ZONING BOARD OF APPEALS

MEETING – NOVEMBER 20, 2012

(Time Noted – 7:05 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision this evening on all applications but may take up to 62 days to reach a determination. And if anyone has a cell phone please silence it or turn it off. And I'd like to mention that the Board Members have all made site visits. Roll call please.

PRESENT ARE:

GRACE CARDONE

BRENDA DRAKE

RONALD HUGHES

MICHAEL MAHER

JAMES MANLEY

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:07 PM)

ZBA MEETING – NOVEMBER 20, 2012 (Time Noted – 7:07 PM)

SCOTT & SARAH COURTER 10 TINA DRIVE, NBGH

(47-1-55.3) R-1 ZONE

Applicant is seeking area variances for the rear yard setback and one side yard setback to build a pool deck.

Chairperson Cardone: Our first applicant and our only applicant Scott and Sarah Courter.

Ms. Gennarelli: The Public Hearing Notice for this application was published in The Sentinel on Tuesday, November 13th and in the Mid-Hudson Times on Wednesday, November 14th. This applicant sent out fourteen registered letters, nine were returned. All the mailings and publications are in order.

Ms. Tompkins: Shall I begin?

Chairperson Cardone: Please.

Ms. Tompkins: My name is Jeanne Tompkins, I represent Scott and Sarah Courter and we’re asking for an area variance for the rear yard setback and one side yard setback to build a pool deck. I don’t believe that my application is anything out of the ordinary and I don’t think it would interfere with any neighbors’ quiet enjoyment of their property. And I believe that everything is stated in the application.

Chairperson Cardone: Does the Board have any questions?

Mr. Hughes: Are…are you an engineer or…?

Ms. Tompkins: No, I’m an attorney. I’m an attorney for Mr. & Mrs. Courter.

Mr. Hughes: Do you have a card?

Ms. Tompkins: I do.

Mr. Hughes: You said Tompkins or Thomson?

Ms. Tompkins: Jeanne Tompkins, 90 East Main Street, Washingtonville, New York.

Mr. Hughes: Thank you.

Chairperson Cardone: Do we have any questions?

Ms. Drake: You’re not obviously moving the house or not moving the pool you’re just adding a deck from the existing deck to the pool and because the house is now connected to the pool and the new deck it makes it all part of the house which is why you need to follow the setback.

Ms. Tompkins: That’s correct.

Mr. Manley: If you could just maybe for the record, get it entered into the record, just indicate the number of feet for each of the side yard and rear yard setbacks?

Ms. Tompkins: Let’s see.

Mr. Donovan: So If I…

Chairperson Cardone: Actually we have it…

Mr. Donovan: Yes, but if I may just in answer to Mr. Manley’s question the minimum rear yard setback (40) forty feet what’s proposed after construction of the deck is (37) thirty-seven feet. The minimum side yard setback is (30) thirty feet what’s proposed after construction is (28) twenty-eight feet, which shows a rear yard variance of (3) three feet or 7 ½ %, side yard variance of (2) two feet or 6.7 %.

Mr. Manley: My purpose for just getting that into the record was, you had testimony earlier was that it was not a significant request for a variance, correct?

Ms. Tompkins: That’s correct.

Mr. Manley: And I just want it on the record that there was only (3) three feet that was required for one setback and (2) two feet for the other.

Ms. Tompkins: Okay. Yes, thank you.

Chairperson Cardone: Any other questions from the Board?

Mr. Hughes: Yeah, I have some. I’m confused about something here. According to this diagram you’re showing a (28) twenty-eight feet…are you familiar with this?

Ms. Tompkins: Yeah, I have it in my file, okay, I’m listening.

Mr. Hughes: There’s no problem with the pool being (28) twenty-eight feet from the property line? Even though you’re going to add all this stuff in between to make the deck and the pool and the house all one thing, do you take the measurement from the proposed additional deck?

Mr. Canfield: The…as Dave had stated earlier a…I believe it was Dave or a…I’m sorry as Brenda had said, once everything becomes attached to the house it’s all figured zoning wise and setback wise as one structure, okay…(Inaudible)

Mr. Hughes: So you’re measuring from the end of the deck?

Mr. Canfield: …pool has one setback requirement a…but now once you attach everything the Bulk Use Table requirements, the setbacks there is what now applies.

Mr. Hughes: So you’re not counting the pool or you are counting the pool?

Mr. Canfield: They are counting it.

Mr. Hughes: And that’s only (28) twenty-eight feet?

Mr. Donovan: That’s why they’re asking for the variance.

Mr. Hughes: That’s (30) thirty feet…oh, I thought somebody said (40) forty feet.

Mr. Donovan: That’s for the rear yard. See I knew all these years you only half listened to me so you only listened to the one variance I talked about.

Mr. Hughes: (Inaudible) Let me get my good ear over there. Now I was out there and there’s the well and there’s the pool and there’s the deck that exists at present and that’s the back of the house.

Ms. Tompkins: (Inaudible)

Ms. Gennarelli: Is that an affirmative, yes?

Ms. Tompkins: Yes.

Mr. Hughes: Dave, maybe I didn’t hear you correctly, try me again.

Mr. Donovan: So, so the side yard which would be measured from the pool to the property line is (28) twenty-eight feet where (30) thirty is required.

Mr. Maher: Once the…I think I can clarify…

Mr. Hughes: Oh, I see…

Mr. Maher: …once they added…

Mr. Hughes: …I’m with you now.

Mr. Maher: …add the decks to the deck and the pool then it becomes the pool because the closest part to the side yard.

Mr. Hughes: I got you now and the (37) thirty-seven is in the other direction to the back.

Mr. Donovan: Right.

Mr. Hughes: All right, I…

Mr. Manley: The pool is already existing it’s not as if…

Mr. Hughes: No I saw the pool but I took the (28) twenty-eight measurement as being…

Mr. Manley: Without the deck on there the pool doesn’t need the variance.

Mr. Hughes: I’m with you, I’m with it, I got you.

Chairperson Cardone: Any more questions from the Board? I have a letter here from a neighbor which I’ll read into the record from a Robert Marchione, 21 Sylvan Park Drive, Newburgh. In reference to the Notice of Hearing on the application of Scott and Sarah Counter, is it Courter?

Ms. Tompkins: Courter.

Chairperson Cardone:

The above notice was received on the evening of November 19, 2012 that there is a meeting on November 20, 2012 regarding the above referenced matter. Unfortunately on such short notice, neither I nor my wife can attend. My understanding is that the Town of Newburgh has required setbacks within the laws of zoning. As the property in question is in the required distance of requiring notice, and since short notice has been served, I would like the Board to comply with the zoning laws currently in place and to not vary from such so that everyone’s interest is protected. Therefore, I want to go on record that I cannot attend the meeting due to job commitments, and since I have not had sufficient time to review the request, I do not want the variance to be granted. Sincerely Robert R. Marchione.

In reference to what was said here about short notice, all the mailings were in order so I don’t see how there could have been short notice unless the neighbor did not pick up their mail once they got the notice.

Mr. Manley: Right, if they got the certified notice and they just delayed getting it.

Chairperson Cardone: Right.

Mr. Manley: When did the notices…?

Ms. Gennarelli: On the (9) ninth.

Mr. Manley: On the (9) ninth of November?

Ms. Gennarelli: That’s my understanding what happened he didn’t pick up his notice...

Mr. Manley: Okay.

Ms. Gennarelli: …until yesterday so…but the notices were sent.

Mr. Manley: Everything was mailed on the (9) ninth, correct?

Ms. Gennarelli: Everything was…

Chairperson Cardone: Right.

Ms. Gennarelli: …done correctly in plenty of time.

Mr. Manley: I’m not objectionable to granting the variance. The variance is not huge; I mean the resident isn’t looking for, you know, a foot from the property line or two feet from the property line. It’s not excessive. I…I don’t see an issue with it.

Chairperson Cardone: First is there anything else from anyone or…?

Mr. Hughes: Are you Mrs. Courter?

Ms. Tompkins: No, I’m…I’m Jeanne…

Mr. Hughes: No, I know who you are.

Ms. Tompkins: No this is my assistant.

Mr. Hughes: Oh.

Ms. Tompkins: She was in the area and she wanted to stop in.

Mr. Hughes: So then how familiar are you with the property?

Ms. Tompkins: I’ve only been there once, I mean, I know from what the client has told me.

Mr. Hughes: It appears by the diagram that there’s a double set of stone walls here.

Chairperson Cardone: There is.

Mr. Hughes: Is that a right-of-way to something?

Ms. Tompkins: I do not know.

Mr. Donovan: It’s off the property Ron.

Mr. Hughes: Well I understand that but I’m wondering does Mr. Marchione own to the stone wall on the part that’s closest to him or to the part that’s closest to the applicant? And, if so I don’t know if its…

Mr. Manley: Let’s pretend the deck isn’t connected to the house, Jerry, and the applicant came and said I just want to put a deck on this pool.

Mr. Canfield: It would be permissible and they wouldn’t be here.

Mr. Manley: Right so just the fact that they’re putting a little bridge from their deck to their pool is what’s causing the variance.

Mr. Canfield: That’s correct.

Mr. Manley: So in my estimation you’re really not looking for a big…I mean, I don’t see really the need to put the applicant through a…hoops.

Mr. Canfield: If may also, Ron, this…the survey map it looks like it may have been from the original subdivision but it indicates the Marchione property and then they show the separation line between the Rafferty property and Marchione…

Mr. Hughes: Yes.

Mr. Canfield: …okay, it appears that the rear property line of the applicant is the property line for Marchione.

Mr. Hughes: The separating line.

Mr. Canfield: Do you follow me? So that double stone wall that you’re referring to appears to be totally on the Marchione property.

Mr. Hughes: Okay, yes, I see that now…that other line we’ll presume is the separator between the two properties.

Mr. Canfield: It…it’s not typical that, you know, the…a border…bordering property would have a separate property line.

Mr. Hughes: Yes.

Mr. Canfield: And then there’d be a no-man’s-land a…

Mr. Hughes: Well I was just wondering if it was there for something else.

Ms. Drake: It doesn’t show on the tax map that Betty gave us for the application. It shows no easements or anything like that.

Mr. Hughes: Yup.

Ms. Drake: It shows that that is the property line right there.

Mr. Canfield: But they border each other.

Ms. Drake: Yes, but…

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

Mr. Hughes: I have nothing else. Thank you for answering those questions.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted – 7:16 PM)

ZBA MEETING – NOVEMBER 20, 2012 (Resumption for decision: 7:16 PM)

SCOTT & SARAH COURTER 10 TINA DRIVE, NBGH

(47-1-55.3) R-1 ZONE

Applicant is seeking area variances for the rear yard setback and one side yard setback to build a pool deck.

Chairperson Cardone: Rather than adjourning to confer with Counsel I don’t think that is necessary. And I think we’re ready to make a decision at this point.

Mr. Manley: I’m ready. I’ll make a motion that the variance for the applicant be granted.

Ms. Drake: Do we need to SEQRA?

Mr. Donovan: It’s a Type II Action.

Chairperson Cardone: Type II Action under SEQRA.

Mr. Donovan: Thanks Brenda.

Ms. Drake: I’ll second the motion.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

BRENDA DRAKE

RONALD HUGHES

MICHAEL MAHER

JAMES MANLEY

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:18 PM)

ZBA MEETING – NOVEMBER 20, 2012

END OF MEETING (Time Noted – 7:18 PM)

Chairperson Cardone: O.K. Has everyone has a copy of the minutes from last month? Do we have any additions, deletions, corrections?

Chairperson Cardone: Do I have a motion to accept the minutes?

Ms. Drake: I'll make a motion we accept the minutes.

Chairperson Cardone: A second?

Mr. Maher: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

(No response).

Chairperson Cardone: Is there any other business that the Board would like to discuss this evening? Is there anything that…?

Mr. Manley: The only other thing that I’d like to discuss if I don’t think it’ll take much time would be to discuss with Counsel outstanding litigation that we received notification on.

Chairperson Cardone: Okay then we will take a short adjournment to confer with Counsel regarding the pending litigation and if I could ask you to either step out in the...

Mr. Donovan: You can go home. You’re all done.

Ms. Thompkins: Thank you very much.

Mr. Donovan: Have a nice evening.

Ms. Thompkins: Thank you.

Sarah: You too. Happy Thanksgiving.

All: Happy Thanksgiving. Thank you.

(Time Noted – 7:19 PM)

Meeting adjourned to confer with Counsel.

(Time Noted – 7:32 PM)

Meeting Resumed.

Chairperson Cardone: Do we have a motion to adjourn?

Ms. Drake: So moved.

Mr. Maher: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

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

PRESENT ARE:

GRACE CARDONE

BRENDA DRAKE

RONALD HUGHES

MICHAEL MAHER

JAMES MANLEY

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:33 PM)