

*Andrew J. Zarutskie, Town Clerk
Town of Newburgh
1496 Route 300, Newburgh NY 12550
Tel.(845) 564-4554*

AGENDA

AUDIT/WORKSHOP TOWN COUNCIL MEETING Wednesday, February 13, 2013 (7:00 p.m.)

-
- 1. ROLL CALL**
 - 2. PLEDGE OF ALLEGIANCE TO THE FLAG**
 - 3. MOMENT OF SILENCE**
 - 4. CHANGES TO AGENDA**
 - 5. APPROVAL OF AUDIT**
 - 6. ZONING REQUEST: Colandrea/Sunshine Ford**
 - 7. ZONING REQUEST: Nella's Nest/Roberts Roofing**
 - 8. RECREATION:**
 - A. 2013 Program Brochure**
 - B. Tee Shirt Bid Award**
 - 9. HIGHWAY:**
 - A. Summer Materials Bid**
 - B. Promotions and New Hires**
 - C. Hiring Seasonal Laborer**
 - 10. DPW:**
 - A. Budget Transfer for DEP Land Use Permit**
 - B. Budget Transfer for Spectrometer**
 - C. Commissioner Salary Allocation**
 - 11. ANIMAL CONTROL:**
 - A. Authorizing T 93 Withdrawal**
 - B. Authorizing T 94 Withdrawal**
 - C. Authorizing Equipment Purchase Using T 94**
 - 12. ENGINEERING: Magyar Stormwater/Soil Erosion Control Security Release**
 - 13. ACCOUNTING:**
 - A. Investment Policy Amendment**
 - B. Interfund Transfer**
 - 14. DATA PROCESSING:**
 - A. Computer Reserve Purchases**
 - B. Purchase of Untangle Software**

- C. Surplus Computers
- D. Discussion—Recycling and Recovery
- E. Copier Update

- 15. POLICE: Authorization to Purchase K-9 Equipment/T 90 Account
 - 16. RESOLUTION of Support for New York State Contact Information for Vacant Structures
 - 17. ETHICS BOARD: Appointments of New Members to Fill Vacancies
 - 18. ADJOURNMENT
-

*WCB: AJZ 3rd DRAFT
02-13-13 9:30 a.m.*

5. APPROVAL OF AUDIT

FEB 13 2013

3

AUDIT # 3

February 13, 2013

VOUCHERS: 130530 to 130729

<u>FUND</u>	<u>REGULAR</u>	<u>PREPAID</u>
GENERAL	\$ 152,468.02	\$ 3,864.00
TRUST & AGENCY	3,097,749.30	-
STREET LIGHTING	16,242.76	-
HIGHWAY	34,035.85	-
WATER	86,339.59	-
SEWER	4,120.66	-
WATER CAPITAL	780,683.02	-
SEWER CAPITAL	832.50	155,810.85
HIGHWAY CAPITAL	-	-
GENERAL CAPITAL	22.20	-
SPECIAL DISTRICT	-	-
TOTAL	\$ 4,172,493.90	\$ 159,674.85
GRAND TOTAL	<u>\$ 4,332,168.75</u>	

AUDIT # 3
2/13/2013
VOUCHERS: 130530 to 130729

Audit Date: February 13, 2013

To the Supervisor:

I certify that the vouchers listed above were audited by the Town Board on the above date and allowed in the amounts shown. You are hereby authorized and directed to pay each of the claimants the amount opposite his name.

Dated: _____

Andrew J. Zarutskie, Town Clerk

Town Board:

Exceptions:

6. ZONING REQUEST: Colandrea/Sunshine Ford

JAN 30 2013

FEB 13 2013



Crossley Associates

DCO REALTY COMPANY, INC.
GENERAL & TURNKEY CONSTRUCTION
15 CARROLL STREET NEWBURGH, NY 12550-5136
TEL: (845) 562-6092 FAX: (845) 562-6105
Email: CrossDevel@aol.com

January 10, 2013 Via Hand Delivery

Mr. Wayne Booth, Supervisor
Town of Newburgh
1496 Route 300
Newburgh, New York 12550

Re: Requests of Cosimo J. Colandrea and Sunshine Ford-Lincoln, Inc. of the Town of Newburgh.

Dear Supervisor Booth,

As per our previous correspondance and meetings, Mr. Colandrea again respectfully requests Town Board approval of a zoning change of lands he owns along Putnam Street that abuts the Sunshine Ford-Lincoln dealership to be utilized as a portion of the Sunshine Ford-Lincoln dealership operations for additional parking and new car storage. This requested zoning change would be from the present R-3 zone to an I-B zone.

Please find attached 5 sets of concept plans date 10-11-2012 by Shaw Engineering Sheet 1 of 1 and associated landscape plan of the subject site as presented by Esposito & Associates for the Towns review.

Mr. Colandrea also again requests the following related Town Board actions in conjunction with the Master Plan Development of the subject site.

- The purchase of 4,750 Square feet of the dead end portion of Boulder Road from The Town of Newburgh as per previously submitted certified survey for a price yet to be determined. The property was appraised to the Town of Newburgh in 2007 at a value of \$ 4,000.00.

Mr. Wayne Booth, Supervisor
Town of Newburgh

Page 2 of 2
1/10/2013

- Mr. Colandrea is prepared to grant certain rights of way over Town of Newburgh Water line mains that run through Boulder Road and the Sunshine Ford-Lincoln, Inc. dealership as per previous submitted certified survey.
-

Please contact me or Mr. Colandrea (845) 565-5800 should you require any additional information in these requests of the Town of Newburgh.

Thank-you in advance for your kind review and consideration of these requests.

Very truly yours,



Douglas V. Crossley

attachments

c/c: - Mr. Cosimo J. Colandrea
- Shaw Engineering

7. ZONING REQUEST: Nella's Nest/Roberts Roofing

GERALD N. JACOBOWITZ
DAVID B. GUBITS
JOHN H. THOMAS JR.
GERALD A. LENNON
PETER R. ERIKSEN
HOWARD PROTTER
DONALD G. NICHOL
LARRY WOLINSKY
ROBERT E. DINARDO
J. BENJAMIN GAILEY
MARK A. KROHN*
JOHN C. CAPPELLO
GEORGE W. LITHCO
MICHELE L. BABCOCK
* L.L.M. IN TAXATION

JACOBOWITZ AND GUBITS, LLP

COUNSELORS AT LAW

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POST OFFICE BOX 367
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TOBIAS A. LAKE
DAVID M. GANDIN
MICHAEL L. FOX
MARCIA A. JACOBOWITZ
F. BRYAN PAZ
CARMEE G. MURPHY**

**OF COUNSEL

DEC 7 6 2012
FEB 13 2013

December 13, 2012

VIA HAND DELIVERY

Hon. Wayne Booth, Supervisor and Town Council Members
Town of Newburgh Town Board
1496 Route 300
Newburgh, New York 12550

Re: Nella's Nest North Corporation
Rezoning Petition
Our File No. 11051-001

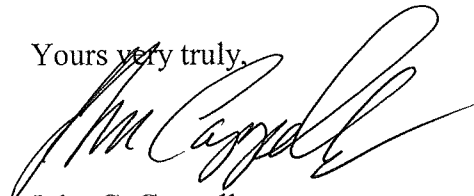
Dear Supervisor Booth and Town Council Members:

Enclosed please find one (1) original and eleven copies of the Petition of Nella's Nest North Corporation requesting an amendment of your zoning code to permit storage buildings of up to 50% the size of the principal building as accessory uses to professional offices in the IB zoning district. Your zoning code currently permits such storage building as accessory facilities to professional offices in the B zoning district. Nest North Corporation is requesting the same treatment for the such buildings in the IB zoning district.

I respectfully request that the Board place this matter on its next meeting agenda to discuss this Petition. We understand that once you have determined to move forward with the Petition the Petitioner may be required to post an escrow fee to cover publication expenses as well as professional fees incurred by the Town Board in review of this Petition. Please note we have copied this letter with a copy of the application to the Town Attorney.

Thank you in advance, I look forward to presenting this Petition to your Board. Happy Holidays.

Yours very truly,



John C. Cappello

JCC/elr

Enclosures

cc: Mark Taylor, Esq. (via e-mail)
Mr. Kevin Roberts

-----X
In The Matter of

In the Petition of **Nella's Nest North Corp.** for an amendment of the Table of Use and Bulk Requirements for the Interchanged Business (IB) District to include storage buildings up to 50% of the floor area of the principal permitted building as an accessory use permitted with "offices for business, research and professional use"
-----X

REZONING PETITION

**TO: The Honorable Supervisor and
Town Council Members of the
Town of Newburgh, Orange County, New York:**

The undersigned Petitioner respectfully petitions the Supervisor and Town Council Members to amend the Table of Use and Bulk Requirements for the Interchange Business (IB) District to include storage buildings up to 50% of the floor area of the principal permitted building as an accessory use permitted with "offices for business, research and professional use" for the following reasons:

1. Petitioner is the owner of certain property located at 1430 Route 300, which property is designated on the Town of Newburgh Tax Map as Section 60 Block 3 Lot 24. A location map depicting Petitioner's property is attached hereto as Exhibit "A."
2. Petitioner's property consists of approximately 1.4 acres.
3. Petitioner's property is located in the Interchanged Business (IB) zoning district.
4. Petitioner's property currently contains a professional office building of approximately 1,620 square feet in size with an accessory storage structure totaling 810 square feet in size.

5. Storage buildings of up to 50% of the floor areas of the principal building are an accessory use permitted with “business professional and research offices and banks.” These storage facilities can be located on lots with a minimum lot area of 15,000 square feet.

6. In the Interchange Business (IB) zoning district, storage buildings of up to 50% of floor area of the principal buildings are permitted with several uses within the zoning district but not with “office for business, research and professional use.” In the IB zoning district, such uses have a minimum lot area of 40,000 square feet.

REASONS SUPPORTING THIS REQUEST

7. There does not appear to be any logic permitting accessory storage units with professional offices in the B zoning district with smaller lots where such accessory uses would be more visible while prohibiting such accessory uses in an IB zoning district with larger minimum lot sizes where any accessory storage building can be more adequately placed on the lot and screened to ensure minimum visibility from any neighboring property or roads.

8. Petitioner’s property containing the accessory building contains significant screening to make it virtually invisible from any roads. The surrounding uses surrounding the Petitioner’s property are similar to uses permitted in the IB zone and include a Verizon facility in which a large number of Verizon work trucks are stored and visible from the road, along with large strip malls and other large commercial uses.

9. Allowing accessory storage buildings to allow property owners in the IB zoning district to store materials away from weather without necessitating expansions to the building is a benefit to all property owners.

10. The detriment to any potential adjoining property owning or people traveling on the

roads in the Town of Newburgh can be appropriately mitigated through proper screening and location of said buildings on the lot

SUMMARY

11. There appears to be no reason for differentiating and permitting accessory storage buildings in the Business (B) zoning district and not in the Interchanged Business (IB) zoning district.

Dated: Walden, New York
December 14th, 2012

RESPECTFULLY SUBMITTED:

Nellas Nest North Corp.

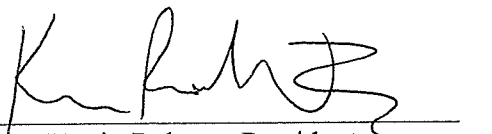

By: Kevin Roberts, President

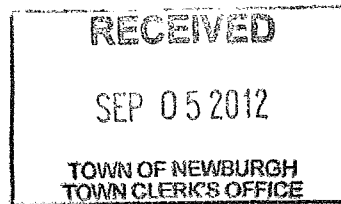
EXHIBIT "A"

ZBA MEETING – AUGUST 23, 2012

(Time Noted – 7:16 PM)

NELLA'S NEST NORTH CORP.

1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE



Applicant is seeking an Interpretation and/or Use variance for Bulk Table – Schedule 8 – storage buildings are not permitted with a D5 and any use not specifically permitted shall be deemed to be prohibited to keep a Prior Built (20 x 40) storage building.

Chairperson Cardone: The next applicant Nella's Nest North Corp.

Ms. Gennarelli: This applicant sent out twelve registered letters for both...for each...for the use variance and for the area variance and eleven were returned for the use variance and eleven were returned for the area variance. All the mailings and publications are in order.

Chairperson Cardone: The first item that we're looking at is the use variance, Interpretation and/or Use variance.

Mr. Roberts: The use variance would be the sign.

Chairperson Cardone: No.

Mr. McKelvey: No.

Ms. Gennarelli: That's the area variance.

Chairperson Cardone: Relating to a storage building, an existing cargo container.

Mr. Roberts: Thank you. First I'd like to thank the Board for their volunteer service. I know it's a thankless job and I want to thank Betty, I...she's been putting up with me the last couple of months running in the door at 4:00 just before the deadlines and stuff. And a...the use variance is a cargo container that I had a...put there in about 2006 a...it was at the time a temporary solution and it still is. A...and a 2006, 7 I had planned on putting a a or had dreamed of putting in a pole barn or something like that, you know, and a more permanent solution to our storage issues. The economy fell apart and at the end of '07, 2008 and business has been down, I don't know, thirty percent every year a...so I have no other needs or I'm not able to store my windows or any other of my material off-site or build a, you know, a permanent solution at this point.

Mr. McKelvey: I just want to say you've done work for me.

Mr. Roberts: I thought you looked familiar.

Mr. McKelvey: Is it alright if I...?

Mr. Donovan: You...you, if you feel you can be a part, there's not a per se conflict...

Mr. McKelvey: No.

Mr. Donovan: ...if he's not doing work for you at the present time.

Mr. McKelvey: No.

Mr. Donovan: In other words, he's not a giving you free work for you to rule on this.

Mr. McKelvey: No, absolutely not.

Mr. Donovan: If that's not the case and you feel comfortable that you can be impartial...

Mr. McKelvey: I feel comfortable, yes.

Mr. Donovan: Yeah, okay, then you don't have a problem.

Ms. Drake: I'll state for the record he's done work for my house also but I don't feel that I...he is not currently doing any work and I don't feel...I would be impartial.

Mr. Donovan: Well now...

Chairperson Cardone: And I see behind the a...that storage thing you also have some kind of an overhang and...

Mr. Roberts: That's correct.

Chairperson Cardone: ...materials behind that and some kind of a floor also there?

Mr. Roberts: The floors are just a...pallets that we put down there to keep some of the material dry when it heavy rains.

Mr. Donovan: Joe, what is the use of the...what's the principal use of this property now?

Mr. Mattina: It's an office.

Mr. Donovan: Office. And is there a Violation on the...on the property?

Mr. Mattina: The Violations are the accessory buildings, the signage which we'll deal with later.

Mr. Donovan: But relative to this structure is there...is there a Code Violation for that? I'm trying to figure out what he's trying to get at, a variance. I know he's asking for a use variance...

Mr. Mattina: Right.

Mr. Donovan: ...and I, I guess my question is this, he's got an office if I understand correctly, he says he's storing stuff from his office. So why, why is this not an accessory structure...?

Mr. Mattina: Well Bulk Table – Schedule 8, Column A, storage buildings is not an accessible use with a D-5. It's permitted with a C-1, D-7, D-11, D-13 but accessory buildings are not permitted with offices, Schedule 8...

Mr. Donovan: I'm looking at it. Thank you.

Mr. Mattina: Right.

Mr. Hughes: I have a couple of questions; maybe it will clarify some of this stuff that's going on on this property in its entirety. If you could tell me, how many entities operate out of that property?

Mr. Roberts: A...myself, I own a roofing, window, siding business and there is a clothing store underneath.

Mr. Hughes: And what about the people that live in the building?

Mr. Roberts: There is none.

Mr. Hughes: You have three mailboxes that get delivery. What is the third entity?

Mr. Roberts: A...the third mailbox is one we never took down from the previous owners.

Mr. Hughes: Okay.

Mr. Roberts: There's actually only two.

Mr. Hughes: So if I may try to a...unless you want to take the position and tell us, isn't the residue of what's stored in these barns from you're contracting business...

Mr. Roberts: That is...

Mr. Hughes: ...and not office supplies? I just want to make it clear.

Mr. Roberts: It is a...it is a...a...material, windows a...you know, compressor and stuff like that a, you know, there may be an office for my business but it's not an office per se. I mean we're a full service construction company.

Mr. Hughes: I...it was very had to keep up with this, I've been out there a...ten times in as many days and it seems like there's a rotating circus, if you will, about vehicles here,

signs there, banners here. It's never the same for a month at a time and I don't know if the rest of the people have been out there that often, I happen to go by there quite a bit. Are we going to bring it down to a dull roar at some point? It seems like there is just so much going on on this property.

Mr. Roberts: A, you know, we do have the banners up there, that is a...for the business down below more or less to attract a...you know, customers for them.

Mr. Hughes: And what is that business?

Mr. Roberts: It's a clothing store. It's actually a...my wife has opened it up. A...we're going through the process of getting a divorce. I'm trying to help her out. She's hidden underneath. No, help her out not throw her out. A...that may be decided by someone other than me but a...for now she stays and a...you know, business is slow there it's, you know, she's hidden underneath. It's her only source of income so that's...with signs and stuff, you know, the banners. She's having a sidewalk sale this weekend so...

Mr. Hughes: So would it be safe to speculate that there's a lot of activity on that one property and when I look at this and the signs and the banners and all the other stuff I'm wondering if the parking and traffic control and that stuff has been addressed too. You're operating two entities something that small...

Mr. Roberts: We do have a a-entrance off of 52.

Mr. Hughes: Yeah, we've been out to the property, there's a driveway goes around in the back but I was more focused on the safety. There's children in and out of there I see. I don't know if they're yours...

Mr. Roberts: That's my daughter.

Mr. Hughes: The parking doesn't seem to be right, the traffic control and with painting lines and arrows and the motion doesn't seem to be right so I was really a little bit antsy about addressing just this in a segment without covering the whole thing. I don't know if Code Compliance has anything.

Mr. Mattina: Right.

Mr. Hughes: Are they in Violation with anything else?

Mr. Mattina: Not with the site. As far back as the records go to the early '70's there has always been an office upstairs and a retail downstairs so they haven't altered the site plan or what they've been using a site plan in the last thirty years. It's just these extras that keep popping up.

Mr. Hughes: I see. And then part of that is propelled or protracted if you will, if you had other parking spaces around the building where you're parking trucks now maybe there's a better way you can make a general outline on the property and clean it up so it's safe.

Mr. Roberts: Is that...you...I...I don't feel the property is unsafe a...a...you know a...the plan is obviously to have as many vehicles in the back as possible, you know, of the building. You know, the larger trucks and stuff and it...and, you know to be honest with you, the trucks are a good source of advertising. You know, we do have box trucks that have our names on it.

Mr. Hughes: Yeah.

Mr. Roberts: So, a...

Mr. Hughes: Well you see we got to that point where there was the trucks with the signs on it and the extra signs that weren't there before and then the truck on each side and you're going by there we have photos, it's unbelievable sometimes.

Chairperson Cardone: We'll a...excuse me, we will get to the...the signs but right now I want to address the use variance.

Mr. Hughes: Okay.

Chairperson Cardone: And I just want to remind the Board that there are five (four) criteria to grant a use variance and all five (four) must be met so...

Mr. Hughes: Alright I have some questions even before it gets to that though and I'll refer to Counsel on this one. Can we segment on a property a use for such a storage trailer?

Mr. Donovan: Segment from what?

Mr. Hughes: Well from the entire property. If he's looking for a use variance just for that storage unit or is he looking for a use variance to change the conditions he can use this facility?

Mr. Donovan: Well, I...

Mr. Hughes: Is it just for the storage unit?

Mr. Donovan: Well, I think that we have two applications and this application that we're reviewing presently is for a use variance or alternatively an interpretation, actually I think it should be reverse, a...but it's a use variance to allow, as I understand it, well a use variance to allow the container to be used as storage?

Mr. Roberts: That's correct.

Mr. Donovan: Or an interpretation that at the truck loading facility?

Mr. Roberts: Well we do a...

Mr. Donovan: Just reading from your application.

Mr. Roberts: ...it...it's more or less for storage.

Mr. Donovan: Okay...

Chairperson Cardone: Joe, correct me if I'm wrong...

Mr. Hughes: (Inaudible)

Chairperson Cardone: ...it would be any type of storage.

Mr. Mattina: Correct, our...our focus is the building itself which would be the eight foot container and the twelve foot overhang cantilever. For us that's storage as a building period, as one lump storage building.

Mr. Hughes: Okay, so then you're going to address this as a building, per se at this point.

Mr. Mattina: Correct.

Mr. Hughes: Okay. And Counsel, we can do that? We can say that that's a building and rule on a use variance for such a thing?

Mr. Donovan: We can say...what's a building?

Mr. Hughes: That the storage container...?

Mr. Donovan: Well that was another question that I had for Joe. Since it...I'm reading the definition of structure in the Code, does...does this a...unit qualify as a structure?

Mr. Mattina: Well I think that was part of the interpretation, are cargo containers considered accessory structures? Wasn't it written up that way? I think we've had this discussion before, cargo containers...

Chairperson Cardone: Yes.

Mr. Mattina: ...are they commercial vehicles or are they accessory buildings? But in this case, to me, the Bulk Table is a storage building period so it really doesn't define whether it's a cargo container or a stick built structure or a concrete structure, a storage building period.

Mr. Hughes: Well what I had my eye on here is if we haven't ruled on one of these storage containers before and I don't believe it to be a building it doesn't have footings and doesn't have windows and doors, and like that. I think we're going...

Chairperson Cardone: But it is a storage container and it does have an overhang that's built on to it.

Mr. Mattina: Correct. The second variance request 185-7-F, unspecified use of cargo container as a storage building so we're asking is it?

Mr. Hughes: Permissible?

Mr. Mattina: Correct. It's not specified in the Code.

Mr. Hughes: Yeah, I didn't see anything anywhere.

Mr. Maher: What's the difference between dropping a storage container in a backyard and a...or a...on the property and a pre-built shed? The same function, there the same...

Chairperson Cardone: Right.

Mr. Maher: ...function in the end is storage (inaudible).

Chairperson Cardone: Right.

Mr. Hughes: And hopefully the shed isn't as ugly as the storage container.

Mr. Maher: Well regardless of that, I mean, it still serves the same purpose.

Mr. Hughes: Yes.

Mr. Maher: I mean, other than gravel or earth under there there's no foundation generally for dropping a shed either. Correct?

Mr. Roberts: No.

Mr. Maher: Now are there...are there footings on the actual overhang?

Mr. Roberts: No.

Mr. Maher: So they're just...

Mr. Roberts: It's a temporary...it's a temporary structure, it's not a permanent solution to my needs but it is one that is needed at the time. There...there's no electric, no heat and if I was a strip mall three buildings down, under the Code, it would be legal but because I'm a free standing building alone it's not legal.

Mr. Maher: Didn't we have one recently...? That was a request ...didn't the Boy Scouts request a...a storage shed?

Chairperson Cardone: Yes, they did. They were denied.

Mr. Maher: And that was on...on Jeannie Drive, right?

Chairperson Cardone: Yes, that's correct.

Mr. Hughes: Yeah, right up the road. Counsel, can you maybe describe for the sake of the public and the applicant how difficult that use variance is to get and read those reg's that go with it please?

Mr. Donovan: Well...

Chairperson Cardone: Do you want me to read the four criteria?

Mr. Donovan: You have them in front of you.

Chairperson Cardone: I have them right in front of me. One, cannot realize a reasonable return substantial as shown by competent financial evidence. Two, alleged hardship is unique and does not apply to a substantial proportion of neighborhood or district. Three, requested variance will not alter essential character of the neighborhood. And four, the alleged hardship has not been self-created. And all four have to be met.

Mr. Hughes: And that hardship is a tough one because...

Chairperson Cardone: Because it is self-created.

Mr. Hughes: ...it...it is self, yeah.

Mr. Manley: Is there a possibility that a...there would be another location that you could utilize for equipment storage versus office location, have, you know, multiple location to kind of...

Mr. Roberts: If you're saying rent another building somewhere else, I mean that's going to create an even further hardship and I, you know, and I do believe I meet all those criteria's regarding hardship. I don't see that a...a national recession, a global recession that has a...you know, that we're still in, is a self-created hardship.

Mr. Hughes: But that's not really what it's looking for.

Mr. Donovan: The nature of a self-created hardship is did you know, or should you have known that you can't have storage space on that...on that property because storage is not allowed as accessory to an office? And if you knew or should have known then the

hardship is self-created. We typically deal with area variances where a self-created hardship is not a bar to relief just a fact to be considered. In the area of use variances, a self-created hardship is an absolute bar. If the hardship is self-created you may not grant the use variance.

Mr. Roberts: I was a...shown plans by the previous owner before I bought it that a...years ago and a...probably about seven or eight before I bought it in '07 that he had a approval to put a small strip mall back there. You know, of course it have to be the demo of the building we're in and the building a strip mall running, you know, running parallel with Verizon so a...I did not know that when I purchased the building that you could not have a...a...storage.

Mr. Hughes: So is there something other than the storage container that you could put on the property, Counsel and Building Department, that is fit to suit in that area? In other words if he removed the storage shed and put a real shed out there? He still can't do that?

Mr. Mattina: Right, Bulk Table 8 doesn't allow storage buildings.

Mr. Hughes: Suppose he put an extension on the back of his building? It would serve the same purpose.

Mr. Mattina: Then the Planning Board would address the issues.

Mr. Hughes: Well so there's...there's one option you can take because I don't see your use variance going through, by the State Law.

Mr. Roberts: Well, that's you know...

Mr. Hughes: It's tough to meet those criteria for a use they're almost impossible to get so, you know, I'm not telling you what to do but I'm looking for a way where you can get a compromise and still where you are without a lot of expense.

Mr. Roberts: Well to put an addition on the back of the building would create a...a...you know, I am looking for a way to satisfy the Town and to...to...to stay in business a...and again, you know, I...I, you know I don't know what the options are that's, you know, cost efficient at the time a...you know, it's a, you know, cargo container that's already bought and paid for and a...you know it's...it could be moved further back if the Board sees fit so it's out of the way more. I mean it is...you really have to pull up the property, you can't see it from Verizon; you can't see it from driving down 300 unless you come to a stop and look. You know, it's...it's...

Mr. Hughes: Well, we don't get into those kind of far reaching details but we're looking for a way where you can meet this and live to tell about it so to speak, you know.

Mr. Roberts: Thank you for that.

Chairperson Cardone: I have a report from the Orange County Department of Planning, which is Local Determination. They also additionally said, if the Board may wish to consider a...in the event that this would be approved mitigation measures should be considered to visually screen the storage container as a part of any approval, this may consist of decorative fencing, with landscaping, in accordance with the Zoning Law and potential approval by the Planning Board.

Mr. Hughes: And so with that...?

Chairperson Cardone: Well they're saying if...if it were approved.

Mr. Hughes: About the mitigation part of it, if you were willing to move it back and dress it up where it would disappear then maybe you would have a shot at...

Mr. Roberts: I would a...I would definitely do anything the Board wishes me to do.

Mr. Hughes: Counsel.

Chairperson Cardone: That...that would not...

Mr. Hughes: That doesn't relieve him from the hardship? No...I...

Chairperson Cardone: No it does not.

Mr. Donovan: If you make a determination that it is self-created you can't grant the use variance.

Mr. Hughes: Yeah, I...about the interpretation now, Counsel?

Mr. Donovan: Well that's the applicant's request he should make his argument and you should listen to it.

Mr. Roberts: Regarding the...being a storage container? I'm not quite clear on where you're going.

Mr. Hughes: I don't have the answer for you. I don't know.

Mr. Donovan: Well I'm just reading from the application, it says your request is for a use variance or...or alternatively an interpretation of the Ordinance and in number two; I'll read what you have written. I would like it interpreted that the cargo container I have used on my property for approximately seven years is a truck loading facility. I use the container solely to hold materials which are loaded and unloaded into my trucks.

Mr. Roberts: That is correct.

Mr. Hughes: Joe, has that thing been there that long?

Mr. Mattina: I never noticed it until a complaint was filed.

Mr. Hughes: Yeah, I never did either. You say it's been there seven years?

Mr. Roberts: Since a...probably '06. That might not be a full seven years but part...a good part of it.

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

Ms. Drake: I...I got a question. I just have a question. Joe, if it was listed, the building was listed as retail versus an office would that allow the storage shed?

Mr. Donovan: I think Brenda that's D-2. I think storage is only allowed with C-1, D-7, 11, 13.

Mr. Mattina: Correct. No it would not. D-7 is a research laboratory, D-11 is a motor vehicle service station and D-13 is a business park. That's the only permitted uses for a storage building.

Ms. Drake: Okay.

Chairperson Cardone: In other words no type of structure would be allowed for...?

Mr. Donovan: For storage.

Chairperson Cardone: ...for storage.

Mr. Mattina: For storage, correct, no storage structures are allowed.

Chairperson Cardone: Right. Right.

Mr. Maher: But just to go back to Ron's suggestion there, if there was a...if there was a roof structure on the rear of the building, a small addition, covered porch, whatever you want to call it, that would be acceptable? Because it's part of the main building?

Mr. Mattina: Once again, that would be up to the Planning Board because they would have to have a site plan and they would dictate what it is to be used for and what it should be categorized as.

Mr. Hughes: You still own that bulk of all that property that you've described?

Mr. Roberts: That's correct.

Mr. Hughes: (Inaudible) business part...well I...what my colleague just suggested might...that's what I was trying to get across, maybe I didn't use the right words but it's either that or you have to go to Town Board to ask them to redistrict that whole thing along in there or I don't see a shot for you any other way. You know, you've got nothing, you have a neighbor there that's a regular house that's been converted into a business as well and they have a...a used clothing store, baby equipment and that kind of stuff so neither one of them were in a district that included residential at that time or...or it's been converted to something else since they were built. There may...because other than those two dwellings I don't think there's anything else but commercial use from one corner to the next.

Mr. Roberts: That's correct.

Mr. Hughes: So maybe you shot isn't here but to go to the Town Board to see if they'll entertain a redistricting of that whole area. That's a commercial...

Chairperson Cardone: Of the whole area when it's commercial?

Mr. Hughes: Well no...

Chairperson Cardone: As an IB he couldn't a...he couldn't have any type of storage. What are you suggesting?

Mr. Donovan: I think he is suggesting that they allow storage in the IB.

Chairperson Cardone: Oh.

Mr. Hughes: Well, no I'm not saying that either. No, no.

Mr. Donovan: And that's not the application that's before us. Alright?

Mr. Hughes: No, I'm not looking for that.

Chairperson Cardone: Well that might be something to look for rather than looking at...I mean there's no way to change this to an R-3 or an R-2...

Mr. Hughes: Oh, no.

Chairperson Cardone: ...or something of that type.

Mr. Hughes: I'm not suggesting that at all. I was going the other way to make it more into a commercial thing because these are just two houses that were converted into a commercial installation. They were residential houses at one time. They've been commercial for a long time at this point. I don't have the answer for you. I'm just trying to make suggestions.

Mr. Roberts: I appreciate your kindness.

Mr. Hughes: But back what Mr. Maher said, if you were allowed by the Planning Board to extend that building and incorporate a garage there with an extension of that building then you could get rid of the storage container. I don't know what to tell you...

Ms. Gennarelli: Ron, could you get a little closer to the microphone?

Mr. Hughes: I'm sorry. Did you get all of that Betty?

Ms. Gennarelli: Barely.

Mr. Hughes: Yeah, that's a tough spot. It's...I don't see a way where we can offer you more suggestions than what we've done already. Everything else is in compliance there Joe? There's no Violations on the building or anything?

Mr. Mattina: No, not on the building, no.

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

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

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted – 7:41 PM)

ZBA MEETING – AUGUST 23, 2012 (Resumption for decision: 9:46 PM)

NELLA'S NEST NORTH CORP. 1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE

Applicant is seeking an Interpretation and/or Use variances for Bulk Table – Schedule 8 – storage buildings are not permitted with a D5 and any use not specifically permitted shall be deemed to be prohibited to keep a Prior Built (20 x 40) storage building.

Chairperson Cardone: On the next application Nella's Nest North Corp., 1430 Route 300, Interpretation and/or Use variance for Bulk Table – Schedule 8 – storage buildings are not permitted with a D5 and any use not specifically permitted shall be deemed to be prohibited to keep a Prior Built (20 x 40) storage building.

Ms. Drake: Based on the need for use variances and the criteria for hardship I don't feel this application has met the criteria for hardship for the storage. I make a motion to deny the application.

Chairperson Cardone: Do we have a second on the denial of this application?

Mr. Hughes: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for denial is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:47 PM)

88 9/5/12

ZBA MEETING – AUGUST 23, 2012

(Time Noted – 7:41 PM)

NELLA’S NEST NORTH CORP.

1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE

<p>SEP 05 2012</p> <p>TOWN OF NEWBURGH TOWN CLERK'S OFFICE</p>
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Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Chairperson Cardone: The next applicant Nella’s Nest North Corporation seeking an area variance related to the square footage of the signage.

(From Use variance minutes) Ms. Gennarelli: This applicant sent out twelve registered letters for both...for each...for the use variance and for the area variance and eleven were returned for the use variance and eleven were returned for the area variance. All the mailings and publications are in order.

Mr. Roberts: Thank you once again. I believe the main issue is the free-standing sign a...that a...my a...has two signs on it, one is Roberts’ Contracting, the other one is Nella Bella’s Boutique and right now it sits forty-four feet from the center of Route 300. A...I believe the Code is 80-feet, as it stands now a...that sign again was there when I bought the building. A...I talked to the previous owner Mark Mazza. He said that his dad put that sign up in the early ‘80’s when Route 300 was a a two-lane highway going up that hill instead of a two-lane plus the turning lane. A...I don’t believe...obviously that met Code back then it should still be grandfathered in a...the second thing, the 80-foot rule make make sense up further by Home Depot and Friday’s where there’s a five lanes but a where I’m at now I would have to move my sign in the middle of my building to accommodate the...the 80-feet rule.

Mr. McKelvey: That truck you got on the...on...advertising the clothing store that’s a sign too.

Mr. Roberts: That is true and that sign, that truck is registered, it’s insured, it’s mobile.

Mr. McKelvey: It is still a sign.

Mr. Roberts: I have signs on all my trucks a...you know, whether it’s lettering...

Mr. McKelvey: You’re advertising a business.

Mr. Roberts: That is correct.

Chairperson Cardone: Any time I’ve gone past and I go past quite often I’ve seen that truck there so it’s more or less permanent.

Mr. Roberts: I wouldn't say that. It's been moved since I put the signs up as we needed to...as it...roofing business will pick up and it will get moved more often.

Ms. Drake: You also have the signs on the building.

Mr. Roberts: That is correct.

Chairperson Cardone: There's a large percent, 145% over on the allowable signage.

Mr. Roberts: A...I'm not sure how you a...we came up with the number of square foot that I'm allowed. I don't know the....I can't figure out the calculation for that.

Chairperson Cardone: Mr. Mattina will help you with that.

Mr. Mattina: Basically you're allowed signage of half the square footage of your road frontage.

Mr. Roberts: I have a...three-hundred and eighty-four a...feet of road frontage and that would allow me a...you know, more than the signage I have.

Mr. Maher: Three-eighty four or two-eighty four?

Mr. Mattina: It's two-eighty four.

Mr. Roberts: Its three-eighty four there's a...

Mr. Mattina: I have a survey that shows two-eighty four.

Mr. Hughes: What are your calculations, Joe?

Mr. Mattina: Basically he is allowed a hundred and forty-two square feet. I have two pending applications for the Roberts' sign that's installed on the building and the Nella sign already installed on the building which when you subtract them two applications only leaves forty-nine square feet remaining of allowable square footage. The free-standing sign is a hundred and twenty and that would put him seventy-one square feet over, with the Roberts' sign, the Nella's sign and the free-standing sign.

Mr. Hughes: Are any of the ones on the building now that are being removed?

Mr. Mattina: Well the Roberts' one will fit square footage wise and the Nella's on the left side of the building will fit in square footage wise without variances.

Mr. Hughes: But when you go to the standing sign...

Mr. Mattina: It's when you go to the standing sign and then all the other trucks, banners and that's where the issue arises.

Mr. Hughes: So just the free-standing sign...

Ms. Gennarelli: Okay, with the air conditioner on we won't be able to hear at all unless you get close.

Mr. Hughes: With the free-standing sign you're seventy-nine over and then the trucks and all the rest of the stuff?

Mr. Mattina: Correct.

Mr. Hughes: I see.

Mr. Mattina: These figures only cover the Roberts' sign, the Nella's sign and the free-standing sign. All the other signage is not included in these calculations because it changes, as you said before, daily.

Mr. Maher: I understand.

Mr. McKelvey: Well when he bought the building and the free-standing sign would be up would have been alright.

Mr. Mattina: No because I have pictures of when the variance was granted in '87 and that's not exactly the sign that he has there.

Mr. McKelvey: Okay.

Mr. Mattina: He has a little but he was granted a variance in '87 for a 5 x 5. Chiccone (Capiccioni) Realtors or something...

Mr. Maher: It was the old photo place too, wasn't it?

Mr. Hughes: It was.

Mr. Mattina: Yeah, that's the little signage underneath it. The main sign was 5 x 5...

Mr. Roberts: Can I see that, sir? If you don't mind?

Mr. Mattina: Sure.

Mr. Maher: Just to clarify, Joe, you said you got a hundred...two-hundred and eighty-four foot frontage, you got a hundred and forty-two square foot of signage allowed? Correct? A hundred and forty-two will roll?

Mr. Mattina: Yes.

Mr. Maher: Okay.

Ms. Gennarelli: Thank you.

Mr. Mattina: Yes.

Mr. Maher: So the sign, the pole...oh, the sign on the front of the building...

Mr. Mattina: The Roberts sign.

Mr. Maher: Correct.

Mr. Mattina: Yes, I have an application for that.

Mr. Maher: Okay, well...just...

Ms. Gennarelli: Mike, can you pull that closer?

Mr. Maher: A...brainwaves...

Ms. Gennarelli: Because of the air...yeah.

Mr. Maher: I'm just trying to clarify because obviously what's on the a...sheet you gave us and what's on the...I'm trying to clarify because if you're allowed one forty-two total, I understand that there may be pending applications but just to clarify what we have overall whether existing, permitted or not a...that's actually secured, the pole sign, the a... and that stuff on building itself that's not going anywhere. So if you have the front sign which is equal to what? On the building itself is...bear with me...

Mr. Mattina: The building sign Roberts' Roofing on the front is eighty-four square feet.

Mr. Hughes: Eighty-four square feet.

Mr. Maher: So eighty-four square feet for the Roberts on the front and then we've got this on the end of the building...

Mr. Mattina: That's Nella's.

Mr. Maher: Which is...a wall sign...

Mr. Mattina: 6 x 36 so that's nine square feet.

Mr. Maher: So you've got nine there, okay you got ninety-three and then we've got the...the pole sign...

Mr. Mattina: The pole sign would be a hundred and twenty square feet.

Mr. Hughes: Inaudible

Mr. Maher: Two sided correct?

Mr. Mattina: Correct.

Mr. Maher: So we've got one twenty there so now we're up to two-hundred and seven with that one...so we've got that one...that one...that one...that one and then the phone side on the...south side of the building. Is that where it is? You've got an additional thirteen and a half, thirteen and a half feet there?

Mr. Mattina: We didn't address them because we only addressed what the applications were submitted for Roberts', Nella's and the free-standing.

Mr. Hughes: So it's at 209...

Mr. Maher: Okay.

Mr. Hughes: ...three of those?

Mr. Maher: 207.

Mr. Hughes: 207?

Mr. Maher: So one forty-two is allowed so sixty-eight...so, got seventy-five square feet give or take, seventy-one or whatever it is.

Mr. Roberts: I'd be a...willing to take down the big sign on the front of the building that's a...seems to be the bulk of the signage.

Mr. Maher: That actually would reduce it below the requirement. So if you took the eighty-four feet off you end up actually having nine-foot, six-foot leeway there. You'd be under actually. Under what's on the Permit and what is discussed.

Mr. Mattina: Right, application wise.

Mr. Maher: Nothing about the other things that are hanging around.

Mr. Mattina: Correct.

Mr. Manley: The one question I have is you're willing to remove the one sign so that you can include the other signs basically get those taken care of?

Mr. Roberts: That's correct.

Mr. Manley: Mr. Mattina mentioned that there were a number of signs that weren't addressed in the application what were your plans to do with those that weren't addressed?

Mr. Roberts: You know, I a...was under the impression that the sign for the phone number on the window was a...that we did file an application for that. If I didn't I apologize. That is about a...twelve inches high by about a...and I'm guessing ten feet.

Mr. Maher: It is labeled here as thirteen and a half square feet total.

Mr. Manley: Well you may have enough square footage once you remove that...

Mr. Roberts: To keep that, yes.

Mr. Manley: ...to keep that.

Mr. Hughes: I noticed some things that looked like sandwich boards up against the...

Mr. Roberts: Those are yard signs and they can be moved and removed if that suits...

Mr. Hughes: If you got rid of all of that and you took the big sign off the front and went with the free-standing in the front you'd be under and that part of it could be addressed alright. The numbers work out there Mike?

Mr. Maher: I'm working on it.

Mr. Hughes: He's our human calculator here.

Chairperson Cardone: But those other signs are not allowed.

Mr. Hughes: Well that's what I'm saying to the applicant...

Chairperson Cardone: Right.

Mr. Hughes: ...that they would have to be removed as part of this.

Chairperson Cardone: Right.

Mr. McKelvey: The truck...the truck would have to be removed too. That's a big sign. Right Joe?

Mr. Mattina: Yes that is signage.

Mr. Maher: Well in essence by keeping the window sign and the pole number sign by keeping the Nella's and the Roberts' sign in the front of the building, the pole sign itself and the Nella's wall sign you end up with one thirty-two and a half ($142 \frac{1}{2}$) so you've

basically got nine, eight and a half, nine and a half to spare, square foot of signage. That's with removing the large wall sign in the front there so you still meet the...you're within the one forty-two that you're allowed based on the frontage.

Chairperson Cardone: Are you talking about removing it or decreasing the size of it?

Mr. Roberts: The large sign I can remove that a...permanently. It served its purpose. It's no longer needed. Everybody knows we're there.

Chairperson Cardone: Then what is the point of all these other signs?

Mr. Roberts: Just a reminder. Don't want people to forget about us.

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

Mr. Manley: Joe, if a vehicle is moved behind a residence where it can't be seen from the roadway not considered a sign then?

Mr. Mattina: On a residence?

Mr. Manley: Well a...behind the office building, if they park it in the back where it's not visible from the roadway are they going to consider that...is that going to be an issue?

Mr. Mattina: That gets into a whole different chapter of parking commercial vehicles a...it gets into screening, it gets to carports, it gets into other issues to just put it in the backyard? No that would not be acceptable.

Mr. Maher: In an IB zone?

Mr. Mattina: Correct.

Ms. Drake: Joe for vehicles that have stuff right on the side of the door of the vehicles, is that considered signage or is the fact that he's got the roofing and siding signs on the back part of the truck considered the sign?

Mr. Mattina: Displayed advertisement is an advertisement whether it's just the name, phone number, artwork.

Ms. Drake: So anybody that has the name of their business on their truck and they park it in their driveway that's signage?

Mr. Mattina: Well you can't park a commercial vehicle in your driveway technically.

Mr. Donovan: Well I guess, I guess the question would be this, I think the question would be this or a question would be this, I have my office Dave's Law Firm and my car has Dave's Law Firm. I come in the morning, I park Dave's Law Firm, I go to court, I go to

meetings, I park, go home is that a sign? As distinct from my other car which I put on...on the lawn and I corner it so everyone can see it and I never move it. I don't know if I know the answer to that question Joe. I don't mean to put you on the spot.

Mr. Maher: Apparently you weren't at the Public Hearing for the Home Occupations.

Mr. Hughes: Right.

Mr. Mattina: The Town Board is already looking at the point right now with lettering of vehicles. The Town Board is working on the definitions, is...they are trying to alter the definitions.

Mr. McKelvey: If they're going to...they're going...

Chairperson Cardone: This is...this is obviously the sign though it says Sale and it says a...Boutique with an arrow pointing toward the Boutique. You know, we're not talking about just lettering on the side of the vehicle. No...

Ms. Drake: What I was getting at...

Chairperson Cardone: ...that's definitely a sign.

Ms. Drake: Right. Right but I was...

Mr. Roberts: They are signs.

Ms. Drake: ...making the...those signs came off that truck and he parked that truck in the back or just park that truck with the lettering on the actual side of the door, is there a distinction between that as being a sign?

Mr. McKelvey: That's what the Town is working on.

Chairperson Cardone: Right.

Mr. Hughes: What's the length of the foot of the truck that you could park a commercial, twenty-one or twenty-five feet? They have a length of a commercial vehicle that's the cut off.

Mr. Mattina: Yeah, right now we're at twenty-five feet in one Section, it also just talks commercial in another section so there's conflicting...

Mr. Maher: But you...yeah, you can't live on twenty-five...

Mr. Hughes: So it's twenty-five feet?

Mr. Mattina: Right.

Mr. Maher: You can't live on twenty-five feet in an IB Zone though.

Mr. Mattina: Right.

Mr. Hughes: No, I was just trying to figure a way.

Mr. Maher: Well let me ask you I guess I have a question here. As much as I...I...I'm not from...not in favor of the myriad of trucks out there. By the same token though you have a Verizon next door, if you've got twenty-five trucks parked there with Verizon on the side of it...

Mr. McKelvey: Plus cars.

Mr. Maher: ...so I mean, you know, again I'm not in favor of all the trucks sitting there but by the same token though you have a next door neighbor that's, you know, fifty feet away. You've got twenty-five trucks parked there with advertising per se on the side of them...what's the difference?

Mr. Mattina: Nobody filed a complaint against Verizon.

Mr. Hughes: Is that what happened here?

Chairperson Cardone: And I think it's...I think it's also the fact that it's not just the lettering on the truck that's the problem...

Mr. Maher: Right, I...I...I don't disagree there...

Chairperson Cardone: ...Yeah...

Mr. Maher: ...I just, in general though...

Chairperson Cardone: ...right.

Mr. Maher: ...you know, while I'm not in favor of...of the...the arrows and the pointing signs there but with the same token though if Roberts is on the side or on the side of the stake body and it's just sitting there it's no different than Verizon sitting there or up on 17K all the truck companies with NEMF on the side of it or NFI or all the NFI trucks on Orr Avenue. There's really no difference in my opinion. Other than it being visible, it's right in front of you versus out of site.

Mr. Hughes: Yeah.

Ms. Drake: Or the Home Depot trucks parked in the Home Depot parking lot.

Mr. Maher: Exactly. There's...there's...

Mr. McKelvey: Verizon also throws stuff up on the front of their building sometimes.

Mr. Maher: Which I'm sure they don't get Permits for.

Mr. Manley: Well I think that's part of the a...part of the conflict that we're having is that we understand that there is a need for some...something of that degree because obviously that's part of business and commerce and...but at the same time, you know, somebody doesn't want eight trucks parked in front of their house, you...you know, so there's got to be some sort of balance and that's why I was asking about well if the trucks were maybe parked in the back of the...the office building in the evening or you know, where it won't detract from the...from the parking lot.

Mr. Roberts: Yeah, it may be considered it an office but it's our place of business and that's...

Mr. McKelvey: That's what I was going to ask him...

Mr. Roberts: ...you know, we a...

Mr. McKelvey: ...if he runs his business from there too.

Mr. Roberts: We pay, you know, and...and I don't want to throw numbers around, we pay fourteen thousand dollars a year in property taxes to stay there in that little corner of 300 and...and near 52 and it's a lot of money and a...you know and it...it's a, you know we need to...we need to advertise it to get our name out and people to see us. It's the nature of the beast with this economy we have to do what we have to do and it...it...putting it up a few extra banners and putting signs on the truck so I can help my wife out, I mean, it's...you know, it's...the way it is. I mean I apologize for any inconvenience for this. You know, we're just trying to survive.

Mr. Donovan: Well let's kind of circle back to where we are because if the eighty-four square foot sign will be removed...

Mr. Roberts: Yes.

Mr. Donovan: ...then there is not an application before this Board anymore. There might be...

Mr. Maher: (Inaudible) variance taken.

Mr. Donovan: That's correct. There may be an enforcement issue, there may be a Permit required a...for other signs if it's determined that the truck sits on the front lawn, it doesn't move, that that may be a sign that may need a Permit a...but right now what's before the Board as I understand it is under a hundred and forty-two square feet. Which...which would not require a variance.

Mr. Roberts: Which I could meet tomorrow or the next day. Give us till Monday and it will be down I can assure the Board that.

Mr. Donovan: Then, maybe I...if you want to do this you can adjourn this Hearing to next month and if in fact that...that's accomplished then the application could be withdrawn.

Mr. Roberts: I appreciate it.

Chairperson Cardone: But you do understand that Code Compliance will be looking at these other additional signs that should not be there.

Mr. Mattina: As far as the additional signage there is a legal, it is in the court system with the signs so after tonight's meeting decisions things will be addressed in the court system.

Mr. Hughes: So do we have to generate a letter, to what was resolved here tonight, for the court?

Mr. Mattina: No, I'll pass it along and we'll take it to the court ourselves.

Chairperson Cardone: Do I have a motion to adjourn this meeting until next month?

Mr. McKelvey: I'll make a motion.

Ms. Drake: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Mr. Roberts: Thank you all.

Ms. Gennarelli: September 27th, this is held open.

(Time Noted – 8:01 PM)

ZBA MEETING – AUGUST 23, 2012 (Resumption for decision: 9:47 PM)

NELLA'S NEST NORTH CORP. 1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE

Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Chairperson Cardone: On the application of Nella's Nest North Corp., 1430 Route 300, seeking area variances for the maximum allowed total signage and no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign. This is a Type II Action under SEQRA.

Ms. Drake: I thought we kept this Public Hearing open.

Chairperson Cardone: On that one, okay yes, I did note that. That's we hold that open pending the removal of the other sign. Okay.

PRESENT ARE:

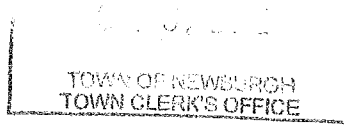
GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:47 PM)

BB 9/5/12



Section 60, Block 3, Lot 24

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

NELLA'S NEST NORTH CORP.

DECISION

For an interpretation that the prior built cargo container on the premises qualifies as a truck loading facility or, alternatively, a use variance as follows:

- *Grant of a variance allowing a structure accessory to an office in the IB Zoning District where such accessory structure is not permitted.*

-----X

Introduction

Nella's Nest North Corp. seeks relief as follows: (1) an interpretation that the prior built cargo container on the premises qualifies as a truck loading facility and therefore is permitted and may remain on the premises; or, alternatively, (2) that a use variance issue as follows: a use variance allowing a prior built structure, said structure being the said cargo container, accessory to an office be allowed to remain where such an accessory structure is not permitted in the IB zone.

The property is located at 1430 Route 300 in the IB Zoning District and is identified on the Town of Newburgh tax maps as Section 60, Block 3, Lot 24.

A public hearing was held on August 23, 2012, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

Accessory Building

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

The bulk tables applicable to the IB zoning district do not permit storage buildings that are accessory to office uses.¹

Background

After receiving all the materials presented by the applicant and the testimony of Kevin Roberts at the public hearing held before the Zoning Board of Appeals on August 23, 2012, the Board makes the following findings of fact:

1. The applicant is the owner of a 1.4± square foot lot (tax parcel 60-3-24) located at 1430 Route 300.
2. The lot is improved by an office building. The applicant has erected, without the required and necessary permits, and wishes to maintain, a storage building (a cargo container) on the premises. Storage buildings, accessory to an office use, are prohibited in the IB Zoning District.
3. The applicant's proposal is set forth in an application that includes photographs and a survey prepared by Raymond E. Heinsman Pro-

¹ Such storage/accessory buildings are only permitted in connection with existing single family dwellings; research laboratories; motor vehicle service stations, public garages, car washes, rental agencies and business parks.

fessional Land Surveyor, PLLC dated June 16, 2012. Those materials are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

4. No members of the public spoke either in favor or against this application.
5. The Building Inspector denied a building permit application by letter dated February 23, 2012.

The applicant has appealed the Building Inspector's determination seeking an interpretation or, alternatively, a use variance to maintain the storage/accessory building in the IB Zoning District.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

Because the Board decision herein results in a denial of the relief sought by the applicant, there is no "action" as that term is defined by the implementing regulations of the *Environmental Conservation Law* and, as such, this project is not subject to review under those regulations, promulgated pursuant to the *State Environmental Quality Review Act*.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that

this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Interpretation Request

As a preliminary matter, the authority for the Board to render interpretations of the local is found in Section 267-b (1) of the New York State *Town Law*. Section 267-b(1) is entitled "**Permitted actions by board of appeals.**" It provides as follows:

Orders, requirements, decisions, interpretations, determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from, and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

It is therefore clear that state law specifically authorizes the Board to entertain the application made by Nella's Nest North Corp. seeking an interpretation of Section 185-49 of the Town Code.

Discussion of Interpretation request

The applicant advanced no argument or theory in support of the interpretation component of the application.² Accordingly, this request is denied.

Discussion of Use Variance request

Findings

In reviewing the facts presented for the requested use variance, the Board considered the standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (2)(b). Each standard has been considered essential to our decision, for a failure to satisfy any one is fatal to this application for a use variance.

(1) Lack of Reasonable Return

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, an applicant must demonstrate to the board that for each and every permitted use under the zoning regulations for the particular district where the property is located that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

To sustain his burden of proof in this regard, the applicant submitted no proof or evidence of any kind or nature.

Accordingly, and based upon the evidence and testimony before it, the Board concludes that the applicant has not satisfied its burden, by dollars and

² The applicant did state that the cargo container had been on the property for approximately seven (7) years. It is unclear, however, what this statement has to do with the requested interpretation.

cents proof or otherwise, that the property cannot be reasonably used for any other of the permitted uses within the IB Zoning District.

(2) Unique Hardship

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

With regard to the “unique hardship” issue, the applicant submitted no proof or evidence of any kind or nature.

As a result of the foregoing, the applicant has not sustained its burden of proof with regard to this factor.

(3) Character of the Neighborhood

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that the requested use variance, if granted, will not alter the essential character of the neighborhood.

With regard to the “character of the neighborhood” issue, the applicant submitted no proof or evidence of any kind or nature.

As a result of the foregoing, the applicant has not sustained its burden of proof with regard to this factor.

(4) Self Created Nature of the Hardship

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that the alleged hardship has not been self-created.

In the context of a use variance application, the self-created nature of the

hardship is an absolute bar to the issuance of the relief requested.

Upon an examination of the facts of this matter, it is clear that the hardship confronting the applicant is self created. Therefore, the use variance requested must be denied.

Decision

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, and in employing the criteria set forth in Town Law 267-b (2), the Board decides and does hereby deny the use variance requested.

Dated: August 23, 2012



Grace Cardone, Chair
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
 Member Brenda Drake
 Member Ronald Hughes
 Member John McKelvey
 Member James Manley
 Member Michael Maher

NAYS: None

ABSENT: None

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision rendered by the Zoning Board at a meeting of said Board held on August 23, 2012.



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on _____.



ANDREW J. ZARUTSKIE, CLERK

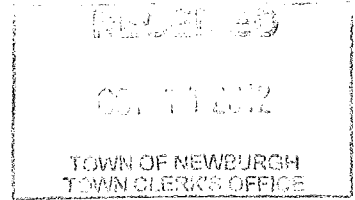
TOWN OF NEWBURGH

ZBA MEETING – SEPTEMBER 27, 2012

(Time Noted – 8:02 PM)

NELLA'S NEST NORTH CORP.

1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE



Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Chairperson Cardone: Okay held over from last month from August 23 was Nella's Nest North Corporation.

Mr. Roberts: Good evening all.

Ms. Gennarelli: Can you get a little closer to that Kevin?

Mr. Roberts: Of course.

Ms. Gennarelli: You could tip it up towards you more and just for the record if you could identify yourself.

Mr. Roberts: Kevin Roberts, president of Nella's Nest.

Ms. Gennarelli: Thank you.

Ms. Drake: I've noticed some of the signs have been removed since last month.

Mr. Roberts: All the ones you've asked me to take down I've taken down.

Ms. Drake: Okay that's the one on the window?

Mr. Roberts: No, it was actually the one on the wall.

Ms. Drake: Right.

Mr. Roberts: And there was two smaller signs leaning against the a sign post they have been removed.

Chairperson Cardone: The signs on the truck are still an issue though. Every time I've gone past there I have seen at least two trucks there with signs on them.

Mr. Roberts: Yeah, I do understand that but a...I have never heard of that issue before I've come to the Board. The Code Enforcement agent didn't violate me for that. He didn't include that as the overage. I've talked to Town officials and they're you know, they haven't said it was an issue to me a, you know.

Mr. McKelvey: I think we've pointed out last month though that we felt it was an issue.

Mr. Roberts: And also too I'd like to point out last month I was here I said I had three hundred and twenty-two feet of a...road frontage. The Code Enforcement agent said on the a survey it was a two eighty-two and then there's also a thirty-eight to the right of that that you add that up and it comes to three twenty-two. I also measured it myself and it does come up to three twenty-two.

Chairperson Cardone: And you a...Code Enforcement Officer was here last month...

Mr. Roberts: That's correct.

Chairperson Cardone: ...and did not tell us that it wasn't an issue and the pictures that I have that he took point to the signs on the truck. So I believe it is an issue.

Ms. Drake: Yeah, we talked about the trucks quite a bit last time and he didn't correct us during the discussion.

Mr. Maher: But we...we discussed the fact that if you take into account Verizon next door that has fifty trucks into the parking lot with signs on them that would constitute a significant overage also.

Mr. Donovan: And I think what Mr. Mattina said and unfortunately he is not here tonight is that a...a...because he was asked that question specifically. He said the Town Board is already looking at the point right now with the lettering of vehicles. The Town Board is working on definitions; they're trying to alter the definitions. I believe he went on to say a...that they were not included the...the a...vehicles, the lettering, the advertising if you will was not included in his calculation; I can't find it right now, because it changed on a relatively frequent basis. So I think...he also went on to say that a...I believe there is a Court proceeding. At least he, Mr. Mattina referenced that in his remarks. A...because we talked about removing certain signs which would then put him within the one hundred and forty-two square feet that's a...permissible and Mr. Mattina then said as far as the additional signage, there is a legal...goes on to say...it is the Court sign system with the signs so after tonight's meeting decisions, things will be addressed in the Court system.

Chairperson Cardone: Did that happen?

Mr. Roberts: I don't know if he was referring to my a...Court case but I haven't been back to Court yet. I thought he was referring to a general basis.

Mr. Donovan: No, he was referring to you.

Mr. Roberts: Okay, no that hasn't been a...a...a...I haven't been back to Court since a the last meeting.

Mr. McKelvey: I talked to Joe today and Joe says that they're waiting for our decision.

Mr. Donovan: Well what we talked about last month, is if he removed certain signs he would be under the hundred and forty-two square feet a...and that, because what he wrote him up for did not include the vehicles. I think Joe said that that it didn't include the vehicles. So if he wasn't referred here based upon the signage on the vehicles then we don't really have jurisdiction. I...I mean I don't want to drag this on forever but it seems to me if they're not here the appropriate course is for us to get some sort of letter from Code Compliance whether they find him in compliance or not.

Chairperson Cardone: Right.

Mr. Roberts: You know, I'd also do a...

Chairperson Cardone: Well even if they have the correct amount of footage, they still have the problem with the number of feet from the road. So they need...they need a variance anyway. I believe, let me find that...

Mr. McKelvey: Eighty.

Chairperson Cardone: ...eighty...within eighty feet of the centerline of Union Avenue, closer than fifteen feet from the street line.

Mr. Roberts: The sign is forty-four feet from the center of Route 300 a...if I were to move it another thirty-six feet it would literally be inside my building.

Chairperson Cardone: Right.

Mr. Roberts: A...there is historical evidence as a...the...the Code Enforcement agent had a picture of that sign being there in some shape in 1987.

Mr. Manley: However, I don't believe the sign was as big in 1987. It's kind of...

Mr. Roberts: That may be true but again the sign was there when I purchased the building in '08 and there when I moved at...in '05.

Ms. Drake: Okay, then he would still need the two variances, one for the centerline to Union Avenue and the other for the lot line should be fifteen and that's nine...

Chairperson Cardone: Right, so those variances are needed, yes.

Ms. Drake: Right.

Mr. McKelvey: But we still need a...

Mr. Donovan: Well if the...I don't...I don't know if the Board is comfortable that there is compliance in terms of the hundred and forty-two square foot issue.

Mr. Manley: Well and it's not really our job to determine which ones stay and which ones go. We grant the variance and then it's up to Code Compliance to...

Mr. Donovan: Correct, right.

Mr. Manley: ...work with the applicant.

Mr. Donovan: And...and we can only deal with what's been a...the violation that's being appealed from that...that specific violation. The idea is for certain signs were taken down that...that the a...allowable signage requirement would have been met. I would suggest that you need confirmation.

Mr. McKelvey: Yeah, I think that we do.

Mr. Maher: That...need confirmation on what?

Mr. Donovan: That...that he's now, in terms of the allowable square footage of signs that he is in compliance. That was the...as I recall Mike, that was the idea last month.

Mr. Maher: Right, but it is obvious the sign in the front of the building is currently missing.

Mr. Roberts: Yeah, the signs were taken down within days after you requested.

Mr. McKelvey: I saw you taken them...I went by when you were taken it down.

Mr. Donovan: Then if the Board is comfortable with that then I don't have any...I don't have any problem.

Mr. Maher: The signage...

Mr. Roberts: I'd also...

Mr. Maher: ...I'm sorry, the signage was seventy-one foot over according to Joe, according to his worksheet and the sign you took down was...

Mr. Roberts: Approximately fourteen by six feet.

Mr. Maher: So basically...

Mr. Roberts: Forty-two, eight-four square feet.

Mr. Maher: Eighty-four square feet a...

Mr. Manley: I have Joe's calculations if you'd like. He has a hundred and twenty feet for the pole sign, nine for Nella's, thirteen and a half for the phone number for a total of a hundred and forty-two and a half. So they're a half over.

Mr. Roberts: I'd also like to point out as I stated before I have three hundred and twenty-two feet of road frontage not two eighty-four.

Mr. Manley: Code Compliance is saying two eighty-four.

Mr. Roberts: The...the survey is there you can add it up, its two eight-four plus thirty-eight.

Mr. McKelvey: Do we have to get a correction on that then?

Mr. Maher: Yeah, I did see that, yeah.

Mr. Roberts: I don't know why my survey was printed like that it does make it confusing even for myself. I had to measure it several times and come...

Ms. Drake: That's because there's a different northing and easting...

Mr. Roberts: Yeah.

Ms. Drake: ...for that one...

Mr. Roberts: I would assume he did it for some reason...

Ms. Drake: ...part.

Mr. Roberts: ...that I don't understand.

Mr. Maher: So if that was the case, a hundred and sixty-one feet would be the allowable signage for that.

Mr. Roberts: And I also have...I'm...I'm not sure how the ruling is on this...I also have a right of way onto 52. Am I credited for a...road frontage there?

Mr. Maher: Do you own that?

Mr. Roberts: No.

Mr. Maher: No. So if the remaining signage is one hundred and a half and the allowable is one sixty-one then there's...there's no variance needed for that.

Mr. Donovan: If the Board is comfortable then that's fine. It would just seem to me it would be nice to have some sort of communication if Code Compliance was here or if they gave us some communication indicating.

Mr. Maher: Well what we have that from his original worksheet what (inaudible) was.

Chairperson Cardone: We could Reserve...

Mr. Donovan: It's up to the...

Chairperson Cardone: Decision and a...

Mr. Donovan: ...it's up to if you're comfortable with the...

Ms. Drake: (inaudible)

Chairperson Cardone: We could close the Public Hearing and then Reserve Decision.

Mr. McKelvey: Reserve Decision.

Mr. Donovan: I think the Public Hearing is closed. Isn't it?

Chairperson Cardone: No.

Mr. McKelvey: No, no.

Mr. Donovan: Oh okay.

Ms. Drake: Is there a way that we could actually make a ruling on the other two items, leaving the third one and saying that we believe that it's in compliance and if it's not that we could unanimously open it up and look at it again at a later date, without making him go through all the mailings again, if it's not in compliance?

Mr. Donovan: I'm sorry Brenda, do you mean rule on the...the two and not on the one?

Ms. Drake: Correct.

Mr. Donovan: No, I would...its all part of one application so I would...

Ms. Drake: Okay.

Mr. Donovan: ...suggest that you rule on it all at one time. Now if you're comfortable that he's now in compliance based upon the Violation, if you will, issued by the Code Compliance then that's fine with me. I...I like to have a little bit of a clearer record that indicates that there's no issues but if the Board is comfortable with the...your visual inspection, you've been out there an the sign is down and Mike's giving us the numbers and he appears to be well under then...then if that's your inclination that's certainly supportable.

Mr. Manley: My only concern is if there is something that creeps up and a...it's not to the applicant's favor he's going to have to come back again and re-file.

Chairperson Cardone: That's why I say to reserve the decision.

Mr. McKelvey: That's why if we close it and Reserve Decision, get the information.

Ms. Drake: Therefore it's not at any expense...

Mr. Donovan: I think you have the authority to proceed in either direction it's...its how the Board feels. I, my own advice to you is having you're better off having a clearer record.

Chairperson Cardone: I would agree with that.

Ms. Drake: We should also ask Code Compliance to confirm the one sixty-one square footage based on the...the additional thirty-eight foot so that it's all clear on the record.

Chairperson Cardone: Again I would suggest that we close the Public Hearing and then reserve the decision until we have that information from Code Compliance.

Mr. Maher: Just one comment.

Chairperson Cardone: Go ahead.

Mr. Maher: Jim on your...on your calculations there, on the worksheet Joe had submitted so we're all on the same page here...the window phone sign thirteen and a half square feet. Twelve dash twenty-nine at...

Mr. Manley: Okay go ahead.

Mr. Maher: So nine by one point five is thirteen and a half square feet?

Mr. Manley: For the phone number?

Mr. Maher: Yep, the wall sign was...was taken down. The Nella pole sign twenty...twenty-five times two is fifty...

Mr. Manley: It's a hundred and twenty.

Mr. Maher: Twenty-five times two.

Ms. Gennarelli: There are two signs on there.

Mr. Maher: I'm just looking at one of them. So it says Nella's pole sign five by five. Is that two sided?

Mr. Manley: Yes.

Mr. Maher: Okay that...that's fifty square feet there, right? And then the...the RCI pole...

Mr. Manley: The way...the way that he has this calculated, he just wrote down the numbers for each one. Is this the applicant's or Joe's?

Ms. Gennarelli: That was Joe's.

Mr. Maher: (Inaudible) Okay, I agree with this.

Mr. McKelvey: If we close the Hearing and reserve it if something comes up, you know, you wouldn't have to apply again.

Mr. Roberts: Okay, so at this time...

Mr. McKelvey: It's going to cost to re-apply.

Mr. Roberts: So at this time we're going to close it, Reserve Decision, I won't have to wait around tonight to...to get the final verdict?

Mr. McKelvey: No.

Mr. Roberts: I can take off?

Mr. Donovan: Unless you want to see how everybody else does?

Mr. Roberts: I wish everybody well. Thank you all.

Chairperson Cardone: Do I have a motion?

Mr. McKelvey: I'll make a motion to close the Public Hearing.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Mr. McKelvey: And I'll make a motion we Reserve Decision.

Ms. Drake: Second.

Mr. Roberts: Thank you all.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Ms. Gennarelli: That will be October 25th that will be on the agenda.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
MICHAEL MAHER
JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:18 PM)

gg 10/11/12

ZBA MEETING – OCTOBER 25, 2012 (Resumption for decision: 8:09 PM)

NELLA'S NEST NORTH CORP.

1430 ROUTE 300, NBGH
(60-3-24) I / B ZONE

Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Mr. McKelvey: We have Other Board Business, on the reserved decision on Nella's Nest North Corporation area variance for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign. This was a Reserved Decision from last month.

Ms. Drake: Is this an Unlisted or...?

Mr. Donovan: This is an Unlisted Action. I think we should just explore for a second the a...the original Violation by Code Compliance did not take into consideration a...the trucks that are used for signage. And I think when the applicant was first before us in August we had a discussion about the signs on the trucks but we indicated at that time if he removed certain signage which I think amounted to eighty-four square feet that he would be in compliance a...not taking into account, not addressing if you will the signs on the trucks and that he only would in that event need a variance from the requirement the distance from the centerline of Union Avenue and the other lot line variance. I think that Code Compliance has identified other deficiencies regarding the signs on the trucks a...but unfortunately I think that would need a new Violation and he would have to come back here again. I think we can only rule on the application that's in front of us which would not...which would simply indicate relative to the sign variance is they remove the one and we're not addressing at this time the signs on the...the alleged signs on the trucks. So the only variance before the Board is the centerline of Union Avenue and the other lot line variance.

Mr. McKelvey: And the a...report from the County is Local Determination.

Mr. Donovan: And this is an Unlisted Action given that it is not a residential structure.

Ms. Drake: I'll make a motion for a Negative Declaration.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

John McKelvey: Yes

Mr. Hughes: I...I have a couple of questions for Code Compliance if you will. Are there other things moving with this other than the variances? Does he have open tickets with Compliance and Building Permits or...?

Mr. Mattina: Well he has the open legal issue with the accessory building in the rear yard and the signage.

Mr. Donovan: Because we denied his application for a...that variance for the accessory structure in the rear.

Mr. Mattina: Correct.

Mr. Hughes: The...the...I don't want to use the word games but it looks as though that every day there is a new circus out there. It's a different truck, it's a different sign, its...in essence you guys would have to go out there and tag him every day to get it pinned down and we'd always be on the conveyor belt and behind the clock. Is the applicant making a genuine attempt to become in compliance?

Mr. Mattina: I would say at this point no because every day we go out there there's more trucks, different trucks, different signage.

Mr. Hughes: So after he left this Board on our advisement he removed the sign from the building and figured that would cover everything when we didn't have the square footage of the trucks that are there every day now? So obviously it's a little...

Mr. Donovan: No, no we only...we covered the a...

Mr. Hughes: Only the sign.

Mr. McKelvey: The sign, yeah.

Mr. Donovan: Yes.

Mr. Hughes: Yeah, maybe I misspoke. I hope I didn't but what I'm saying is that these trucks are out there every day and it's a different number of trucks and the signs are always different. It's never the same two trucks.

Mr. Donovan: Well I think that was the original problem is that you really didn't know what to violate them on.

Mr. Mattina: Correct.

Mr. Hughes: Yeah.

Mr. Mattina: You can't...you can't violate them one day and come here with specific evidence because tomorrow is going to be different, yesterday is different.

Mr. Hughes: Yeah.

Mr. Mattina: So there is no way to narrow it down to a specific number.

Mr. Donovan: And the issue or the reason for my advice to the Board is that that's understandable but the Violation in front of us was for...didn't bring into account those signs. So I'm just saying we can't rule on that not that their not Violations but he'd have to be Violated on those additional signs and then either he chooses to come back here or ends up in Court unfortunately, however that may go.

Mr. Hughes: Well would it be irregular or unusual for the applicant to take a position on this and tell us what he is going to do ultimately and have him come back here or send him over to the judge?

Mr. Donovan: Well that's up to him, that's up to him. He can fight it in Court or he can make an application to us. Go ahead Jerry.

Mr. Canfield: If I may? A...this applicant is already before the Courts a...the applicant has indicated to the Courts he would like to exercise his Constitutional Right to come before this Board. So this Board's final...final decision will then allow the Code Compliance Department to go back to the Courts with your decision. A...I realize and understand that a pending an Enforcement Action should not sway or a...weigh in in any reasoning for your decision but however in this case we do need a decision from your Board a...so we can go back to the Courts and say, yes your Honor they did effectively go before the Board, Zoning Board and this is their decision and then the Courts can then take an action.

Mr. McKelvey: But the only thing we can rule on is this.

Mr. Hughes: The application before us.

Mr. McKelvey: Before us.

Mr. Donovan: Well the original Violation indicating that there was a hundred and twenty square feet of signage and if I recall Joe's advice to us back on that first night in August was that he didn't calculate the trucks because he really couldn't calculate the trucks because it was not an easy thing to do. So what I'm suggesting to the Board is our decision would be you...you now that you have removed the one sign you're in compliance however, we're not passing judgment on any of...any additional signage on...on the property, just what was identified in the...in the hundred and twenty square feet based upon the referral to us. Actually, gee Joe, it looks like it's

back in, well not the referral to us but the original denial back in early...early this year. Is that...is that going to work for you Jerry or is that a problem?

Mr. Canfield: A...yes that's going to work for us providing you do make a decision a...nothing in the variance before you has changed a...to my understanding. Last time the applicant was before you I think the Board asked our department to calculate the signage on the vehicles and bring that back to you which Joe has provided. So nothing other has changed.

Mr. Donovan: Okay, I guess the question was, he had indicated to us...I think Mike had suggested that he take down one of his signs. I just have it sign on the front, the Roberts sign. And he came back to us in September and said he took the sign down. And is that true or not true?

Mr. Hughes: It is true.

Mr. Mattina: Yes.

Mr. Donovan: So based upon the...the analysis you did back in February that...that would put him in compliance exclusive of the signage on the trucks.

Mr. Canfield: That's correct.

Mr. Donovan: Okay.

Mr. Mattina: And the location from the street and the centerline.

Mr. Donovan: Correct those two items we need to vote on. All I'm suggesting is that if he has in fact removed the one sign and he is in compliance from the analysis done in February then we...we could rule on that and specifically state in our decision that we are not passing judgment on any additional signage not included in the February analysis specifically the signs on the trucks which would give you, should you deem it appropriate, the ability to re-violate that...I'm sorry, not re-violate, violate that in the future.

Mr. Canfield: Yes, understood.

Mr. Donovan: Is that okay?

Mr. Maher: (Inaudible)

Mr. Canfield: And I agree, yes.

Mr. Maher: (Inaudible) the maximum allowable signage would be the one sixty one which what the...what they are allowed to have based on the linear footage of frontage.

Mr. Mattina: Yes.

Mr. Canfield: Fixed on the buildings, yes.

Mr. Maher: So then, right, there'd be...there would be no additional signage, no variance given for any signage if in fact they are over that then that gives you the right to...

Mr. Canfield: Yes, that's correct.

Mr. Maher: ...do what's necessary.

Mr. Donovan: Got that?

Mr. Manley: I would then be willing to a...make a motion that we grant the side yard which was the fifteen feet from the street line to keep the prior build free-standing sign and also recognize that in lieu of the applicant removing the actual sign off of the building that it now brings him...that the Board recognizes it brings him within compliance of the required signage which alleviates that one variance. Correct?

Mr. Donovan: Specifically not...not addressing the issue of any signage on trucks and the other two variances, the center line from Union Avenue 80-feet required, 40-feet provided and the lot fifteen feet required, nine feet provided.

Mr. Manley: So I would...I would so move that and recognize that in the calculation we have not included any vehicles.

Mr. Donovan: Right.

Ms. Drake: I'll second that motion.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

John McKelvey: Yes

PRESENT ARE:

JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER

JAMES MANLEY

ABSENT:

GRACE CARDONE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
JOSEPH MATTINA, CODE COMPLIANCE
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:19 PM)

Handwritten signature and date: 2/11/12. The signature is a stylized cursive mark, and the date is written in a simple, slanted font.

11/30/12

Section 60, Block 3, Lot 24

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application¹ of

NELLA'S NEST NORTH CORP.

DECISION

For area variances as follows:

- *Grant of a variance allowing a structure (a free-standing sign) to be located 40 feet from the center line of the street where a minimum of 80 feet is required; and*
- *Grant of a variance allowing a free-standing sign to be located 9 feet from the lot line where a minimum of 15 feet is required.*

-----X

Introduction

Nella's Nest North Corp. seeks area variances as follows: (1) grant of a variance allowing a structure (a free standing sign) to be located 40 feet from the center line of the street where a minimum of 80 feet is required from certain streets specified in the Code, specifically Union Avenue upon which the property

¹ The original application also sought an additional sign variance, specifically the grant of a variance allowing total signage of 120 square feet where 49 square feet is the maximum allowed. At the initial meeting of the Board regarding this application, however, the applicant agreed to remove one sign from the building which then reduced the total signage to a conforming level and obviated the need for the variance regarding total signage. In this regard, the Board makes specific reference to the ongoing dispute between the applicant and Code Compliance relative to the parking of vehicles on the applicant's property which vehicles have lettering identifying the business uses being conducted on the applicants' property. The violation issued by Code Compliance which resulted in the instant application before the Board did not address this issue and the signage calculation originally submitted to this Board did not reflect any signage allocable to the lettering on the vehicles. This Decision, therefore, does not in any way address this issue.

in question fronts; and (2) grant of a variance allowing a sign to be located 9 feet from the street line where a minimum of 15 feet is required.

The property is located at 1430 Route 300 in the IB Zoning District and is identified on the Town of Newburgh tax maps as Section 60, Block 3, Lot 24.

A public hearing was held on August 23, 2012, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code. The public hearing was continued on September 27, 2012 at which time it was closed.

Law

Section 185-18(C)(4)(a) provides that no building or structure shall be placed within 80 feet of the center line of certain specifically identified streets, including Union Avenue the street upon which the property fronts.

Section 185-14(B)(1)(c) provides that any freestanding sign shall be at least 15 feet from any street line.

Background

After receiving all the materials presented by the applicant and hearing the testimony of Kevin Roberts, a principal in the applicant corporation, at the public hearing held before the Zoning Board of Appeals on August 23, 2012, and continued on September 27, 2012, the Board makes the following findings of fact:

1. The applicant is the owner of the property located at 1430 Route 300 and is designated on the tax map as Section 60, Block 3, Lot 14.2.
2. The lot is improved by a commercial retail building. The property is improved by a free standing sign that is less than 80 feet from the cen-

terline of Union Avenue. The same free standing sign is also less than 15 feet from the street line.

3. The applicant's proposal is set forth on a set of photographs as well as on a survey prepared by Raymond E. Heinsman Professional Land Surveyor, PLLC dated June 16, 2010. These photographs and survey are hereby incorporated into this decision and a set shall remain in the Zoning Board's file in this matter.
4. The required, existing and proposed dimensions and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Minimum distance from Center Line of Union Avenue	80'	40'		40'	50%
Lot Line	15'	9'		6'	40%

5. No members of the public were heard during the hearing.
6. The Building Inspector denied a building permit application by letter dated February 23, 2012.

The applicant has appealed the Building Inspector's determination.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes an unlisted action under the State Environmental Quality Review Act. The Board has issued a negative declaration thereby determining that the application will have no adverse impact upon the environment.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the existing free standing sign is in harmony with this existing and well-established commercial neighborhood. The applicant also testified that maintaining the sign in its present location would not in any way result in any undesirable change to the neighborhood nor cause any detriment to any nearby properties. The applicant further testified that the signage is appropriate as to scale and is in harmony with other signs in this

commercial neighborhood.

No contrary evidence or testimony was submitted to the Board at the public hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the surrounding properties in that neighborhood will result from the signage proposed to be maintained by the applicant.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that issuance of the requested area variances will not result in any serious, undesirable, detriment to the surrounding neighborhood.

(2) Need for Variance

The applicant testified that signage of the quantity and of the size proposed was integral to the identification of their business. Given the size of the property in question and further given the fact that it has limited road frontage, it is clear that the difficulty confronted by the applicant cannot be overcome by any method, feasible for the applicant to pursue, except by issuance of the area variances.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant can not be achieved by any other method other than the issuance of the requested variances.

(3) Substantial Nature of Variances Requested

The variances requested are substantial. However, under the circumstances present here, and because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe,

that the substantial nature of the variances requested does not prohibit the Board from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence produced that would indicate that issuance of the requested variances would result in any adverse physical and/or environmental effects. The applicant testified that no such effects would occur.

(5) Self-Created Difficulty

The need for these variances is clearly self-created in the sense that the applicants are charged with the knowledge of the requirements of the Town of Newburgh Zoning Ordinance.

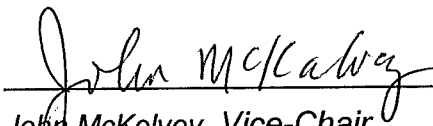
However, given the fact that the Board has determined that issuance of the requested variances will not result in any adverse impact upon the surrounding neighborhood and further given that the Board has determined that the variances requested are the minimum variances that may be issued to allow the applicant the relief sought, the Board determines that the self-created nature of the hardship confronting the applicant is not a bar to issuance of the relief requested herein.

Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variances as requested upon the following conditions:

1. The variance hereby granted is granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

Dated: October 25, 2012



John McKelvey, Vice-Chair
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:


AYES: Member Brenda Drake
 Member Ronald Hughes
 Member James Manley
 Member John McKelvey
 Member Michael Maher

NAYS: None

ABSENT: Chair Grace Cardone

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

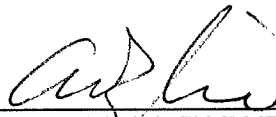
I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on October 25, 2012.



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on NOV 20 2012.



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH

- 8. RECREATION:**
 - A. 2013 Program Brochure**
 - B. Tee Shirt Bid Award**
-

TOWN OF NEWBURGH
SUMMARY OF QUOTATION FORM

FEB 13 2013

RECREATION DEPT.
DATE PREPARED: FEB. 4, 2013

REQUESTED BY:

RECREATION 2013 PROGRAM BROCHURE PRINTING

ITEM/SERVICE PURCHASED

VENDOR NAME

SPEAR PRINTING Co.

THE SENTINEL

GREAT AMERICAN BROCHURE

ADDRESS

15 GOSHEN AVE., SUITE 100

MAAR PRINTING

MAC MEDIA

CITY/STATE/ZIP

WASHINGTONVILLE, NY 10992

WOODBURY PRINTING PLUS

THE PRINT SHOP

PHONE #

845-496-3611

FIRST IMPRESSIONS

CONTACT PERSON

JOHN SPEAR

PRICE QUOTED

\$5,920.00

No QUOTE

No QUOTE

EXPIRATION DATE

VENDOR CHOSEN

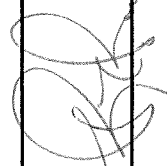
SPEAR PRINTING Co.

Section V

*NOTE: If the vendor you wish to purchase from did not give the lowest quote, state reason why you did not purchase from the lowest cost vendor.

DUE TO TIME CONSTRAINTS REQUESTING BOARD APPROVAL ASAP TO EXPEDITE PRINTING AND DISTRIBUTION.

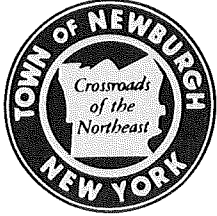
DEPARTMENT HEAD SIGNATURE



DATE:

2/4/13

(ATTACH ANY WRITTEN QUOTES, IF REQUIRED)



TOWN OF NEWBURGH RECREATION DEPARTMENT

311 ROUTE 32, NEWBURGH, NY 12550

Robert J. Petrillo
Commissioner of Parks, Recreation & Conservation

845-564-7815
FAX: 845-564-7827

February 4, 2013

TO: Wayne Booth, Supervisor
Town Board Members

FROM: Robert J. Petrillo, Commissioner

RE: 2013 Program Brochure

The Recreation Department has received only one quote for the printing of the 2013 Annual Program Brochure. For your reference, attached is the list of vendors from whom quotes were requested.

At this time, I am requesting your approval to accept the quote from Spear Printing at the price quoted of \$5,920.00. Spear Printing has been awarded this job for the past several years and we have been satisfied with the quality of their work.

Thank you for your consideration.

Regards,

Robert J. Petrillo
Commissioner

Attachments



TOWN OF NEWBURGH RECREATION DEPARTMENT

311 ROUTE 32, NEWBURGH, NY 12550

January 10, 2013

845-564-7815
FAX: 845-564-7827

TO: Potential Bidders
FROM: Robert J. Petrillo, Commissioner
RE: Price Quote for 2013 Town of Newburgh Recreation
Department Program Brochure

Specifications including quantity to be delivered to the Recreation Department are as follows:

Quantity: 8,000

Packaging: Bulk Carton

Delivery to: Town of Newburgh Recreation Department

Cover Stock: 80 # Gloss book cover is 4/2 full color with full bleed all sides

Text Stock: 36 inside pages on 60 # white, 2 color throughout

Bindery/size: Stapled and 3 sides trimmed to 8.5 x 11 finished size

Design/layout: Supplied in Adobe InDesign CS5 version
On-site consultation and pick up of file
Complete proofs for approval prior to printing

Approximate Delivery Time from final approval: 2 weeks

Price Quote for consultation, file and proof: included

Price Quote for Printing and Bindery: Included

Total Amount of Price Quote: \$5920

Name of Company: Spear Printing Co.

Address of Company: 15 Goshen Ave. - Suite 100
Washingtonville, NY 10992

Name of contact person: John Spear

Phone Number: 845-496-3611

PLEASE SUBMIT QUOTE BY JANUARY 30, 2013.

Rec'd 1/30/13

*Request for quote sent to the
following companies -*

The Sentinel
36 Meriline Ave
New Windsor NY 12553

Maar Printing
49 Oakley St
Poughkeepsie NY 12601

~~Image Land
1079 Little Britain Rd
New Windsor NY 12553~~

Spear Printing Co
17 Goshen Ave
Washingtonville NY 10992

Woodbury Printing Plus
96 Turner Rd Route 32
Central Valley NY 10917

First Impressions
690 Route 211 East
Middletown NY 10941

Great American Brochure
1874 State Route 284
Slate Hill NY 10973

Mac Media
5 N. Hudson
Chester NY 10918

The Print Shop
623 Broadway
Newburgh NY 12550

FEB - 4 2013

audit meet

AA



TOWN OF NEWBURGH RECREATION DEPARTMENT

311 ROUTE 32, NEWBURGH, NY 12550

Robert J. Petrillo
Commissioner of Parks, Recreation & Conservation

845-564-7815
FAX: 845-564-7827

January 28, 2013

TO: Wayne Booth, Supervisor
Town Board Members

FROM: Robert J. Petrillo, Commissioner

RE: T-Shirt Bid Opening & Award

Sealed bids were opened on Friday, January 25th at 10:00 a.m. Six bid packages were received quoting t-shirt prices for 2013. Attached is a summary of qualified bidders and their pricing.


Based on last year's total purchases, please find below a comparison based on the weighted average between the two lowest bidders.

	CREATE MY TEE.COM	WILDHEART APPAREL
On Color Front Print 2012 Quantity: 1,782	\$5,328.18 @ \$2.95/shirt	\$5,613.20 @ \$3.15/shirt
One Color Front Chest and Back 2012 Quantity: 843	\$3,060.09 @ \$3.63/shirt	\$2,857.77 @ \$3.39/shirt
Four Color Front Chest and Back 2012 Quantity: 120	\$462.00 @ \$3.85/shirt	\$442.80 @ \$3.79/shirt
TOTALS	\$8,850.27	\$8,913.87

Difference between bids is \$63.60.

Wildheart has satisfactory serviced the Town for the last two years. Considering the above information, we recommend staying with Wildheart Designs based on our past experience and the minimal difference in the cost.

Regards,


Robert J. Petrillo
Commissioner

FEB - 4 2013

8B 25



TOWN OF NEWBURGH RECREATION DEPARTMENT

311 ROUTE 32, NEWBURGH, NY 12550

FEB 13 2013

Robert J. Petrillo
Commissioner of Parks, Recreation & Conservation

845-564-7815
FAX: 845-564-7827

January 28, 2013

TO: Wayne Booth, Supervisor
Town Board Members

FROM: Robert J. Petrillo, Commissioner

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Regards,

Robert J. Petrillo
Commissioner

Andrew Zarutskie
Deborah A. Smith

2013 T-SHIRT BID OPENING
Town of Newburgh
1496 Rte 300, Newburgh, NY
Friday, January 25, 2013
@10:00 a.m.

BIDDER	1 COLOR FRONT SCREEN ONLY	1 COLOR FRONT LEFT CHEST ONLY	1 COLOR FRONT LEFT CHEST & BACK	4 COLOR FRONT LEFT CHEST & BACK	SCREEN CHARGE
Crater Tee.Com					
43 Course Dr. Suite 330					
Arbit, MI 48108	2.99	2.99	3.63	3.85	0
73-418 2689					
Furion Graphics					
216 Route 208					
Montgomery, NY 12549	3.23	3.23	3.46	3.88	0
84-457 7746					
Mattie Dudley					
Spencer Inc.					
120 Madison Avenue		4	4.5	5.65	0
Memphis, TN 38104	4	4			
90-725 1757					
Paadisi Sunshine Sports					
220 NW 3rd Avenue Unit 5B					
Pompano Beach, FL 33060	5	4.5	6.15	7	35
95-785 8843					
Sritfys					
14101 HWY 95					
Leicester, TN 37771	4.5	4.5	5.5	8	0
86-988 6932					
Widheat Apparel					
206 N Shelah Drive					
Fayetteville, AR 72704	3.15	3.15	3.39	3.79	4.95
47-442 3899					

9. **HIGHWAY:**
 - A. **Summer Materials Bid**
 - B. **Promotions and New Hires**
 - C. **Hiring Seasonal Laborer**
-

FEB 13 2013



HIGHWAY DEPARTMENT

ga

90 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

TELEPHONE 845-561-2177
FAX 845-561-8987

DARRELL BENEDICT
HIGHWAY SUPERINTENDENT

TODD DEPEW
DEPUTY HIGHWAY SUPERINTENDENT

TO: Wayne C. Booth, Supervisor & Town Board Members

FROM: Darrell Benedict, Highway Superintendent (DB)

DATE: February 5, 2013

RE: Summer Material and Other Bids

I would like to be put on the agenda, to go out to bid for the Summer Materials including Guide Rails, Chip Spreader, Wheel Rubber Tire Roller, and Aluminum Box Culverts. Also the individual bids for the Cold Milling Machine and Heavy Equipment Rentals.

If you have any questions please feel free to call me. Thanking you in advance.

DB/ch

cc: John Platt, DPW Commissioner

FEB 13 2013

9B




HIGHWAY DEPARTMENT

90 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

TELEPHONE 845-561-2177
FAX 845-561-8987

DARRELL BENEDICT
HIGHWAY SUPERINTENDENT

TODD DEPEW
DEPUTY HIGHWAY SUPERINTENDENT

TO: Wayne C. Booth, Supervisor & Town Board Members
FROM: Darrell Benedict, Highway Superintendent 
DATE: February 7, 2013
RE: Promotions/New Hires

For your consideration, the number of Highway Department employees is at an all time low, approximately 26; we were at 32 in 2009.

I am requesting permission to post for the following positions:
WORK LEADER, HEO & MEO'S
(to fill the various open positions).

Please feel free to contact me, so we can discuss this problem. Thanking you in advance.

DB:ch
cc: John Platt, DPW Commissioner

FEB 13 2013

Debbie
qc



TOWN OF NEWBURGH

1496 Route 300, Newburgh, New York 12550

PERSONNEL DEPT.

PH: 845-566-7785
Fax: 845-564-2170

To: Wayne C Booth, Town Supervisor
Town Board
Jackie Calarco, Town Accountant

From: Charlene M Black, Administrative Aide

Handwritten initials 'CB' inside a circle.

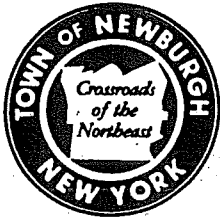
Date: February 6, 2013

Re: Seasonal Worker(s)

The following person(s) have been interviewed for Seasonal Full time and/or Snow call ins:

Travis Smith
for Full time seasonal.

If approved he will need to complete his paperwork, be fingerprinted and Drug and Alcohol tested. Tentative start date is February 28, 2013




HIGHWAY DEPARTMENT

90 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

TELEPHONE 845-561-2177
FAX 845-561-8987

DARRELL BENEDICT
HIGHWAY SUPERINTENDENT

TODD DEPEW
DEPUTY HIGHWAY SUPERINTENDENT

TO: Charlene Black, Personnel Department
FROM: Darrell Benedict, Highway Superintendent 
DATE: February 6, 2013
RE: Seasonal Employees

I am recommending the following candidate for full time seasonal work at the Town of Newburgh Highway Department. His title will be seasonal laborer and the rate of pay will be \$12.00 per hour, with a tentative start date of February 28, 2013. Thank you.

Travis Smith

DB:ch

TOWN OF NEWBURGH
EMPLOYMENT REQUEST FORM

To: Personnel Department

NAME OF CANDIDATE: TRAVIS SMITH

DEPARTMENT: HIGHWAY

TITLE OF POSITION: LABORER

FULL TIME OR PART TIME: SEASONAL

HOURLY RATE: \$12.00

IS POSITION FUNDED IN CURRENT BUDGET: YES OR NO

FUND APPROPRIATION NUMBER: 5110.100

PROPOSED HIRE DATE: 2/28/13

NOTE: CANDIDATE CANNOT BEGIN WORK WITHOUT PRE-EMPLOYMENT PHYSICAL AND COMPLETION OF ALL REQUIRED PAPERWORK.



DEPARTMENT HEAD SIGNATURE

2/6/13

DATE

ORIGINAL APPLICATION SHOULD BE ON FILE IN THE PERSONNEL
DEPARTMENT

COPY TO ACCOUNTING DEPARTMENT
11/15/2010

10. DPW:
 - A. Budget Transfer for DEP Land Use Permit
 - B. Budget Transfer for Spectrometer
 - C. Commissioner Salary Allocation
-

FEB 13 2013

10a

**TOWN OF NEWBURGH
COMMISSIONER OF PUBLIC WORKS**
311 NYS Route 32
Newburgh, New York 12550
(845) 564-7813

MEMORANDUM

TO: Wayne Booth, Town Supervisor and Town Board

From: John Platt, Commissioner of Public Works



Date: February 5, 2013

Re: Budget Transfer for DEP Land Use Permit for Delaware Aqueduct Tap Property

Please note below, for the Town Board's approval, a budget transfer request to fund the NYC DEP Land Use Permit for the Delaware Aqueduct Tap Property.

From: 8330.0472 - \$5,000.00

To: 8330.0471 - \$5,000.00

As the above requires Town Board action, I am requesting that this item be placed on the next available agenda for approval. If you have any questions or comments, I am available to discuss them with you. Thank you.

Cc; Jackie Calarco, Town Accountant
James Osborne, Town Engineer

FEB 13 2013

2012
103

TOWN OF NEWBURGH
COMMISSIONER OF PUBLIC WORKS
311 NYS Route 32
Newburgh, New York 12550
(845) 564-7813

MEMORANDUM

TO: Wayne Booth, Town Supervisor and Town Board

From: John Platt, Commissioner of Public Works



Date: February 7, 2013

Re: Budget Transfer for Hach Dr6000 spectrometer

Please note below, for the Town Board's approval, a budget transfer request to fund the purchase of the DR6000 spectrometer previously approved by the Board.

From: 8330.0459 - \$7,500.00

To: 8330.0466 - \$7,500.00

As the above requires Town Board action, I am requesting that this item be placed on the next available agenda for approval. If you have any questions or comments, I am available to discuss them with you. Thank you.

Cc; Jackie Calarco, Town Accountant
James Osborne, Town Engineer

FEB 13 2013



TOWN OF NEWBURGH

1496 Route 300, Newburgh, New York 12550

100

WAYNE C. BOOTH
Supervisor

845-564-4552
Fax: 845-566-9486
e-mail: townsupervisor@hvc.rr.com

To: Board Members
From: Wayne C. Booth, Town Supervisor
Date: February 11, 2013
RE: Allocation of Commissioner of Department of Public Works Salary

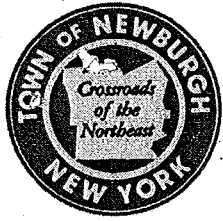
The allocation percentages that were put in the budget for John Platt were:

Filter 30%
Water 30%
Sewer 25%
Highway 15%

Please approve this allocation effective January 1, 2013.

11. ANIMAL CONTROL:

- A. Authorizing T 93 Withdrawal**
 - B. Authorizing T 94 Withdrawal**
 - C. Authorizing Equipment Purchase Using T 94**
-



FEB 13 2013

11a

RECEIVED

FEB 01 2013

TOWN OF NEWBURGH ANIMAL CONTROL & SHELTER
645 Gidney Ave. Newburgh, NY 12550

Town of Newburgh

February 1, 2013

To: Town Board

Subject: Authorization to Pay Veterinarian Services Utilizing T-93 Account

I am requesting authorization to use the T-93 account to pay for veterinarian services from Newburgh Veterinary Hospital for January and for your authorization for payment of this voucher in the total amount of \$14.50.

Sincerely,

Chantel Haight
Animal Control Supervisor

Cc: Accounting

FEB 13 2013

RECEIVED

FEB 01 2013



TOWN OF NEWBURGH ANIMAL CONTROL & SHELTER

645 Gidney Ave. Newburgh, NY 12550

Town of Newburgh

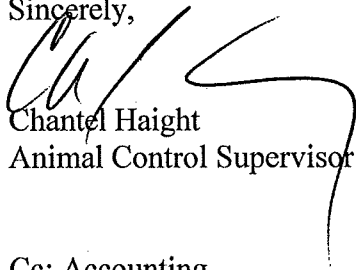
February 1, 2013

To: Town Board

Subject: Authorization to Pay Veterinarian Services Utilizing T-94 Account

I am requesting authorization to use the T-94 account to pay for veterinarian services from Newburgh Veterinary Hospital for the months of December and January for your authorization for payment of this voucher in the total amount of \$1275.55.

Sincerely,



Chantel Haight
Animal Control Supervisor

Cc: Accounting



11c

TOWN OF NEWBURGH ANIMAL CONTROL &
SHELTER

645 GIDNEY AVE. NEWBURGH, NY 12550

(845)561-3344

FAX: (845)561-2220

animalcontrol@hvc.rr.com

Memorandum

To: Wayne Booth, Town Supervisor and Town Board
From: Chantel Haight, Animal Control Supervisor
Date: February 11, 2013
Subject: Request of use of T-94 account monies

I would like to request the use of T-94 account funds in the amount of \$3355 to pay for the purchase of exterior kennel doors from Moore Pet Doors.

Attached please find the estimate and description. The measurements supplied to receive estimate are not final.

12. ENGINEERING: Magyar Stormwater/Soil Erosion Control Security Release

TOWN OF NEWBURGH
TOWN ENGINEER
1496 Rte. 300
Newburgh, NY 12550
(845) 564-7814

MEMORANDUM

TO: Wayne Booth, Town Supervisor & Town Board
FROM: James W. Osborne, Town Engineer *JWO*
DATE: February 5, 2013
RE: PB \ **MAGYAR BUDGET TRUCK RENTAL SITE PLAN**

Based on a request from the developer's contractor, Pat Hines has conducted a final inspection of the site conditions. Based on the installation of the required stormwater control facilities and stabilization of all disturbed areas, it is recommended that the stormwater/soil erosion control security be released and the Town execute the Notice of Termination for the SWPPP.

As the above requires Town Board action, I am requesting that this item be placed on the next available agenda for approval. If you have any questions or comments, I am available to discuss them with you.

JWO/id

cc: M. Taylor, Atty.
G. Canfield, Code Comp. Supervisor
P. Hines, MH&E
F. Valdina, Valdina Consult. Eng.

- 13. ACCOUNTING:**
A. Investment Policy Amendment
B. Interfund Transfer
-

13A

Town of Newburgh, NY

INVESTMENT POLICY

Contents

Section 1	Introduction & Scope
Section 2	Objectives
Section 3	Delegation of Authority
Section 4	Prudence
Section 5	Diversification
Section 6	Internal Controls
Section 7	Designation of Depositaries
Section 8	Collateralizing of Deposits
Section 9	Safekeeping and Collateralization
Section 10	Permitted Investments
Section 11	Authorized Financial Institutions and Dealers
Section 12	Purchase of Investments
Section 13	Operations, Audit and Reporting

Section 8 – Collateralizing of Deposits

In accordance with the provisions of General Municipal Law, §10, all deposits of Town of Newburgh, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured:

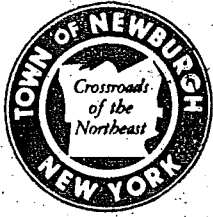
1. By a pledge of “eligible securities” with an aggregate “market value”, or provided by General Municipal Law, §10, equal to the aggregate amount of deposits from the categories designated in Appendix A to the policy.
2. By an eligible “irrevocable letter of credit” issued by a qualified bank other than the bank with the deposits in favor of the government for a term not to exceed 90 days with an aggregate value equal to 140% of the aggregate amount of deposits and the agreed upon interest, if any. A qualified bank is one whose commercial paper and other unsecured short-term debt obligations are rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization or by a bank that is in compliance with applicable federal minimum risk-based capital requirements.
3. By an eligible surety bond payable to the government for an amount at least equal to 100% of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims- paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations.
4. By an “irrevocable letter of credit” issued in favor of the local government by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical rating organization. Such letter of credit payable to the local government as security for the payment of 100% of the aggregate amount of public deposits

Section 9 – Safekeeping and Collateralization

Eligible securities used for collateralizing deposits shall be held by a third party or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure local government deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events, which will enable the local government to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with the Town of Newburgh or its custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company, or agent of and custodian for, the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be co-mingled with or become part of the backing for any other deposit or



119 13 203

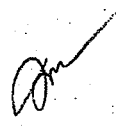
TOWN OF NEWBURGH

1496 Route 300, Newburgh New York 12550

133

JACQUELINE M. CALARCO, CPA
ACCOUNTANT

845-564-5220
Fax 845-566-1432
E-Mail: townacct@frontiernet.net

To: Wayne C. Booth, Town Supervisor
CC: Board Members
From: Jackie Calarco, Town Accountant 
Date: February 4, 2013
RE: Interfund Transfer

In December 2012, we closed two capital projects that had unspent bond proceeds from a 1994 bond in the amount of \$182,185.78. Upon closing the projects, the unspent proceeds transferred to our Debt Service Fund.

The principal payments for these two projects for 2013 amount to \$635,000. Please approve an Interfund Transfer of \$182,185.78 plus all earned interest to the Sewer fund to be used to pay the 2013 principal payment on the 1994 bond from the Debt Service.

14. DATA PROCESSING:

- A. Computer Reserve Purchases**
 - B. Purchase of Untangle Software**
 - C. Surplus Computers**
 - D. Discussion—Recycling and Recovery**
 - E. Copier Update**
-

Copy Machines for Various Departments Toshiba vs. Ricoh

Model	Toshiba Purchase	Monthly Service	Model	Ricoh Purchase	Monthly Service
Accounting	\$ 2,064.00	\$ 53.24	31SPF	\$ 2,287.00	\$ 5.88
Recreation	\$ 6,457.00	\$ 53.14	C4502	\$ 10,055.00	\$ 78.40
Code Compliance	\$ 4,930.00	\$ 28.53	5210SR	\$ 4,159.00	\$ 24.50
Police Dept	\$ 6,457.00	\$ 47.23	C3002	\$ 7,652.00	\$ 67.62
	\$ 19,908.00	\$ 182.14		\$ 24,153.00	\$ 176.40

Transfer
 1315.0200
 7020.0200
 4000.00 } Computer Equip
 1000.00 }
 3410.0200
 3120.0200 } Computer Equip

Toshiba 111,000 images per quarter billed at .007 B&W
 Color .055

Ricoh 72,000 images per quarter billed
 .0098 B&W Color .089

Our existing Laser printers black & white copies cost 2.5 cents
 A Black & White copy on one of the above machines cost .007

A color copy on a small desktop copier cost 25 cents
 A color copy on one of the above machines cost .6 cents

It should be noted the current Cannon Copiers used by the Assessor and Town Clerk will not be supported after April 2013

Department	Model	Unit Status	Equipment Purchase		Monthly Lease	Monthly Service	Monthly Operating Cost
			Proposed Model	Purchase Price			
Accounting	Canon 330S	Replace	MP 301SPF - 31ppm	\$2,287.00	\$74.20	\$5.88	\$80.08
Town Clerk	Canon 3530	Replace	SP 5210SR - 52ppm	\$4,159.00	\$134.94	\$24.50	\$159.44
Assessor	Canon 210s	Replace	MP C3002 - 30ppm	\$7,652.00	\$201.26	\$24.50	\$225.76
Mail Room	RICOH 4001	Keep					
Code Compliance	Canon 3235	Replace	SP 5210SR - 52ppm	\$4,159.00	\$134.94	\$24.50	\$159.44
3410 fire - 3620 zoning - 8020 planning board							
Police Department							
Booking	RICOH 2550b	Keep					
Records	Canon 2200	Combine	MP C3002 - 30ppm	\$7,652.00	\$201.26	\$67.62	\$268.88
Conference Room	Canon 210s	Combine					
REC / Conference Room		Combine					
Detectives	Canon 1600	Remove					
Fleet Maintenance							
Shop	HP6310	Keep					
Town of Newburgh							
Court House	RICOH MP6000	Keep					
Recreation Department	Canon 330s	Replace	MP C4502 - 45ppm	\$10,055.00	\$288.71	\$78.40	\$367.11
Water Department	Savin 2518D	Replace	MP 301SPF - 31ppm	\$2,287.00	\$74.20	\$4.90	\$79.10
Animal Shelter	Canon NP 7130	Keep					
Highway Department	Savin 4018D	Replace	MP 301SPF - 31ppm	\$2,287.00	\$74.20	\$4.90	\$79.10
Totals				\$40,538.00	\$1,183.71	\$235.20	\$1,418.91

- 39 Month Lease Agreement
- Service and Supplies Included (Toner & Staples)
- 72,000 Images Included per Quarter
- B&W Overage to be billed at \$.0098 per Image
- Color Images to be billed from image 1 at a rate of \$.089 each

Color Copiers Assessor
Code Compliance
Police Conference Rm.
Recreation

Ricoh

**PREPARED FOR THE TOWN OF NEWBURGH
February 4, 2013**

Department	Model	Department Code	Unit Status	Average Monthly Volume	Annual Spend	Monthly	Proposed	Monthly Equipment Purchase	Monthly Lease	Monthly Service	Monthly Operating Cost
Accounting	Canon 330s	1315	Replace	7,606	\$600.00	\$50.00	Toshiba 356	\$5,004.00	\$98.08	\$53.24	\$151.32
Town Clerk	Canon 3530	1410	Replace	3,437	\$1,009.68	\$84.14	Toshiba 356	\$5,004.00	\$98.08	\$24.06	\$122.12
Assessor	Canon 210s	1355	Replace	4,076	\$4,305.28	\$358.77	Toshiba 2550c	\$4,930.00	\$96.63	\$28.53	\$125.16
Mail Room	Ricoh 4001	1670	Keep		\$473.74	\$94.75					
Code Compliance	Canon 3235	8010	Replace	4,972	\$1,311.00	\$109.25	Toshiba 2550c	\$4,930.00	\$96.63	\$28.53	\$125.16
3410-fire-3620-Zoning 8020 planning board											
Police Department											
Booking	Ricoh 2550s	3120	Keep		\$59.94	\$19.98					
Records	Canon 2200	3120	Combine		\$2,350.00	\$195.83					
Conference Room	Canon 210s	3120	Combine		\$1,580.60	\$131.72					
REC / Conference Room			Combined	6,747			Toshiba 3540c	\$6,457.00	\$126.56	\$47.23	\$173.79
Detectives	Canon 1600	3120	Remove		\$488.28	\$40.69					
Fleet Maintenance											
Shop	HP 6310		Keep								
Town of Newburgh											
Court House -	Ricoh MP 6000		Keep		\$1,262.76	\$105.23					
Recreation Dept	Canon 330s	7020	Replace	7,592	\$3,629.52	\$302.46	Toshiba 3540c	\$6,457.00	\$126.56	\$53.14	\$179.70
Water Dept	Savin 2518D	8340 / 8130	Replace	1,264	N/W	N/S	Toshiba 206L	\$4,130.00	\$80.95	\$8.85	\$89.80
Animal Shelter	Canon NP 7130	3510	Keep		\$582.36	\$48.53					
Highway Department	Savin4018D	5130	Replace	896	N/W	N/S	Toshiba 206L	\$4,130.00	\$80.95	\$6.27	\$87.22
				36,590.00	\$17,653.16	\$1,541.35		\$41,042.00	\$804.44	\$249.85	\$1,054.27

63 month All Inclusive Agreement
Service & Supplies included
111,000 images included per quarter
Overage to be billed at .007 per image
Color images to be billed from image 1 at rate of .055 each

TOSHIBA



Toshiba Business Solutions Preferred Customer

Proposed equipment

Toshiba e-Studio 306 / 30 ppm Black & White

Reversing Auto document feeder

2 –paper trays (550 sheets each)

Stapling

Scan to email / scan to file & folder (completely networked

Stand

Proposed Toshiba Purchase plan

NYS #01649 Price \$4,538.00

Toshiba Local Government -\$2,474. 00

Toshiba purchase total for The Town of Newburgh.

\$2,064.00

*Service and supplies will be the same monthly number as listed for Accounting on the spread sheet

Accounting

15. POLICE: Authorization to Purchase K-9 Equipment/T 90 Account

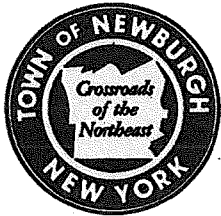
2013 02 07

15

RECEIVED

FEB 07 2013

Town of Newburgh



TOWN OF NEWBURGH POLICE DEPARTMENT

300 Gardnertown Road, Newburgh, New York 12550

Michael Clancy
Chief of Police

(845) 564-1100

February 7, 2013

To: Town Board

From: Chief Michael Clancy

Subject: Authorization to Purchase K-9 Equipment Using T-90 Account

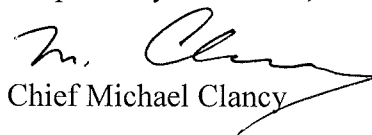
On December 6, 2012 the Town of Newburgh Police K-9 Unit received \$750.00 from Mrs. Sharon Bell to purchase miscellaneous K-9 equipment.

I am requesting authorization to purchase a portable kennel for both K-9 Raven and K-9 Varo to be used to assist in the transportation of the dogs in the event the K-9 vehicles go down due to mechanical failure. The kennels will also serve as a portable holding pen for the dogs in inclement weather.

I am also requesting authorization to purchase holsters for both Officer Krizek and Officer Lawson. The new holsters are necessary to accommodate the handgun mounted lighting system that allows the officers to manipulate their handgun, flashlight and K-9 simultaneously.

The approximate cost of this equipment is \$1,000.00. Including the donation from Mrs. Bell there is ample funds in the T-90 account to cover the cost of the requested equipment.

Respectfully Submitted,


Chief Michael Clancy

**16. RESOLUTION of Support for New York State Contract Information for
Vacant Structures**

DRAFT

At a meeting of the Town Board of the Town of Newburgh held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York, on the ____ day of February, 2013 at 7:00 o'clock p.m.

PRESENT:

Wayne C. Booth, Supervisor

George Woolsey, Councilman

Gilbert J. Piaquadio, Councilman

Elizabeth J. Greene, Councilwoman

Ernest C. Bello, Jr., Councilman

RESOLUTION OF SUPPORT FOR NEW YORK STATE BILLS REQUIRING CONTACT INFORMATION FOR VACANT STRUCTURES AND GOOD FAITH IN OBTAINING FORECLOSURES

Councilman/Councilwoman _____ presented the following resolution which was seconded by Councilman/Councilwoman _____.

WHEREAS, vacant, abandoned and foreclosed homes and structures have proliferated throughout New York State over the last five years; and

WHEREAS, vacant structures that are not maintained for months at a time degrade and depreciate the value of the vacant structure as well as the value of surrounding properties; and

WHEREAS, lending institutions that hold mortgages on said vacant structures do not always provide the contact information of a responsible party; and

WHEREAS, Assembly Bill A.88/S.3655 and Bill A.824/S.3534, currently pending, would make it mandatory for lending institutions to provide contact information of responsible parties regarding vacant structures; and require good faith in obtaining a foreclosure; and

WHEREAS, the Town of Newburgh Town Board supports the passage of said Bills.

NOW THEREFORE, BE IT RESOLVED that the Town of Newburgh hereby supports the passage of said Bills and respectfully requests that the State Representatives who represent constituents in the Town of Newburgh support the passage of said Bill; and

BE IT FURTHER RESOLVED, that certified copies of this Resolution be delivered by the Town Clerk to the Hon. William J. Larkin, Jr., Senator for the 39TH District, the Hon. Frank Skartados, Assemblyman for the 104TH District and to the Co-Sponsors of the Bills; and

BE IT FURTHER RESOLVED, that the aforesaid resolutions shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

George Woolsey, Councilman voting _____

Gilbert J. Piaquadio, Councilman voting _____

Elizabeth J. Greene, Councilwoman voting _____

Ernest C. Bello, Jr., Councilman voting _____

Wayne C. Booth, Supervisor voting _____

The resolution was thereupon declared duly adopted.

I, Andrew J. Zarutskie, the duly elected and qualified Town Clerk of the Town of Newburgh, New York, do hereby certify that the following resolution was adopted at a regular meeting of the Town Board held on _____, 2013 and is on file and of record and that said resolution has not been altered, amended or revoked and is in full force and effect.

Andrew J. Zarutskie, Town Clerk
Town of Newburgh

STATUS:

A88 Kearns Same as S.3655 GALLIVAN

Real Property Actions and Proceedings Law

TITLE....Requires plaintiffs in mortgage foreclosure actions to provide contact information

01/09/13 referred to judiciary

BILL TEXT:

STATE OF NEW YORK

88

2013-2014 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2013

Introduced by M. of A. KEARNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to notice of contact information of a plaintiff in a mortgage foreclosure action

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 1307 of the real property actions and proceedings
- 2 law is amended by adding a new subdivision 9 to read as follows:
- 3 9. A mortgage foreclosure plaintiff with a duty to maintain foreclosed
- 4 property shall provide the contact information of the employee or agent
- 5 of the plaintiff responsible for maintenance of the foreclosed property.
- 6 Such contact information shall include, but not be limited to, a direct
- 7 telephone number and the name of the employee or agent of the plaintiff
- 8 responsible for maintenance of the foreclosed property. Such contact
- 9 information shall be provided to the municipality in which the fore-
- 10 closed property is located through written notice to the chief financial
- 11 officer of the municipality and shall be posted on any vacant dwelling
- 12 or any dwelling that becomes vacant after the issuance of the judgment
- 13 of foreclosure and sale.
- 14 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD00115-01-3

STATUS:

A824 Kearns Same as S 3534 GALLIVAN

Real Property Actions and Proceedings Law

TITLE....Relates to a plaintiff in a mortgage foreclosure action obtaining a judgment of foreclosure and sale in good faith

01/09/13 referred to judiciary

BILL TEXT:**STATE OF NEW YORK**

824

2013-2014 Regular Sessions

IN ASSEMBLY(Profiled)

January 9, 2013

Introduced by M. of A. KEARNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to a plaintiff in a mortgage foreclosure action obtaining a judgment of foreclosure and sale in good faith

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 1 of section 1307 of the real property actions
2 and proceedings law, as added by chapter 507 of the laws of 2009, is
3 amended to read as follows:
4 1. A plaintiff in a mortgage foreclosure action who in good faith
5 obtains a judgment of foreclosure and sale pursuant to section thirteen
6 hundred fifty-one of this article, involving residential real property,
7 as defined in section thirteen hundred five of this article, that is
8 vacant, or becomes vacant after the issuance of such judgment, or is
9 abandoned by the mortgagor but occupied by a tenant, as defined under
10 section thirteen hundred five of this article, shall maintain such prop-
11 erty until such time as ownership has been transferred through the clos-
12 ing of title in foreclosure, or other disposition, and the deed for such
13 property has been duly recorded; provided, however, that if a municip-
14 ality or governmental entity holds a mortgage subordinate to one or
15 more mortgages on the residential real property, the municipality or
16 governmental entity shall not be subject to the requirements of this
17 section. As used in this section, the term "good faith" shall be
18 defined as honesty in fact and the observance of reasonable standards of
19 fair dealing.
20 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

MICHAEL P. KEARNS
Assemblyman 145th District

January 2, 2013

Michael Sweeton
Town of Warwick Supervisor
132 Kings Highway
Warwick, NY 10990

RECEIVED

JAN 16 2013

TOWN OF WARWICK
SUPERVISOR'S OFFICE

Dear Representative Sweeton:

I am writing to you regarding two foreclosure bills (A.88 and A.824) currently referred to the Judiciary Committee in the New York State Assembly. Last session the New York Assembly joined the list of states that have passed foreclosure bills making it mandatory for banks to provide municipalities with contact information of property managers or other parties responsible for upkeep and maintenance of foreclosed or abandoned properties. Unfortunately, the companion bill in the New York State Senate was referred to the Senate Committee on Housing and received no further action, including no vote on the floor of the Senate.

I am concerned that the passage of contact information bill (A.88) and bill (A. 824) requiring "good faith" in obtaining a foreclosure will encounter considerable special interest headwinds this year. In anticipation of significant opposition to these bills, I am hoping that your governing body could provide a resolution, in support of these bills. They can be viewed at my webpage: www.assembly.state.ny.us/mem/Michael-P-Kearns or I can be reached at the email below. Included are two editorials directly dealing with these foreclosure issues and a sample resolution. My intention is to make financial institutions and lenders more accountable to the surrounding community when homes and buildings are abandoned or foreclosure proceedings have started. A resolution from your governing body will add depth and resonance to committee deliberations, as well as establish a robust and persuasive record based on the facts and the needs of the people.

I would be grateful for your participation. Please send your resolution to my District Office in Buffalo, New York. Thank you for your time and help.

Sincerely,

Michael P. Kearns - Assemblyman 145th District

The following RESOLUTION was adopted by the Town Board of the Town of _____
At a regular meeting held on _____:

Resolution XXX-XX

SUPPORT FOR NYS-CONTACT INFORMATION FOR VACANT STRUCTURES

On a motion made by Councilman _____, seconded by Councilman _____,
the following was

ADOPTED AYES # Councilman _____, Councilman _____
 NAYES # Councilman _____, Councilman _____

Resolved to support New York State regarding the proposed laws concerning contact information for vacant structures:

WHEREAS, vacant, abandoned and foreclosed homes and structures have proliferated throughout New York State over the last five years; and

WHEREAS, vacant structures that are not maintained for months at a time degrade and depreciate the value of the vacant structure as well as the value of surrounding properties; and

WHEREAS, lending institutions that hold mortgages on said vacant structures do not always provide the contact information of a responsible party; and

WHEREAS, Assembly Bill A.88 and Assembly Bill A.824, currently pending, would make it mandatory for lending institutions to provide contact information of responsible parties regarding vacant structures; and require good faith in obtaining a foreclosure; and

WHEREAS, the Town of _____ Town Board supports the passage of said Bills.

NOW THEREFORE, BE IT RESOLVED that the town of _____ hereby supports the passage of said Bills and respectfully requests that the State Representatives who represents constituents in the Town of _____ support the passage of said Bills.

Copies of this resolution to be forwarded to Senator _____, Assemblyman _____, Co-Sponsors of this bill: Senator _____, Assemblyman _____.

I, _____ DO HEREBY CERTIFY, that the foregoing is a true copy of a Resolution passed by the Town Board of the Town of _____ at its regular meeting held on _____, and members of the Town Board had due notice of said meeting, and further that such resolution has been fully recorded in the Town Clerks books.

In Witness thereof, I have hereunto set my hand the XX day of XXXX, 2012

XXXXX XXXXXXXXXXX
Town Clerk
Town of XXXXXXXX

AMERICANS AND OTHER IMMIGRANTS FROM YOUNG. WHY? Because, by and large, they vote for Democrats and can make the difference in a close national election.

IN ORDERING THE REFORMATION OF THE CONSTITUTION TO FIGHT AND WIN THE FIGHT AND WIN THE FIGHT. HENDER NEEDS TO FIGHT THIS WITH EVERYTHING HE'S GOT.

Web site, scroll to the bottom of the page, click on Contact us and we will send you a copy of the newspaper, The Buffalo News, P.O. Box 100, Buffalo, NY 14240

Another Voice / Property maintenance

'Good faith' clause could ensure banks' responsibility

By MICHAEL P. KEARNS

In today's Great Recession, a concern keeps coming to the forefront in my Assembly district and in many other areas of the country: "Who is responsible for upkeep and maintenance of properties that families have vacated and banks hold a lien on?"

Analysis starts with the relationship between lender and customer, both entering into a mortgage contract regarding the sale and purchase of a home or business. When the customer defaults on a home mortgage, both parties turn to the contract in search of rights, remedies, obligations and responsibilities. The mortgage contract often contains abandonment and waste clauses that grants the lender authority to enter the

property prior to foreclosure in order to secure and maintain the collateral, the home. When the market is good and the property has significant value, these clauses are routinely enforced. However, when the market hits a downturn or the property is run-down, some lenders argue that they are not responsible and these provisions go unenforced. Perhaps a mandatory ownership designation clause in the event of default for all mortgage contracts would help clear up the banks' status.

In New York, when the property requires repairs under local housing and building code ordinances, it is in the bank's best economic interests if "ownership" of the property remains ambiguous. Banks achieve this by relying on re-

quirements of Real Property Actions and Proceedings Law. The banks can argue that statutorily they aren't responsible because they haven't met the requirements of a judgment of foreclosure and sale and thus ownership. This effectively allows banks to shift responsibility for vacant properties onto a concerned municipality, neighborhood or homeowners association. The statute allows banks to delay obtaining "ownership" if they obtain it at all. In strict, the banks have the best of both the contractual and statutory worlds and may rely on either contract or statute to suit their economic interests.

How can this dilemma be solved? In Town of Huntington v. Lago, the court hints it may be remedied by changing the statute. A solution may be as simple as including the words "in good faith" in the duty to maintain foreclosed property. In other words, the banks would be required to exercise good faith and not be allowed to delay obtaining a judgment of foreclosure and sale.

In an ideal world, banks and lenders would exercise ethical business practices and conduct themselves responsibly in the communities in which they make their fortunes. Unfortunately, this is a pragmatic world and reining behavior requires statutory amendment. I will be sponsoring a bill to add "good faith" language to the law. I hope New Yorkers agree and lend their voices to this issue.

Michael P. Kearns represents the 145th Assembly District.

THE BUFFALO NO

EDWARD H. BUTLI
Founder 1890-1938
EDWARD H. BUTLER
Editor 1938-1977

MRS. EDWARD H. BUTLER
1977-1978
HENRY Z. URRAL
Publisher 1978-1988

ROBERT J. CASER
Executive Vice President
DANIEL J. BARBERA
Vice President
Executive Director

FRANK T. CARON
Vice President, Buffalo
RICHARD C. WILLIAMS
Vice President,
Circulation Director

KEVIN J. DONOHUE
Vice President,
Chief Financial Officer

The reason for that is simple: Religious liberty is not being threatened in the United States. Americans remain free to pray and attend church as they wish.

The operations of the church's important but secular side businesses, the church is entering a realm in which it is not well-served. Its own members are saying so.

Web site, scroll to the bottom of the page, click on Contact Us and then click on News Opinion Page. Or send a self-addressed, stamped envelope to Opinion Page Guidelines, The Buffalo News, P.O. Box 109, Buffalo, NY 14240

Another Voice / Vacant properties

Banks, property managers must be held accountable

By MICHAEL P. KEARNS

Acting responsibly as a neighbor and citizen is essential to the operation of a free society. When homes, residences, stores and other buildings become vacant, their maintenance and upkeep is vital to sustaining the property values of entire communities.

So it is surprising that in this economic downturn, despite large profits for the financial sector, banks, mortgage and lenders are not meeting this fundamental responsibility. Several of these institutions are presiding over the degradation and depreciation of vacant structures throughout the United States. The property portfolios of vacant structures for many of these institutions, at least in part, are becoming

run down with the effects spilling over to the heartbreaking neighborhoods in many inner-city areas and districts.

The 146th Assembly District is confronted with this problem daily. Constituents who are alarmed repeatedly call about vacant buildings and homes that are not maintained for months at a time, if at all. The main complaint is that there is no one to call, contact or hold responsible. Attempts to contact banks holding the mortgage, after a foreclosure proceeding is commenced, are met with recitations and in the rare instance when a person is reached, no contact information of a responsible party is divulged.

I have been told on several occasions that giving out this information would create privacy breaches. My staff

has also been told that the information could not be divulged for fear of harassing phone calls made to individuals. These reasons seem specious because a neighbor living in a structure whose acts or omissions violate local building codes would not enjoy privacy protection or avoid responsibility for requests made by neighbors to do basic upkeep on the premises. The time involved is discouraging and frustrating for many.

In an economic environment of dwindling net worth, degradation of our neighborhoods is an issue of national economic importance. In 2011, the states or policy laboratories of this country had no advantage of proposed legislative experiments to combat this issue. Arizona, Connecticut, Georgia, Hawaii, Illinois, Indiana, Kentucky,

Maryland, Minnesota, Nevada, New Jersey, Oregon and Rhode Island have passed bills in one or both houses to address this lack of vacant property maintenance, accountability and responsibility. A federal response is hoped for.

For the protection of our neighborhoods and communities, I have asked that Assembly Bill 10624 and Senate Bill 7020, which would make it mandatory for lending institutions to provide contact information of responsible parties regarding vacant structures, be sponsored by New York. This year I hope that the people of New York can elect their local representatives and join in this endeavor which concerns us all.

Michael P. Kearns represents the 146th State Assembly District.

THE BUREAU NEWS

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