entry would face northbound over to my driveway and that will provide a safer pathway and walkway to my driveway. As seen in the photographs that I provided to the Zoning Board my house is extremely close to the road which imposed a safety condition for myself and my visitors. The distance from my house to the road was beyond my control because the house was built in 1930 and I purchased in 2003. The new porch it’s not going to extend past the corners of my house structure nor would it move forward onto the road or onto anybody else’s property. My goal is to achieve a safer passageway for exiting and entering my house than what was previously there. With regards to the rear open deck, it was made of…also made of cement and cinder blocks that throughout the years also deteriorated and was pulling away from the house which caused a safety concern. The…the new open deck would extend past the entrance of my house either or will it won’t impede anybody’s view. On each side of my property there’s a open land, there are no homes back there. I’m not going to block anybody’s view of the…the foliage or any other property. I’m unable to have the deck extend to the north side of my house because within the past couple of years I had a septic and leech fields installed. Raising the deck with the building lines would not be conducive because it would interfere with my septic system and pipes leading to the leech fields and it wouldn’t be very visually appealing. I would like to maximize the usefulness of my rear property. So in conclusion, building the porch and rear deck would be a major improvement that would bring beauty to the house and neighborhood.

Mr. McKelvey: I would just like to state too for everybody that’s here all the Board have visited the properties.

Mr. Manley: I would agree with you that when I did the site visit Albany Post Road the traffic is 30 MPH, they were easily doing 45-50 down…down your road and that’s where my concern and part of what we have to look at is safety. Part of my concern is I would have no problem granting a larger variance for the back deck to give you more in the back but my concern with the front is the proximity because there isn’t really that with a four foot deck sticking out you’re going to be fairly close to that…you know, to the edge of the roadway. And my concern is in the wintertime…or even in the summertime if somebody is on that deck or you know, and a car does come off and careen off the roadway a…it’s…it’s a likelihood that’s going to go into the house is probably very likely but if there’s somebody on that front porch they’re...they’re going to be a casualty. It just happened in the City of Newburgh they had an SUV that went into a…into a house and it was…created substantial damage to the home. So that…that’s one of my concerns a…I would have no problem giving you a large enough variance so that you could create a small porch to get onto and then get into the house with cover over it but extending eighteen…I think it was you were looking at eighteen feet…was that?

Ms. Reyes: Yes.

Mr. Manley: That’s going to be a fairly large…you know, fairly large length of the…the house there. That’s just one concern that…that I saw. Is there any way to make the deck wraparound perhaps?

Ms. Reyes: No, because on one side is my oil tank and the other side is my septic system so it wouldn’t be able to put it.

Mr. Manley: Can you go part of the way around the house? The south side of the house where the basement door is?

Ms. Reyes: The north…the north side.

Mr. Manley: Oh, I’m sorry; it’s the north side of the house with the basement door. Could you actually have the deck go around and come three or four feet out this way and come to the…you know, towards the front so that you have a walkway perhaps? Would that be something that…?

(Audience Member Inaudible)

Ms. Gennarelli: Excuse me, you’re going to have to come up to the mic and introduce yourself.

Mr. Macaron: My name is Brian Macaron, my company is Decks Unlimited, I drew up the plans for them. It’s essentially a four foot walkway as it is right now. And the steps that she has there are not up to Code so even if someone comes, essentially comes in their car or whatever and someone is walking out you’re going to have the same result if you have a front walkway or not. This gives her cover and safety getting in and out of her house which she does not have right now.

Mr. Maher: So let me ask you a question. So the…currently the plans are submitted basically that the entrance or exit onto the deck would be from the side, correct?

Mr. Macaron: Yes so instead of going out, if you have four steps you’re going out four feet essentially anyway…

Mr. Maher: Right, I got you now…

Mr. Macaron: …so if you’re going to have…

Mr. Maher: …my…

Mr. Macaron: …you’re going…

Mr. Maher: …my…

Mr. Macaron: …the steps…

Mr. Maher: …my point is…

Mr. Macaron: …coming out the left side.

Mr. Maher: …so when you…when you exit the house you’re coming out of the door you’re going right to the left. You’re not going straight down towards the road.

Ms. Reyes: Which is currently how my cement walkway that I had it went straight out into the road.

Mr. Bell: Right.

Mr. Maher: And about how far off the…off the ground is the front door? Ball park?

Mr. Macaron: It’s got to be…

Mr. Maher: It’s up 32 inches so…

Mr. Macaron: …they’re more than eight inches.

Mr. Maher: So roughly three foot or so your side…

Mr. Macaron: Yes.

Mr. Maher: …so you’d have to come out to a platform and then stairs down so…

Mr. Macaron: Inaudible

Mr. Maher: …ultimately you’re going to…

Mr. Macaron: Inaudible.

Mr. Maher: …be probably close…

Mr. Macaron: …pushing out a lot further…

Mr. Maher: …farther than four foot, okay.

Mr. Levin: In the winter when the plows go down…excuse me…does it spray the snow onto your property…onto your deck what was there?

Ms. Reyes: Yes.it could easily just hop onto the front of that walkway and then…

Mr. Levin: Steps.

Ms. Reyes: …right, where the cement block was so I mean usually we just have to shovel it. It doesn’t push it close to the house.

Mr. Bell: You’ve got a…you have just like a small berm there.

Ms. Reyes: I’m sorry?

Mr. Bell: You know when they plow if they just put a little small berm.

Ms. Reyes: Right.

Mr. Bell: Can you tell me from your front door to the road what is the actual footage? I didn’t have a tape. I wanted to measure that distance…is it right there? Eleven is that what it was?

Ms. Reyes: According to my survey, it probably would be approximately fourteen feet.

Mr. Maher: Well actually the survey states here it’s actually twenty-eight feet…

Mr. Scalzo: That’s to the center of the pavement…

Ms. Reyes: To the middle of the road.

Mr. Scalzo: …to the improvement…

Mr. Bell: That’s the middle of the road.

Mr. Scalzo: Yeah, so say you got twelve foot asphalt you…you’re…

Mr. Bell: Right.

Mr. Scalzo: …you’re potentially looking at…

Mr. Bell: …so about…

Mr. Scalzo: …sixteen feet.

Mr. Bell: …fourteen and then another four…four and a half out to the clearance…

Mr. Scalzo: …(Inaudible) domain from (Inaudible) but some…a lot of old deeds go to center line.

(Inaudible)

Mr. Manley: That’s to the center…center line?

Mr. Scalzo: Well they base it on the square foot your lot so yeah that…that portion that she can’t use another twenty-five feet. Typically the municipality a...has the opportunity through eminent domain to maintain up to twenty-five feet from the center of the improvement. So having said that now it becomes difficult as I look at this should the Town do a taking…well, the Town wouldn’t do a taking they’re not trying to subdivide here so a…you know, typically in a subdivision scenario they…they dedicate twenty-five foot from the center. But twenty-five foot from the center in this case would only leave for a three point two nine feet…

Mr. Maher: So the Town (Inaudible) a deck. Yeah, pretty much only on the one…well it’s only parallel. I mean there…there needs to be an entrance in the front obviously.

Mr. Macaron: Yeah, regardless, as much in the front entrance as the back entrance for an egress that she needs to have both entrances.

Mr. Scalzo: Well the other thing too as far as the…I’ll call it for the lack of a better word snow storage as they plow, you know, because the deck would be elevated the snow would go underneath it as opposed to you know, if you had a concrete paver rather than an interior (Inaudible) and…

Ms. Reyes: Right.

Mr. Scalzo: …aesthetically it’s going to change the look of your house with a roof over it too, you know, it’ll give you a little shading on the front.

Mr. Macaron: It will be going to the left instead of going out…

Mr. Maher: Correct.

Mr. Macaron: …further out.

Mr. Bell: And it would add a little more safety advantage, I mean, with a deck you figure they come around that corner and they hit that deck first it’s not actually going to go like it is now straight and more or less into the house. I mean, still not a good thing but…you know…

Mr. Scalzo: But as she had mentioned, you know safety purposes, somebody comes with young…

Mr. Bell: Yeah.

Mr. Scalzo: …children if they bolted out the front door…

Mr. Bell: Yeah, exactly.

Mr. Scalzo: …at least they wouldn’t bolt straight to the street…

Mr. Bell: Yeah, exactly, exactly.

Mr. Scalzo: …as opposed to the…

Ms. Reyes: Right.

Mr. Macaron: It’s going to be elevated that whole deck is three feet so that gives you some sort of protection as well.

Mr. Bell: Exactly.

Mr. McKelvey: Is it going to have a railing on it in the front?

Ms. Reyes: Yes, it’s a...

Mr. Macaron: Yeah, Trex, Trex.

Mr. Manley: Have you talked to the Town at all about maybe asking them or considering that they may be put in a guard rail at all? Have you ever…?

Ms. Reyes: I never thought of that, no.

Mr. Manley: Just around… around that curve there…just before your driveway and then it would be open at your driveway but then have it continue, you know, just past your house. Just so that if anybody did ever come down…for safety reasons. You may want to contact the Highway Department. It is a Town road…

Ms. Reyes: Okay.

Mr. Manley: …and you know, maybe they can run some speed calculations. They have a…a speed camera that actually records so they can see what the average speeds on the road are. The Police would have to do that and then they can make a determination if that..., you know, cause regardless of what you do that is a very, very bad corner…

Ms. Reyes: Yes.

Mr. Manley: …you know.

Mr. Scalzo: It’s an enforcement issue. It’s really not a…

Mr. Bell: Yeah.

Mr. Scalzo: …you can reduce the speed as much as you wanted to. It’s all about enforcement.

Ms. Gennarelli: Darrin, is your mic on?

Mr. Scalzo: I’m mumbling. I apologize.

Ms. Gennarelli: That’s okay but is it on now? Yes? Okay.

Mr. Scalzo: Yes it is.

Ms. Gennarelli: Oh, there you are.

Mr. Donovan: I heard everything you said.

Mr. Scalzo: Thank you Dave.

Ms. Gennarelli: It’s been very quiet in here.

Mr. Manley: Are there any questions from the public with regard to this application?

Mr. Feder: Yes, I’m Bill Feder, Rockwood Drive. It sound like the intent is more of a walkway than a recreational deck for the front. So I think it’s more a function of traversing and recreating where people are going be sitting idle and at risk of being hit? Has it ever happened before? Another question, how many times have you ever had somebody in the front yard or the cars screeching?

(Inaudible)

Ms. Reyes: No, I don’t usually hang out in front of my house.

Mr. McKelvey: That’s what I was going to ask you, do you plan on sitting out there?

Ms. Reyes: Not really.

Mr. Macaron: That’s what the back deck is for.

Mr. McKelvey: Yeah, that’s what the back deck would be for.

Mr. Maher: Just a note on the back deck…on the variance obviously it’s not to increase the degree of non-conformity so not going close to the twelve point nine two feet I believe it is to the property so you’re simply going past the side of the house. So your house isn’t parallel to the property line…

Ms. Reyes: No it’s not, it’s kind of angled.

Mr. Maher: …no I…right, so just…just I don’t want to have you come back here again just understand that twelve nine two is off of the actual line wherever that line may fall. I see the deck offset from the side which you fall in that but I just want to make sure you remember that so you don’t move the deck over and you’re back here again for…for a variance for that.

Ms. Reyes: Right.

Mr. Manley: The last item to address with this application is the a…Orange County Department of Planning. Their comments are the Planning Department has reviewed the submitted materials regarding the appeal for area variances. While the Zoning Board of Appeals must weigh the local issues while balancing the needs of the appellant with potential impact on the surrounding area it does not appear that inter-municipal or countywide impacts would result if the Baord finds that granting relief is warranted in this matter. The County recommendation is Local Determination. Are there any further question from the Board with regard to this application?

No response.

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

Mr. Levin: I make a motion to close it.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

(Time Noted - 7:41 PM)

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ZBA MEETING – NOVEMBER 22, 2016 (Resumption for decision: 8:54 PM)

CHRISTINE REYES 29 ALBANY POST ROAD, NBGH

(43-5-43) A/R ZONE

Applicant is seeking area variances for the front yard setback to build a covered front porch (4 x 18) and increasing the degree of non-conformity of the side yard setback to build a rear open deck (20 x 14) on the residence.

Mr. Manley: The next application before the Board this evening is the application of Christine Reyes, 29 Albany Post Road in Newburgh. This is a Type II Action under SEQR. And we will go through the tests for the area variance? The first again being whether or not the benefit can be achieved by other means feasible to the applicant? Is there a discussion on that?

Mr. Bell: No.

Mr. Maher: No, once again you need a front entrance on the house and the fact that it’s going in the direction that it’s less likely of an issue being close to the road.

Mr. Manley: The second item is whether or not there is going to be an undesirable change in the neighborhood character or detriment to nearby properties? Is there a discussion on that?

Mr. McKelvey: I don’t think so.

Mr. Bell: No, there isn’t.

Mr. Manley: The third being whether or not the request is substantial in nature?

Mr. McKelvey: No, no it’s not.

Mr. Levin: I don’t believe it’s substantial.

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

Mr. Masten: No.

Mr. Bell: No.

Mr. Manley: And the last again is whether or not the alleged difficulty is self-created? Relevant but not determinative. There’s no…

Mr. Bell: It’s not self-created. The road…the road is already there.

Mr. Donovan: Well unfortunately the law computes knowledge when you buy and you know that you need so…

Mr. Bell: That’s true, okay.

Mr. Donovan: …it is actually a self-created…

Mr. McKelvey: Yeah.

Mr. Donovan: …which of course is not determinative as previously indicated.

Mr. Bell: Okay.

Mr. Manley: And again the Board has to balance all the tests and determine which one falls into and…and balance the weight of each of the tests that were used. Given that information do we have a motion for either approval or disapproval on the application before us?

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

Mr. Manley: I have a motion to approve do we have a second?

Mr. Levin: I'll second.

Mr. Maher: Just note that’s on both variances.

Mr. Levin: Pardon?

Mr. Maher: That’s on both?

Mr. Manley: Correct.

Mr. Bell: Yes.

Mr. Manley: We have a second from Mr. Levin. Roll call please.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

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

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:56 PM)

ZBA MEETING – NOVEMBER 22, 2016 (Time Noted – 7:41 PM)

JMDH REAL ESTATE OF NEWBURGH, LLC. 1281 ROUTE 300, NBGH

(RESTAURANT DEPOT) (95-1-8) I/B ZONE

Applicant is seeking variances for the maximum allowed square footage of signage and the minimum 15 foot setback from the street line for a free-standing sign to erect signage for an amended site plan approval application for the Restaurant Depot before the planning board.

Mr. Manley: The last Hearing this evening before the Zoning Board of Appeals is the scheduled held open from our October 27th meeting JMDH Real Estate of Newburgh, LLC., 1281 Route 300, Newburgh also known as Restaurant Depot area variances for the minimum…for the maximum allowed square footage of signage and the minimum 15 foot setback from the street line for a free-standing sign to erect signage for an amended site plan approval application for the Restaurant Depot before the planning board. Ms. Gennarelli the mailings and postings were in order?

Ms. Gennarelli: They were, we were waiting for the Orange County report.

Mr. Manley: Correct, which I have here. I will go ahead and read into the record the Orange County Department of Planning’s report. The comments from them is the Planning Department has reviewed the submitted materials regarding the appeal for an area variance while the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impact on the surrounding area it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We note that this is a busy area of NYS Route 300 the Town and the appellant should ensure that the sign is designed in such a way that it does not distract motorists. County recommendation is Local Determination. Good evening.

Mr. Frank: Good evening Board Members, Mr. Chairman, Madam Secretary, Counsel, my name is William Frank, I’m with the law firm of Blustein, Shapiro, Rich & Barone and I’m here on behalf of the applicant. With me this evening is Larry Cohen who is a representive…a representative of the applicant and also Larry Marshall from a…project engineers, Mecurio, Norton, Tarolli & Marshall. And I would like to note before a make a few remarks we a….we were able to also obtain a copy from the Board’s agenda website this evening and that referral…that response from the County dated October 20th that has been be received by us as well so I acknowledge receipt of that. I believe the first presentation back in October this is a continuation of that Public Hearing there was some issues that were raised with regard to the signage and a…Larry has some diagrams up on the easel which perhaps it would be best to first speak to him before…before anything else to get an idea of the location of the proposed signs not only on the building which is…was discussed last time is a flag lot. It’s not directly abutting Route 300 and the one variance that’s being sought with the setback from the street for the monument sign which is a request for a three foot variance from the fifteen foot setback requirement. So If I may for the moment, turn it over to Larry if it’s okay with Mr. Chairman?

Mr. Manley: Certainly.

Mr. Frank: Thank you.

Mr. Marshall: As previously indicated at the October meeting the…there’s a total of nine a…non-directional signs proposed for Restaurant Depot. I’ll begin along 300 because that’s the a…I think that’s one of the most important signs and that is sign “I”. That sign is a thirty-two square foot monument sign standing four feet tall and also the subject of one of the…the variances. We proposed this sign to be located twelve feet off the front property line, zoning code requires fifteen. As we demonstrated in your a…variance addendum the location of this sign is very important as your approaching specifically from the southerly direction up 300. There is a turning lane there a…to turn into the site along with a traffic light but because of the existing topography any adjoining sign for the a…Hudson Valley Resort and Conference Center a…this sign becomes basically cut substantially down where you can’t…you wouldn’t even be able to see a portion of the sign as your approaching that. So what we did was we provided the Board with a visual simulation of what this sign would look like from the roadway…from the beginning of that turning lane so to…if…if we were to shift it back…the sign back a portion of the sign gets blocked by existing topography and signage. So a…while it is located closer to the road a…you know, we…we feel that it’s not too close to the road but it allows the…the sign to be seen. The remaining signs, the remaining eight signs are located on the building itself demonstrated in the again in the packet that’s provided. They do consist with a series of the logo and the slogan for Restaurant Depot. I can show you a generic and we can go through individually if…if the Board wishes but that’s pretty much a repetition of the same signage.

Ms. Gennarelli: Larry, if you could you could just take that microphone off and…if you’re going to you know…thank you.

Mr. Marshall: The signage that we’re proposing consists of a three different circular Restaurant Depot signs. The largest of them being twelve feet in diameter then there’s a ten foot diameter…two ten foot diameter signs and then a five foot diameter sign and then the remaining signage is the…the slogan of ‘where restaurants shop’. And these are…these are featured basically on the two corners of the building. The…the…the southerly corner of the building a will feature two of the…the ten foot circular signs and then one of the ‘where restaurants shop’ slogans near the top of the building. We provided those a demonstrations on some of the renderings but basically this would be the…the they call it the west eleva…or the left elevation but also the south, you basically see form and function as far as overall scale of the sign in relationship to the height of the building. What this would be with the circular Restaurant Depot sign would be mimicked on the opposing corner along with the ‘where restaurants shop’. These signs…these signs specifically…these signs specifically would provide identification to the people traveling up…up from 300. Because this building is completely invisible from…from drivers along 300 we feel that the entrance sign in…in conjunction with the signage on the corner of the building is important because you can’t…you’re not going to identify this sign because it serve…because this entrance drive serves multiple properties you’re not going to identify this building easily as being that’s the Restaurant Depot. You know, most…the majority of retail facilities you can see that the building itself from…from the entranceway and you know it’s easily identifiable. So those are a…three of the signs, the other signs are primarily located on the NYS Thruway side of the building but again it’s a repetition of the circular Restaurant Depot logo and the ‘where restaurants shop’. These signs are slightly larger, they’re twelve foot in diameter…the circular logos are. In…a…Restaurant Depot because of the lack of visibility along 300 they a…they want to identify their store location to drivers along 300 or along the Thruway and 84. These signs have been reviewed and approved by the Thruway Authority. We’ve provided the…the a…the approval letters to the Board a…in the packet and the only other remaining sign is a small five foot diameter logo right on the front of the canopy identified as sign “C”. In total a…the advertising signage is six hundred and eight square feet a…so we would be seeking a variance for that.

Mr. Maher: So sign “A” really is the…the sign you’re going to be visible driving up from 300?

Mr. Marshall: Sign “I”.

Mr. Maher: Sign “A” and “B”?

Mr. Marshall: Sign “I”. What? Did you say the…

Mr. Maher: No “I” is obviously at your…at your monument sign at 300 there.

Mr. Marshall: Yes.

Mr. Maher: But driving up so your…your need for sign “A” is because of the driving up from 300 to identify the building.

Mr. Marshall: Yes. Sign “A” in conjunction with sign “H” a…yes, from 300 absolutely, sign “A” is the most visible. Sign “H” also serves a purpose of providing a…a…people that come in through the Hudson Valley Resort & Conference Center…

Mr. Maher: So do you have an entrance through there? Is your sign located on 17K?

Mr. Marshall: There is no sign on 17K.

Mr. Maher: So what traffic would you…would you expect through the Conference Center?

Mr. Marshall: I think mostly people that just a…

Mr. Maher: Know where the building is already, right?

Mr. Marshall: Yeah.

Mr. Manley: The a…the Restaurant Depot, is that open to the general public?

Mr. Marshall: What? It is not, it is a…a store that you have to either own a restaurant or be a member of a firehouse or there…there’s you can…membership is free.

Mr. McKelvey: Non-profits…non-profits.

Mr. Marshall: It’s a…yeah, non-profit associations but it’s primarily…it’s not somebody…I just can’t go in and get a membership like a Sam’s Club or a Costco or…or those type of membership clubs. The memberships are free but you have to demonstrate that you’re part of either a restaurant or a non-profit.

Mr. Manley: So like a Lowe’s or a Target or a Walmart it’s not something that you’re going to have a lot of foot traffic from the general public is that fair to say?

Mr. Marshall: Yeah, yes.

Mr. Manley: So most of your…most of your customers are going to come from a particular nitch group rest…like you said restaurant owners, you’re going to have volunteer organizations that are going to be a…patronizing the a…the facility?

Mr. Marshall: That’s correct.

Mr. Cohen: Hi, my name is Larry Cohen from Restaurant Depot. I can answer specific questions about the business operations if you have any.

Mr. Manley: Okay.

Mr. Cohen: But what you said is correct.

Mr. Manley: Okay. Where is most of the advertising that you’re going to be utilizing? What are…how are you going to advertise? Or let’s just say to direct people and traffic to this particular location? You have other locations…

Mr. Cohen: Yes, we have salespeople they’re more good will ambassadors not salespeople as much but they go actually and visit each of these customers.

Mr. Manley: Got you.

Mr. Maher: Is there a…is there a branding requirement for the Restaurant Depot as far as the signage goes?

Mr. Cohen: Well this is our standard signage package that we put on all our buildings.

Mr. Maher: No, I understand I…what I’m saying is there a requirement? This isn’t a franchise so it basically…

Mr. Cohen: No, no.

Mr. Maher: …it’s a corporate store, correct?

Mr. Cohen: It’s a corporate store, yes.

Mr. Maher: So there’s no actual requirements as far as signing packets other than standard?

Mr. Cohen: That’s correct. Something that’s different from us we…we pull as you said into a small nitch and that nitch travels much farther. A grocery store or a Target will go to a neighborhood store and there’s one in each neighborhood. We pull from a twenty-five mile radius and we’re very specific to our customer base. A lot of them haven’t heard of us, don’t know about us and it’s a source for somebody who realizes they can get what they need that they’re not getting now.

Mr. Levin: When you look at your signs “F” and “G”…I’m sorry, I hope Betty doesn’t get my coughing in there…”F” and “G” seems to me aren’t even seen because a…it’s a steep down to the Thruway so somebody coming down the Thruway wouldn’t even see that sign. When they get off the Thruway and come around they’re actually to “D” and “E” their back is to it. But…

Mr. Cohen: We…

Mr. Levin: But…but I want to emphasize “D” and “E” because when they get off they’ll have to get on 300, they’ll make a right on 300 and that is a perfect spot “D” and “E” making it even bigger. So if you take away these two signs that sign should be big because I was driving down 300 going to work and that building just stands out.

Mr. Cohen: That’s absolutely correct. When you come down off 300 and I was telling Larry that and you make the right you can see the corner of the building. And since the building is pretty much hidden from anywhere else a lot of customers will see that when…when you’re on the Thruway though you can absolutely see it. Either the Thruway or 84 it sits up on the hill and you see it and that’s all part of our plan is that they see it, they know it’s the next exit, they get off and you can see it because when you’re very close it’s hard to see. So we like them to have an idea of where it is.

Mr. Levin: Well that to me is the most important spot that you have “D” and “E”.

Mr. Cohen: Right, well that’s once they get off, agreed.

Mr. Levin: Of the course the sign on the road is (Inaudible)

Mr. Cohen: Right, agreed.

Mr. Maher: Well I mean I have to respectfully disagree. I think “F” and “G” obviously on the Thruway side I don’t see an issue there. I…I believe that…that whether they’re coming there today or next month they know it’s there now and that does identify it. I…I have no concern there.

Mr. Cohen: It actually helps us when a salesman walks in and he says ‘oh, I’ve seen that building’, absolutely.

Mr. Maher: Right and it is visible, I mean, anything that grows on the Thruway people do notice whether it’s high or low I mean it does catch your eye so on that part I don’t necessarily dis…or necessarily agree. My only, you know obviously we’re trying to minimize the variance needed. I just don’t agree with the sign “H” I guess is my issue only because of the fact it’s only visible coming from…from the Resorts parking lot per se. There’s no entrance there. The visibility of sign “A” is obviously that of coming up the road identifies the building. As you stated though it’s…it’s a…subscription not subscription based but it’s a membership base?

Mr. Cohen: Right.

Mr. Maher: So you’re not just driving by coming in, you’re already going there for a reason. You’re going to see the sign, your pedestal sign or your…your monument sign there to begin with. You know again, this is my suggestion just me talking as far as minimizing the request, you know, with what’s needed you know. “F” and…and “D” I…I agree, it’s a benefit hitting the Thruway, people seeing it. I just see…see “H” as being repetitive and not really being visible from anything. Obviously you’re again just off 300 and the way it’s facing, the building, I don’t think it’s going to be too visible there going up the hill, my two cents.

Mr. Scalzo: To tag onto Mike, I don’t necessarily agree with Richard but I don’t agree with Mike’s methodology or…or his thought process. For signs “D” and “E” I travel the Thruway…

Mr. Donovan: Usually you guys get along so well Darrin.

Mr. Scalzo: …I know, I know, it’s a tough a…(Inaudible) but I travel the Thruway every day. I get on at Newburgh, I can come off of 84, I get on the Thruway and then I navigate that sweeping turn and because I do it every day I know exactly what to do. However, distracted drivers are a concern for everyone and those people that are not very familiar with the area may be very distracted by that ten foot circular a…Restaurant Depot sign. Thankfully it’s not red or else they may want to stop but that’s…

Mr. Cohen: But it’s…it’s off in the distance in the back. If you’re not looking for it it’s not visible where it’s up front but if you’re looking for it and get off and I know and how Mr. Levin has seen as you get off if you’re looking for it and you look up on the hill you’ll see that sign. But it’s not in your…you have to look back because it’s not in your…

Mr. Scalzo: Well along 300…

Mr. Cohen: (Inaudible)

Mr. Scalzo: …I understand with what you’re looking for but my concern is the people getting on the Thruway trying to navigate that hard right turn that…that will be and if it’s illuminated a…over illuminated, I’m not quite sure what the luminesce requirements for the planning board or…or what they will hold you to but I just…I wouldn’t want it to be a distraction for drivers entering the Thruway.

Mr. McKelvey: That’ a long…that’s a long sweep too.

Mr. Maher: Poor design.

Mr. Scalzo: Could be Mike.

Mr. Cohen: You know one thing I wanted to point out is just the scope of these signs.

Mr. Manley: It’s also very dark.

Mr. Maher: Well it’s illuminated. If they turned the lights on it would be good.

Mr. Scalzo: Actually in that area it’s not. They have high mass lighting structures there. Route 300 is kind of dark but up in that complex it’s a…pretty bright.

Mr. Cohen: When we’ve been before planning boards before a big goal is for them to not have over aggressive signage. And when you look at the scope of the sign on the building it’s really a small designation as opposed to forty foot letters and a billboard. It sounds like…it sounds like a big square footage but on a building this size that’s long and narrow, this isn’t a multi-floor building where there’s a small wall. It’s one huge wall with one little sign at the end. So, I don’t know if you agree with that but in our view it’s not an overwhelmingly big signage request.

Mr. Maher: What you’re saying basically the Code it should reflect the…the square footage of the building (Inaudible) in deciding with more.

Mr. Cohen: Yeah, because if it was six feet, six floors and it was a much narrower instead of being four hundred feet in length it was eighty feet in length and it went straight up that would be a huge sign. But in the scale of a…I’m not even sure if this is the whole building but on some of the…

Mr. Marshall: (Inaudible)

Mr. Cohen: …and again it’s cut off and you still see it’s not a huge sign that’s overwhelming.

Mr. Marshall: There are…there are several municipalities that utilize…sorry, there are several municipalities that utilize square footage of…of the building to demonstrate their sign size. Yours obviously doesn’t but…

Mr. Manley: Well and I think that you’ll probably get agreement from this Board that the Town pretty much our signage calculation is not really with today’s requirement for signage. However the Board is still constrained with insuring that we do not go beyond a reasonable area variance request. When we start giving large sums of then…then we’re really…you know, we’re really…you know then we’re really legislating versus acting as an appeal Board. I think one of the things that I’ve mentioned in the past and we had a hotel that was coming for a signage request and a…you know, my big thing is how many people today really use signage as a means of finding location. That really is decreasing…

Mr. McKelvey: GPS.

Mr. Manley: ….because most people are using their GPS and they’re using Google maps and I do it all the time. I don’t even look for signs anymore. I use my…my GPS on my phone. That’s my big way of finding places. So in my business I make sure that my market area knows and that I have a very, very big presence on Google so that I’m drawing that traffic you know, via you know the Google maps and the GPS versus you know, the signage because signage today is not something that…that I use.

Mr. Marshall: Well I…I would…would tend to agree with your assessment that, you know, I personally do very much the same. I would use my GPS to get close but I don’t use it to make a turn. Ultimately, I have to get to this location and then I identify yes that is the Restaurant Depot. And approaching this whether it be from the north or from the south as Mr. Cohen had indicated their radius of pull is much larger than a typical retail establishment because it is somewhat of a destination but the closest to the south is about fifty-five minutes away from here. The closest to the north is up in Albany. Correct? So you know you’re pulling from between you know, let’s say halfway between those two areas. The easier that you can identify to somebody that is where I’m going the easier they are going to navigate either do I…should I be in the right lane, should I be in the center lane, should I be in the left lane? You know where I should be along 300 and where I should make that turn. If the worst thing that could happen is somebody makes a turn into Denny’s or makes a turn into Finkelstein thinking that those are the entrances here a…and if you can identify yes, this is the Restaurant Depot from somebody traveling south on the Thruway or traveling north on the Thruway or you know a…along 84 the easier that you can identify this building to those drivers and saying, this is where we are…the easier they’re going to get here.

Mr. Manley: What about a stanchion sign versus signs all over the building but one stanchion sign that goes in a corner that goes up, you know, has that ever been considered versus putting it on all sides of the building do a…you know, and I’m not talking a huge sign but one that would you know be illuminated and that people could see maybe from three corners versus…?

Mr. Marshall: A…well one of…one of the a…speaking not from the perspective of…of the owner a…two aspects of that one is your code I believe only allows one free-standing sign that would be a variance that we would require if it was a…if it was a second free-standing sign. The second part is of a large free-standing is going to be substantially more a…costly than just…than putting that same sign on a building itself. The foundation, the electrical wiring a…you know for…built for a sign of that size becomes very costly.

Mr. Cohen: It would also have to be bigger than the building. You could put it in the front corner and take two of the sides but it would have to be taller than the building and the building is at thirty-six feet so that would be a big sign especially to be seen from the highway.

Mr. Donovan: So Larry one of the things the Board has to be concerned about is the substantial nature of the variance, right? And…and we talked last time whether or not you could use the Thruway and we determined that you can’t so…so Code Compliance, I don’t know if you’ve seen this, they…they’ve done a calculation indicating that you know the percen…on a percentage basis you’re looking at like two thousand, three hundred and sixty three percent…

Mr. Marshall: Yeah.

Mr. Donovan: I wonder if you can in terms of, and…and the Board knows since we’ve been down this road before, it’s not just the mathematical computations to determine whether the variance is substantial, it’s the overall effect or impact or granting the variance. And I…I don’t know if we have a good feel for what’s the square…how big is the building? What percentage of the…of the face of the building each size being occupied by the sign? What’s the…is it…is it while it looks enormous by…by reference to a mathematical calculation, you know, what’s the real word…real world impact? Is that accurate? Is it not accurate? Cause I think your point before is well taken that most Codes will do it as a percentage of the…of the building. We don’t so that’s what we have to deal what we have to deal with.

Mr. Cohen: While…while Larry is looking for that I’ll…I’ll note that one of the…one of the obstacles or one of the issues we have here is this being a flag lot. It’s not directly addressed in…in the Town Code as it’s written right now. So it’s…it’s hard to calculate that frontage but go ahead Larry.

Mr. Marshall: As it relates specifically to a…okay, first is building size, the building size itself I believe is sixty-four thousand square feet just under sixty-four thousand square feet as far as the physical footprint of the building. As…as Larry mentioned the building height itself is thirty-five, the wall of the building other than the small…the…the lower canopy area a…the building wall stands thirty-five feet tall. The building length is two hundred and eighty-five feet long that gives you a square footage area of one of the…of the front wall, we’ll call it the…the easterly wall of just under ten thousand square feet. The building is approximately square that’s about forty thousand square feet of building wall area to which we would be asking for six hundred and eight or not even six hundred and eight cause we’re down…if you remove the thirty-two square feet below a…what is that five seventy…five seventy-five?

Mr. Maher: Is that thirty-two one side or two sides?

Mr. Cohen: What was that?

Mr. Maher: Thirty-two.

Mr. Marshall: Thirty-two two sides…thirty-two on each side.

Mr. Maher: So sixty-four square feet so it even lessens it…

Mr. Marshall: Yes.

Mr. Maher: …the square footage on the building.

Mr. Marshall: Well the building…I didn’t count thirty-two and thirty-two down at the right of way.

Mr. Donovan: Larry, does the building have windows?

Mr. Cohen: No.

Mr. Marshall: No it does not.

Mr. Donovan: No windows at all?

Mr. Marshall: No it does not. It has many, many exit doors but no windows.

Mr. McKelvey: You did figure your pylon size is two sides…square footage.

Mr. Maher: Yeah but you said thirty-two square feet is that a sixty-four foot actually?

Mr. Marshall: It would be sixty-four…if you count both sides then it would be sixty-four, yes.

Mr. McKelvey: We count both sides.

Mr. Marshall: Okay.

Mr. Donovan: Larry, I know you engineers are good with math so what’s…what’s the percentage of the building that’s occupied by the signs? If we’re (Inaudible)

Mr. Maher: (Inaudible)

Mr. Marshall: In total?

Mr. Maher: It’s actually point one percent.

Mr. Marshall: I mean it…it…it’s five hundred and…five hundred and seventy-five over forty thousand.

Mr. Donovan: Yeah, I couldn’t do the math in my head though.

Mr. Marshall: I can’t either.

Mr. Donovan: But, but Mike…

Mr. Maher: Well for an easier method it’s six hundred and forty square feet if you add everything together for your complete sign package and sixty-four thousand square feet so it’s…

Mr. Scalzo: Yeah it’s one point four percent.

Mr. Marshall: One point four of the…of the wall area.

Mr. Maher: Right.

Mr. Marshall: And that includes the sixty-four down below.

Mr. Cohen: It’s not considered the surrounding area and the fact that you can’t see anything but the monument sign from the street, from 300, we don’t believe it’s much of a deviation what’s proposed than what’s applied for…it’s not much of a deviation from the commercial development that you have in this area.

Mr. Marshall: It’s not substantially different that the three hundred and seventy-eight, I believe, three-hundred and seventy-eight square feet that was granted a variance for the Hilton Garden Inn, you know which is essentially a flag lot. It is on a…a private road, frontage on the Thruway which wasn’t counted but it was the…limited a…you know, forty square feet I think it was that was a…that was permitted. They requested a three-hundred and seventy-eight square foot variance. Obviously we are bigger than that. We are substantially bigger than that with almost six hundred…with over six hundred with the difference being the Hilton Garden Inn has about a twenty thousand square foot footprint this has sixty-three thousand square feet a…and I think that one of the other differences is that you know, just the…the lack of visibility along 300. We’re trying to notify motorists that hey, this is the Restaurant Depot. This is where you’re headed. This is where you want…if you’re headed here, this is where you want to be.

Mr. Manley: At this point we’ll open any questions or comments from the public. If you have any questions or comments regarding this application please step forward and state you name.

No response.

Mr. Manley: Are there any further questions or comments from any of the Board Members? Concerns?

Mr. Maher: I just want to get the math right. So, are we assuming six hundred and forty-six square foot is the total square footage needed? That includes the directional?

Mr. Cohen: If you’re calculating both…both sides of the monument.

Mr. Maher: Yeah, you’re required to so it’s is not an issue there.

Mr. Cohen: Six forty-six.

Mr. Maher: Six forty-six is what I got, right?

Mr. Marshall: If you include the directional.

Mr. Maher: We’re including the directional, right Dave, I’m assuming.

Mr. Donovan: Yeah so Mike I’m glad you asked that because originally I think I…I…the application was like six hundred and seventy-seven square feet and then you were modified to likes six hundred and five and now you’re at a different number.

Mr. Marshall: Well that…so six a…the six hundred and seventy whatever square feet that came from the sign company which drew boxes around the circles…

Mr. Donovan: Okay.

Mr. Marshall: …so with our revised application we came up with six hundred and eight a…because reading through your Code and this may be in misinterpretation but I felt that based upon your Code that the directional signs were not…were exempt from a…as long as they were under a certain square footage were under the regulation were…were…

Mr. Donovan: I just had a list…

Mr. Marshall: …outside of the…

Mr. Donovan: …the last meeting, six hundred and five point nine. The percentage calculation that we got from Code Compliance indicates six hundred and five point nine.

Mr. Marshall: That’s what they came up with? Okay.

Ms. Gennarelli: They didn’t calculate it; they just took what was in the minutes.

Mr. Donovan: Okay.

Mr. Marshall: Six hundred and eight is what we have in our application. That excludes the directional signs, the two directional signs on the site a…J-1 and J-2…

Mr. Donovan: Well unfortunately we don’t have Code Compliance here but why…why…why do you think you can exclude the directional sign?

Mr. Marshall: The…in the…in my reading of the Code and I apologize I didn’t bring that Section of the Code with me this evening…

Mr. Donovan: Don’t worry Larry that’s why I come.

Mr. Marshall: I figured…I figured you were reading while I was talking. The…the directional signs are under a separate regulation other than…they’re under the same heading but they’re under the…under a separate area than the calculation for advertisement signs. And we felt that these, the six hundred and eight is the…is the advertisement signs and then the six square feet for the directional signs were exclusive of that.

Mr. Donovan: Okay.

Mr. Marshall: If…if the Board disagrees we have no problem adding that back in that’s an additional six square feet. They’re three square feet per sign.

Mr. Donovan: Yeah, so 185-14-B-(1)-c talks about a sign or signs free-standing or attached to a building announcing a business establishment on the same lot the total area of all such signs shall not exceed one half of total length. Now Subdivision 2 of that does talk about directional signs I don’t know, we don’t have Code Compliance here, I would suggest to the Board that we add those in because otherwise I think you want to have a full a…

Mr. Maher: Alright so think it’s from six o eight to six fourteen…

Mr. Donovan: Yeah.

Mr. Maher: …and then we again…

Mr. Marshall: The double sided.

Mr. Maher: …thirty-two square foot additional for the…for the monument sign would bring it to six forty six all inclusive.

Mr. Cohen: That gives us a percentage of…?

Mr. Donovan: A lot, but it gives you the one percent. Relative to the required there...

Mr. Cohen: No, I talking about relative to the building. Of course…

Mr. Donovan: Right.

Mr. Cohen: …of course, under the Code the way it’s written it’s a large percentage.

Mr. Marshall: We have a little less than fifty feet of frontage, usable.

Mr. Manley: You said that your comparison was the Hilton Garden which you said their variance was…?

Mr. Marshall: Three hundred and seventy-eight. Correct? Three hundred and seventy-eight square feet a…which they had a permitted capacity of I believe…I believe they had frontage about seventy-five feet so they had a permitted area of like thirty-eight whatever it may be.

Mr. Maher: So basically a thousand percent over their allowed.

Mr. Marshall: Essentially.

Mr. Manley: And you’re actually looking for a couple hundred above what they were approved at…?

Mr. Marshall: Yes.

Mr. Manley: …and your case for getting that couple hundred what they’re approved at is based on the fact that your building is you’re stating is larger therefore you believe you should be entitled to a little bit more square footage because of that and…

Mr. Marshall: I…I think…I think the…the building size itself is…is larger a…and the…the having a smaller sign in it would actually be…the sign would get lost you know, on a building wall of that size looking at it at that distance the sign would actually get lost by reducing the size. The…the second part is the pure lack of visibility from 300 and I think that’s paramount to Restaurant Depot which actually attracted them…the location of this and the visibility from Thruway and 84 is what attracted Restaurant Depot to this site and saying look this could work for us because we have this visibility but without having the signage on that side that’s not capital…capitalized upon. So I think the fact that you have lack of…lack of visibility from 300 and the overall physical size of the building would be the reasons why we’re asking for a couple hundred more square feet than what the Hilton Garden Inn did.

Mr. Cohen: And I think one of the things we wanted to impress upon the Board we understand this is from in terms of the Code is asking for a substantial deviation from the Code as written as we said earlier the Code doesn’t hit on all four squares. It doesn’t hit what you do with a flag lot. In a case like this, you know, what’s substantial is determined by the totality of the circumstances and not necessarily the percentage deviation as…as Larry correctly pointed out you know where...where something if you talked about the building coverage you’re talking about one percent thereabouts. And again as for visibility from 300 we’re talking about the monument sign. We don’t believe there will be any disruption of traffic on...on 300 because of that one monument sign where we’re seeking a small variance of three feet and issues of those nature…of that nature.

Mr. Manley: Could you explain sign “C” what is the purpose of having the purpose of having the Restaurant Depot logo on sign “C” you have it on “A” and “B” already is that something may be redundant that…I mean you already have it the left side on…on the top there.

Mr. Cohen: On many of our locations we have this big canopy and you can’t see that sign “A” and “B” and it’s more prominent. That’s the least important sign here. It does denote the entrance and if you see it’s centered right over the entrance so it kind is a focal point when you park. It’s the least important of the signs the other ones will get you there. Once you’re there, I agree with you, you’ll see it but it does…a lot of the Towns in their Code are having you denote where the main entrance is. I’m not sure why I see that more and more and this is kind of what it does. So it’s not as important as the other ones other than if we drive to the main entrance.

Mr. Maher: It represents a little less than two percent of the total request.

Mr. Manley: I guess what I was looking at is if “H” and “C” if both could be removed you’re looking at almost a hundred square feet that…and then instead of you’d be splitting the difference between the two hundred…you’re looking for two hundred above let’s say what Hilton Garden is looking with those two out of the picture you’d be looking at only a hundred above what they were at.

Mr. Marshall: “H” is the…just for reference “H” is the one that’s on the southerly side of that front corner and then “C” is above the entrance.

Mr. Manley: Who owns the…who maintains and owns the road that goes into the a…the Hudson Valley hotel there?

Mr. Marshall: So Restaurant Depot owns up until their truck entrance, shortly after the truck entrance within ten…fifteen feet is a…that’s Restaurant Depot’s obligation. There is an easement for the Hudson Valley Hotel & Conference Center to utilize that down to 300. But beyond that it’s the obligation of a…Hudson Valley Inn & Conference Center to maintain that.

Mr. Manley: Okay, that’s the way that I came in when I went to look at the site and you know, obviously there’s a lot of construction but it was a bit of a…I mean certainly had I known how bad it was I probably would have went the other way.

Mr. Marshall: The…the…

Mr. Manley: Is there a plan to pave that so that…or is it to leave it as is?

Mr. Cohen: We’re paving from 300 up to our building. Our property is being retained and widened as per the planning board.

Mr. McKelvey: You were paving the other day.

Mr. Cohen: Yeah, from 300 up to our building.

Mr. Manley: Beyond your entrance…

Mr. Cohen: No.

Mr. Manley: …all the way to the Hudson Valley a…a Hotel & Conference Center that’s going to remain as is?

Mr. Cohen: That’s not our road, yeah.

Mr. Manley: Okay.

Mr. McKelvey: You’re split off of it.

Mr. Cohen: Right, well we from 300 to our property line we’re widening it, paving it and putting lights. That’s what the Town had requested but beyond we’re not touching that property.

Mr. Manley: Okay.

Mr. Cohen: Just…just one comment on the “H” sign, I was told that people who live nearby come the other way and know a short cut. I’ve never come that way and that’s the only thing that “H” designates is otherwise they’ll go by the building, see it and turn around.

Mr. Manley: Right, that’s why I’m saying if…if people do come that way it’s they’re coming that way because they know you can get through that way to get to…even you can get into the bank from there too, I believe…

Mr. Cohen: And I don’t know that way but…

Mr. Manley: …not the bank the a…Time Warner Cable there.

Mr. Cohen: …I’ve have just been told.

Mr. Manley: You can come down there, you can cut in through there so…

Mr. Cohen: That’s all “H” really gives you is people coming that way they know kind of the building is on that road they’ll see the building rather than having to back up or turn around. So and “C” is the least important, “H” is probably the second least important other than that if people are coming from that way they miss the building so...

Mr. Manley: Any other questions from the Board?

No response.

Mr. Manley: Do we have a motion from the Board to close the Public Hearing?

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: At this point, 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 in the interest of time if you could wait out in the hallway and then we’ll call you in very shortly. Thank you.

Mr. Cohen: Thank you, by the way, everyone.

(Time Noted - 8:23 PM)

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ZBA MEETING – NOVEMBER 22, 2016 (Time Noted – 9:56 PM)

JMDH REAL ESTATE OF NEWBURGH, LLC. 1281 ROUTE 300, NBGH

(RESTAURANT DEPOT) (95-1-8) I/B ZONE

Applicant is seeking variances for the maximum allowed square footage of signage and the minimum 15 foot setback from the street line for a free-standing sign to erect signage for an amended site plan approval application for the Restaurant Depot before the planning board.

Mr. Manley: The last application this evening that the Board has heard is the application of JMDH Real Estate of Newburgh, LLC., 1281 Route 300 in Newburgh. Now this particular application is an Unlisted Action under SEQR. If it is the Board’s pleasure to make a motion for approval the Board would first have to entertain a Negative Declaration. If the Board…if it’s the Board’s pleasure to disapprove then a Negative Declaration would not be necessary and then the Board would then just simply make a motion for disapproval. Going through the balancing tests as outlined in the earlier cases this evening we’ll start with discussion on the first item which is whether the benefit can be achieved by other means feasible to the applicant.

Mr. Scalzo: Reduction in size…would be an option.

Mr. Manley: Okay, so you’re concern Mr. Scalzo is that the size of the variance may be somewhat substantial…substantial in nature a…do you have any input on what you feel might be able to be reduced? Do you have a particular area or do you have a particular size that you’re looking at?

Mr. Scalzo: It’s not that I have a particular size. What I’m looking at is the…the north and west sides of the building, the Restaurant Depot circular sign is twelve feet…twelve foot diameter. That’s one third of the building height and…and not that…that we should base it just on, you know, scale however, perhaps the twenty-five percent size may be more appropriate. That’s only my opinion. I’m just…

Mr. Manley: Well does any of the other Board Members have any input with regard to the size or the perhaps substantiality of the…of the signage request? Is there any other concerns from the Board? Or is Mr. Scalzo the only one that has a…?

Mr. Maher: No, well I think we all voiced our opinion as far as the substantiality of it but again but based on the…the ability of the…of the square on the road frontage and the square footage allowed it’ll be substantial regardless of what the request is. That being said, you know we did discuss a couple of areas of options for the signs that if they were needed or not. The applicant obviously a…says they are but at the end of the day you know, again it will be substantial regardless of what sizes that they go with because of the frontage they have so I can’t really say it’s…I can’t really say it’s…it’s too large but again, there…there…there seems to be a a dissention among the Board as far as what the sizes should be.

Mr. Manley: Mr. Levin do you share any…?

Mr. Levin: I only suggested that sign “H” is eliminated.

Mr. Manley: So is it that your feeling is that that particular sign may not be needed that could be eliminated?

Mr. Levin: I don’t see that it’s needed at all.

Mr. McKelvey: I would agree with that too.

Mr. Manley: How do the other Board Members feel? Mr. Bell?

Mr. Bell: I was in…I was in agreement with “H” as far as with the signage being eliminated there as well.

Mr. Masten: Inaudible.

Mr. Bell: The question…the question I have, I’m sorry, if I asked this question because I was maybe a little bit confused on something. This is not a public business is that what you’re saying? It’s…it’s not open to the public? Okay. Then I was kind of wondering why we do need so much signage if we’re not trying to draw in activity from the outside? I was kind of confused on that I mean.

Audience Member: Do you want us to respond?

Mr. Manley: Yeah, we would…we would certainly a…

Audience Member: Inaudible.

Mr. Manley: We would certainly if you could offer some clarity for Mr. Bell we certainly would a…

Mr. Bell: Yeah I just wanted, I’m sorry, I appreciate it.

Mr. Cohen: I had stated earlier and I may not have been clear that we attract from…we just speaking to the other restaurant and he used to shop with us from up in Kingston. He would go to the Albany store an hour away. We have people who come a great distance and as we said earlier we also have non-profits and the non-profits sometimes it’s a member of a church or fire department, they’ve never been there. So by driving by, somebody says go to Restaurant Depot, they say ‘oh, I’ve seen that I know just where it is’ or ‘I know which exit to get off’ or ‘that makes sense’.

Mr. Bell: Okay.

Mr. Cohen: So it’s just really to locate the…especially, just to further, especially in a place that’s so hidden and so out of the way (Inaudible) of the location.

Mr. Bell: Okay.

Mr. Manley: Thank you.

Mr. Donovan: So as you may discern the Board is kind of struggling with the…with the amount of signage. I don’t know whether you have any consideration as to whether or not you would be willing to reduce square footage?

Mr. Frank: Well in consultation with Mr. Cohen if…if it will help the process and…and based on the discussions that were had earlier and now the applicant is willing to forgo sign “H” if that will assist in the process of approval.

Mr. Scalzo: Any consideration…I see your, let’s see, the…as I had mentioned the north and the west side have the twelve foot diameter sign however, east and south is only a ten…would there be a consideration for just having all four of the circular Restaurant Depot logos be all tens or do…?

Mr. Cohen: We had origin…this may not be our dealing for…we had originally made them…had them all twelves, the problem with the “A” and “B” signs, you pull right up to it and you’ll see it. The other ones are a big distance to see off the Thruway a twelve foot sign you know, a quarter mile away is a very small sign. That’s the only reason we left those big and we’d rather keep them big again so that you can see them from the highway.

Mr. Frank: (Inaudible)

Mr. Cohen: Particularly since that’s the only way to see them with a car passing by. I’m not sure that was the answer you’re looking for.

Mr. Scalzo: Well I understand your position.

Mr. Levin: It’s my colleagues won’t agree with me but I think “D” and “E” are very important to the project.

Mr. Frank: And I…I guess for purposes of the a…the record, the applicant would consent to an amendment or make a motion to amend the application to eliminate sign “H” if that would a…help the Board in their deliberations.

Mr. Manley: Thank you. Darrin, perhaps that twelve feet when you’re doing eighty-five miles an hour on the Thruway is one of the reasons why it’s a blur.

Mr. Scalzo: Well…

Mr. Donovan: Well not…not Darrin because he doesn’t speed.

Mr. Scalzo: As you pass through the maximum speed of twenty miles per hour in the higher speed Easy Pass.

Mr. Manley: Oh, got you.

Mr. Scalzo: It’s just that one, it’s the toll entering plaza that…that has me, I just thought the distraction of the drivers is my concern.

Mr. Manley: Duly noted.

Audience Member Inaudible

Mr. Scalzo: I just noted that that’s what it’s posted as.

Mr. Maher: Inaudible.

Mr. Manley: With the information that’s been presented by the applicant to remove “H” does the Board at this point feel that they have enough information at this point to make a decision with regard to the application? Does the Board need additional time?

Mr. Donovan: Bearing in mind that Thursday is Thanksgiving.

Mr. Manley: Okay, can we continue on then with the…the tests at this point now that we have gotten through that one area there?

Mr. Maher: By all means.

Mr. Manley: The next is whether or not the requested variance would create any undesirable change in the neighborhood character or any detriment to nearby properties?

Mr. Maher: No, I think it’s removed enough where it’s not going to be an issue (Inaudible).

Mr. Levin: I don’t think that’s an issue.

Mr. McKelvey: No.

Mr. Bell: Not at all.

Mr. Manley: I think the applicant’s testimony that it is pretty hidden does create no undesirable change. The next is whether or not the request is substantial.

Mr. Maher: I think we identified that in the last…in the first balance.

Mr. Manley: Correct, I would…I would agree, I mean, even with the…with the removal of “H” it’s still more than what most variances would be…I think we can counter that with the size of the structure and the square footage.

Mr. Levin: I agree.

Mr. Manley: The fourth that we’re looking at is whether the request will have adverse physical or environmental effects? That goes back to Mr. Scalzo’s concern about distracted driving…that may still be a you know a factor that we can’t get rid of because the location of the signs. Anybody else have any input with that?

Mr. Maher: While I understand his concern it’s not uncommon for the commercial establishments around you know, whether the Thruway or 84 to have signage to show where they are so I don’t know. While it is a concern I don’t think it’s…enough to a…not move forward with the rest of the balances.

Mr. Manley: And the next is whether or not the alleged difficulty is…is self-created? Which again is relevant but not determinative the, you know, the applicant probably realizes it is self-created. When they purchased the property they knew what limitations the property had, again, but it’s not something that’s completely determinative, just a piece of the pie. What the Board now has to consider is whether or not the items brought up and the concerns brought up are enough to weigh the…the decision into the negative or whether there’s enough balance there to create a balance and move it into the area of being approved. So at this point, if the Board has enough I would look for a motion of some sort.

Mr. Levin: I would make a motion to approve.

Mr. Maher: A Neg Dec.

Mr. Donovan: You’ve got to make a motion for a Negative Declaration first because this is an Unlisted Action.

Mr. Manley: Correct. This is an Unlisted Action so if you wish to move forward, Mr. Levin, we would need first a motion for a Negative Declaration.

Mr. Levin: I’ll make a motion for a Negative Declaration.

Mr. Maher: Second.

Mr. Manley: We have a motion and a second for a Negative Declaration.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Negative Declaration is approved. This means that the Board feels that there’s no substantial environmental impacts. So at this point, the Board, we now need a motion.

Mr. Levin: I’ll make a motion to approve.

Mr. Donovan: And just to clarify that’s the application as amended with the deletion of the sign designated as sign “H”. Correct?

Mr. Levin: I agree.

Mr. Manley: Which includes the logo and the slogan.

Mr. Maher: Well there was no slogan on that sign.

Mr. Manley: No slogan there, okay.

Mr. Maher: And that also includes the…the monument sign at the same…as far as…both variances.

Mr. Donovan: Correct.

Ms. Gennarelli: So Richard was the first.

Mr. Donovan: Yes.

Mr. Manley: Do we have a second?

Mr. Maher: Second.

Mr. Manley: Mr. Maher is the second, roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: No

James Manley: No

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

Ms. Gennarelli: That’s five - two.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:10 PM)

ZBA MEETING – NOVEMBER 22, 2016

END OF MEETING (Time Noted – 9:10 PM)

Mr. Manley: At this point this concludes our meeting for this evening. The Board does have some housekeeping items but as far as the Public Hearing portion of it we’re all set. Have a Happy Thanksgiving.

Ms. Gennarelli: Happy Thanksgiving everybody. Thank you.

Mr. Manley: Thank you.

Mr. Cohen: Can I ask why you voted no just so I understand?

Mr. Manley: My only concern was that one other sign which was “C”.

Mr. Cohen: “C” the small one.

Mr. Manley: That was it.

Mr. Cohen: Okay, thank you everyone. I have to say I’ve been in front of a lot of Boards you guys are very thorough not just with me but with everybody, thorough but fair. So thank you very much.

Mr. Manley: Thank you very much. Good luck with the business, much success.

Mr. Cohen: Come by and see it, it’s great, hopefully in February, thank you.

Mr. Manley: Thank you.

Ms. Gennarelli: Alright, good night, Happy Thanksgiving.

Mr. Bell: Let me get a (Inaudible) application right quick so I’m still going through the websites and seeing everything like so I go on…go on the site for the instructions for the applications for variances?

Mr. Manley: Correct.

Mr. Bell: That’s…then read…read the…

Mr. Manley: And then read through it and see exactly how it’s…how the process is…

Mr. Bell: Okay.

Mr. Manley: …if there’s any suggestions to make things easier, if there’s anything in there that perhaps a…could be changed a…and then what we’ll do is we’ll incorporate all that, sit down with a…counsel and with the Secretary and…and try to make changes or modifications that might help streamline things a little bit. And you may want to look at some of the other municipalities around us to see what they’re instructions are. The other thing I just wanted to bring to the Board’s attention in an open meeting was the a…Town Board has adopted some changes to our fee schedule. The fee schedule of course different than what was presented by the Board so they will be having a Public Hearing on December 19th if any of the Board Members want to attend, it is a public meeting and you also have the ability to comment on it if you so desire. But that is the upcoming proposal by the Town for the fee schedule.

Mr. McKelvey: They have four Public Hearings that night.

Mr. Manley: Right, you might be here a while.

Mr. McKelvey: You might be there a while.

Mr. Manley: The fee schedule mirrors that which was…which is used by the Village of Woodbury that’s the one that they a…looked at and a…

Mr. Maher: In southern Orange County that has much more…

Mr. McKelvey: They looked at the Town of Wallkill too.

Mr. Maher: …money than…than oran…than Newburgh has, right?

Mr. Manley: Right. They…they…they looked at the…

Mr. McKelvey: Town of Wallkill.

Mr. Manley: Town of Wallkill…

Mr. McKelvey: They took two or three.

Mr. Levin: You’re closer to Legoland.

Mr. Maher: (Inaudible) to Fantasyland.

Mr. Manley: The other thing that is before the Board is the Cumberland Farms just updating us on their progress before the planning board. They just wanted to give us an update.

Mr. Maher: Did they request an extension?

Mr. Manley: No.

Mr. Donovan: They don’t need one because they’re in front of the planning board.

Mr. McKelvey: In front of the planning board.

Mr. Manley: And the last item is the minutes. Did anybody have an opportunity to review?

Mr. Donovan: I did but I can’t vote.

Mr. Manley: Did everybody feel comfortable to approve the minutes or do you need additional time and do the minutes in December? You tell me. I’m going to abstain because I wasn’t here.

Mr. Maher: If you read them twice you can vote.

Mr. Manley: Read them twice.

Mr. Scalzo: I apologize I have not had the time to read them.

Mr. Maher: Let’s hold off to next month.

Mr. McKelvey: Let’s hold them off to next month.

Mr. Manley: We’ll hold off on the minutes for approval until next month and I’ll just need a reminder. If there is nothing further and at this point I would look for a motion to adjourn.

Mr. Masten: I’ll make a motion.

Mr. Manley: I have a motion, do I have a second?

Mr. Levin: I’ll second.

Mr. Manley: All in favor?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is adjourned. Have a Happy Thanksgiving everyone.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:25 PM)