

TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

Zoning Board of Appeals
AUG 02 2017
Town of Newburgh

APPLICATION

OFFICE OF ZONING BOARD
(845) 566-4901

DATED: July 19, 2017

TO: THE ZONING BOARD OF APPEALS
THE TOWN OF NEWBURGH, NEW YORK 12550

I (WE) Autumn Sky Development, Inc. PRESENTLY

RESIDING AT NUMBER Attn: Steve Michalski, PO Box 298,

TELEPHONE NUMBER New Paltz, NY 12561

HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

- A USE VARIANCE
- AN AREA VARIANCE
- INTERPRETATION OF THE ORDINANCE
- SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

86-1-86 (TAX MAP DESIGNATION)

254 Route 17K, Ste 107 (STREET ADDRESS)

1B (ZONING DISTRICT)

2. PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUBSECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

185-67



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3. IF VARIANCE TO THE ZONING LAW IS REQUESTED:

- a) APPEAL IS MADE FROM DISAPPROVAL BY THE TOWN BUILDING INSPECTOR OR BUILDING PERMIT APPLICATION. SEE ACCOMPANYING NOTICE DATED: February 5, 2016
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: _____

4. DESCRIPTION OF VARIANCE SOUGHT: See Addendum for description of

Interpretation

5. IF A USE VARIANCE IS REQUESTED: STRICT APPLICATION OF THE ZONING LAW WOULD PRODUCE UNNECESSARY HARDSHIP IN THAT: (see addendum)

- a) UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT IS DEPRIVED OF ALL ECONOMIC USE OR BENEFIT FROM THE PROPERTY IN QUESTION BECAUSE:

(ATTACH WITH THIS APPLICATION COMPETENT FINANCIAL EVIDENCE ESTABLISHING SUCH DEPRIVATION)

- b) THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:

- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:



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d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

6. IF AN AREA VARIANCE IS REQUESTED:

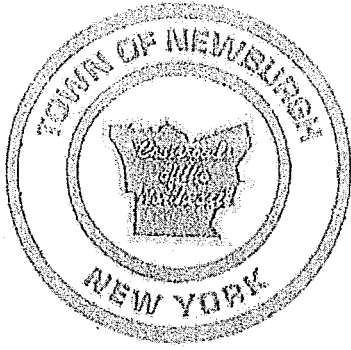
a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE:

b) THE BENEFIT SOUGHT BY THE APPLICANT CAN NOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, BECAUSE:

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE:

e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:



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(845) 566-4901

7. ADDITIONAL REASONS (IF PERTINENT):

See Addendum

Autumn Sky Development Co., Inc.

Steven Michalski
PETITIONER (S) SIGNATURE

By: Steven Michalski, President

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 19th DAY OF July 2017

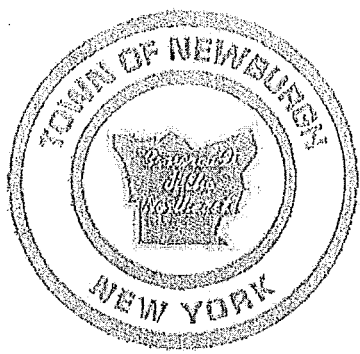
Nancy M. Quick
NOTARY PUBLIC

NANCY M. QUICK
Notary Public, State of New York
No. 4959105
Qualified in Orange County
Commission Expires November 20, 2017

NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.

(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).

(NOTE: BOARD MEMBERS MAKE SITE VISITS TO ALL THE PROPERTIES)



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PROXY

Steven Michalski, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 58 S. Manheim Blvd., Apt. 68

IN THE COUNTY OF Ulster AND STATE OF New York

AND THAT HE/SHE IS THE OWNER IN FEE OF Autumn Sky
Development Co., Inc., the owner

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Jacobowitz & Gubits, LLP
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 7/19/17 Steven Michalski

OWNER'S SIGNATURE

[Signature]
WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 19th DAY OF July 20 17

[Signature]
NOTARY PUBLIC

NANCY M. QUICK
Notary Public, State of New York
No. 4959105
Qualified in Orange County
Commission Expires November 20, 2017

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

TYPE IN BLACK INK:

NAME(S) OF PARTY(S) TO DOCUMENT

Danza Group XIV, LLC
TO
Autumn Sky Development Co., Inc.

SECTION 86 BLOCK 1 LOT 86

RECORD AND RETURN TO:
(name and address)

James Yastion, Esq.
153 Main Street
New Paltz, NY 12561



THIS IS PAGE ONE OF THE RECORDING

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH RECORDED INSTRUMENT ONLY

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED MORTGAGE SATISFACTION ASSIGNMENT OTHER

PROPERTY LOCATION

- 2089 BLOOMING GROVE (TN)
- 2001 WASHINGTONVILLE (VLG)
- 2289 CHESTER (TN)
- 2201 CHESTER (VLG)
- 2489 CORNWALL (TN)
- 2401 CORNWALL (VLG)
- 2600 CRAWFORD (TN)
- 2800 DEERPARK (TN)
- 3089 GOSHEN (TN)
- 3001 GOSHEN (VLG)
- 3003 FLORIDA (VLG)
- 3005 CHESTER (VLG)
- 3200 GREENVILLE (TN)
- 3489 HAMPTONBURGH (TN)
- 3401 MAYBROOK (VLG)
- 3689 HIGHLANDS (TN)
- 3601 HIGHLAND FALLS (VLG)
- 3889 MINISINK (TN)
- 3801 UNIONVILLE (VLG)
- 4089 MONROE (TN)
- 4001 MONROE (VLG)
- 4003 HARRIMAN (VLG)
- 4005 KIRYAS JOEL (VLG)

- 4289 MONTGOMERY (TN)
- 4201 MAYBROOK (VLG)
- 4203 MONTGOMERY (VLG)
- 4205 WALDEN (VLG)
- 4489 MOUNT HOPE (TN)
- 4401 OTISVILLE (VLG)
- 4600 NEWBURGH (TN)
- 4800 NEW WINDSOR (TN)
- 5089 TUXEDO (TN)
- 5001 TUXEDO PARK (VLG)
- 5200 WALKKILL (TN)
- 5489 WARWICK (TN)
- 5401 FLORIDA (VLG)
- 5403 GREENWOOD LAKE (VLG)
- 5405 WARWICK (VLG)
- 5600 WAWAYANDA (TN)
- 5889 WOODBURY (TN)
- 5801 HARRIMAN (VLG)

- 0900 MIDDLETOWN
- 1100 NEWBURGH
- 1300 PORT JERVIS
- 9999 HOLD

NO PAGES 4 CROSS REF. _____
CERT. COPY _____ ADD'L X-REF. _____
MAP# _____ PGS. _____

PAYMENT TYPE: CHECK
CASH _____
CHARGE _____
NO FEE _____

Taxable CONSIDERATION \$ 195,000
TAX EXEMPT _____
Taxable MORTGAGE AMT. \$ _____

- MORTGAGE TAX TYPE:
- (A) COMMERCIAL/FULL 1%
 - (B) 1 OR 2 FAMILY
 - (C) UNDER \$10,000
 - (E) EXEMPT
 - (F) 3 TO 6 UNITS
 - (I) NAT.PERSON/CR. UNION
 - (J) NAT.PER-CR.UN/1 OR 2
 - (K) CONDO

Donna L. Benson
DONNA L. BENSON
ORANGE COUNTY CLERK

RECEIVED FROM: Herdenburg

RECORDED/FILED
06/18/2013/ 12:21:08
DONNA L. BENSON
County Clerk
ORANGE COUNTY, NY
FILE#20130061951
DEED C / BK 13586PG 1429
RECORDING FEES 315.00
TTX# 006440 T TAX 7,800.00
Receipt#1620449 dab

STATE OF NEW YORK (COUNTY OF ORANGE) SS:
I, ANN G. RABBIT, COUNTY CLERK AND CLERK OF THE
SUPREME AND COUNTY COURTS, ORANGE COUNTY, DO
HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH
THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE
ON July 18, 2013 AND THE SAME IS A CORRECT
TRANSCRIPT THEREOF. IN WITNESS WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

Ann G. Rabbit
COUNTY CLERK & CLERK OF THE SUPREME COUNTY COURTS,
ORANGE COUNTY.
July 18, 2017



7307-2418

Bargain and Sale Deed
With Covenants Against Grantors Acts

**CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT
THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY**

THIS INDENTURE, made the 12th day of June, two thousand thirteen

BETWEEN Danza Group XIV, LLC, a New Jersey Limited Liability Company,
with an office located at 104 Garden Court, Franklin Lakes, NJ 07417,
party of the first part,

and

Autumn Sky Development Co., Inc., a New York Corporation, with
a mailing address of P.O. Box 298, New Paltz, NY 12561, party of the
second part,

WITNESSETH, that the party of the first part, in consideration of Ten and No/100
(\$10.00) Dollars lawful money of the United States, and other good and valuable
consideration paid by the party of the second part, does hereby grant and release unto the
party of the second part, the heirs or successors and assigns of the party of the second
part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon
erected, situate, lying and being in the Town of Newburgh, County of Orange and State of
New York, described as follows:

See Schedule "A" attached.

Property: 254 NYS Route 17K, T/O Newburgh
SBL: 86-1-86

BEING the same premises conveyed by C&F Realty, Inc. to Danza Group XIV, LLC by
deed dated March 7, 2013 and recorded in the Orange County Clerk's Office on April 23,
2003 in Liber 11026 of Deeds at Page 1596.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to
any streets and roads abutting the above described premises to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the party of the first
part in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto the party of the second
part the heirs or successors and assigns of the party of the second part forever.

Schedule A Description

Abstract No. **NEW-3266**
Title Number **730-O-2418**

Page 1

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Newburgh, Orange County, New York, being Lot #3, as shown on a plan entitled "Plan for Charles Catanzaro and Richard Fracasse, Minor Subdivision", said plan having been filed in the Orange County Clerk's Office as Map No. 7063 and said lot more particularly described as follows:

Beginning at a point in the northeasterly line of the New York State Highway known as Route 17K (Cochecton Turnpike), said point being at the intersection of said line with the southwesterly corner of Lot #2, as shown on a map entitled "Minor Subdivision, Lands of Coldenham Development Company, Inc." said map having been filed in the Orange County Clerk's Office on November 16, 1984, as Map No. 6801, and running thence the following courses:

1. Along said northeasterly line of Route 17K, North 40 degrees 18' 24" West 300.00 feet to a point;
2. Along Lot #1, as shown on the above-referenced Catanzaro and Fracasse Subdivision Map, North 39 degrees 59' 54" East, 400.00 feet to a point;
3. Still along said Lot #1, South 31 degrees 02' 39" East, 200.00 feet to the northwesterly corner of Lot #2, as shown on the above referenced Coldenham Development Co., Inc. subdivision map;
4. Along said Lot #2, South 24 degrees 32' 50" West, 400.00 feet to the point or place of beginning.

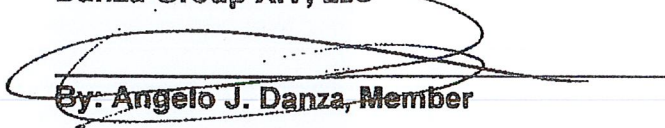
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby and said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.


IN PRESENCE OF:

Danza Group XIV, LLC


By: Angelo J. Danza, Member

State of New York)
) ss.:
County of Orange)

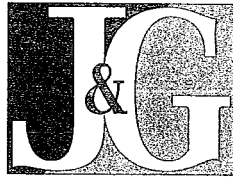
On June 12th, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Angelo J. Danza, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public, State of New York

Record & Return to:

James Yastion, Esq.
153 Main Street
New Paltz NY 12561

JAMES V. RINALDI
Notary Public, State of New York
No. 01R18580050
Qualified in Orange County
Commission Expires March 30, 2014



JACOBOWITZ
AND GUBITS LLP
COUNSELORS AT LAW

July 28, 2017

Gerald N. Jacobowitz
David B. Gubits
Howard Protter
J. Benjamin Gailey
Mark A. Krohn*
John C. Cappello
George W. Lithco
Michele L. Babcock
Gary M. Schuster
Marcia A. Jacobowitz
William E. Duquette
Kara J. Cavallo
Andrea L. Dumais
Alanna C. Iacono
Jennifer S. Echevarria
Kelly A. Pressler
Robert M. Lefland
Christopher J. Cardinale
Allison G. Cappella
Donald G. Nichol**
Larry Wolinsky**
Peter R. Eriksen**
John H. Thomas, Jr.**
Carmee G. Murphy**

Hon. James E. Manley, Jr., Chair
and Zoning Board of Appeals Members
Town of Newburgh Zoning Board of Appeals
1496 Route 300
Newburgh, NY 12550

RE: Request for Interpretation - Autumn Sky Development, Inc.
Town of Newburgh Tax Map 86-1-86
Our File No. 4491-004

Dear Chairman Manley and Members of the Board:

Attached please find the following documents constituting the application of Autumn Sky Development, Inc. for an interpretation of the Town of Newburgh Zoning Code Section 185-67:

1. Original completed Zoning Board of Appeals application on official Town forms with addendum;
2. Check in the amount of \$250.00 payable to the Town of Newburgh representing the required fee, and a check in the amount of \$50.00 representing the publication fee;
3. Eleven copies of a survey by Daniel P. Yanosh, dated June 3, 2013;
4. Certified copy of the Deed to the property in question;
5. February 15, 2016 Determination of Town of Newburgh Building Inspector, James Campbell;
6. Four photographs from different angles of the subject property;
7. Proxy statement signed by the applicant authorizing Jacobowitz and Gubits, LLP to represent the applicant;
8. The application is for an interpretation not subject to SEQRA; and

*LLM IN TAXATION
**OF COUNSEL

REPLY TO:
158 Orange Avenue
P.O. Box 367
Walden, NY 12586
tel. (845) 778-2121
fax (845) 778-5173

548 Broadway
Monticello, NY 12701
tel. (845) 791-1765
fax (845) 794-9781

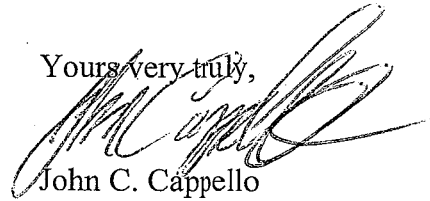
JACOBOWITZ.COM

9. List of property owners within 500 feet of the exterior boundaries of the lands involved, prepared by the Town of Newburgh Assessor's office, to be provided under separate cover.

I respectfully request this matter be placed on the Board's next available meeting agenda. Please contact me at your convenience when the notice is ready so we can provide you with the completed envelopes and post the property as required.

Thank you in advance for your attention to this matter.

Yours very truly,



John C. Cappello

JCC:nmq
Enclosures

ADDENDUM – Interpretation of the Ordinance

I. Appeal of February 5, 2016 determination of Building Inspector of James Campbell.

Discussion: On February 5, 2016, Building Inspector James Campbell issued a determination determining that the Hana Spa facility located at 254 Route 17K is a “massage establishment” as defined under Section 185-67 of the Town of Newburgh zoning code.

Reasons in support of such determination. Town of Newburgh Zoning Code Section 185-67 defines massage establishment as any establishment having a fixed place of business where massages are administered for pay, including but not limited to, massage parlors, sauna baths and steam baths. Subsection B of this definition provides that a Massage Establishment shall not be construed to include the following:

1. “(Hospitals, nursing homes, medical clinics, or the offices of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist, occupational therapist, or duly licensed massage therapists.” (*underline added*)

The Hannah Spa is operated by Chu Im Yon, a licensed massage therapist pursuant to New York State as set forth in the license attached as Exhibit “A”. The facilities constitute the offices of Ms. Im Yon, where therapeutic massages are administered. This definition does not require that every massage therapist employed at the facility be licensed; it merely requires that the facilities be the “office” of duly licensed massage therapists. This would be consistent with the office of a physician that may employ nurse practitioners, but is still a physician’s office. Therefore, this facility is a service permitted by zoning and not a massage establishment prohibited by Article XVI of the Town of Newburgh Zoning Code.

Therefore, this appeal should be granted and the facilities continue to operate, so long as they remain the office of a licensed massage therapist, pursuant to New York State Law.

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OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
TELEPHONE 845-564-7801
FAX LINE 845-564-7802

February 5, 2016

Autumn Sky Development Co., Inc.
Attn: Steve Michalski
PO Box 298
New Paltz, NY 12561

Autumn Sky Development Co., Inc.
Attn: Steve Michalski
254 Route 17K, Suite 106
Newburgh, NY 12550

Sent via First Class Mail, Certified Mail, RRR

Re: Massage Establishment
254 Route 17K, Suite 107
Newburgh, NY 12550
SBL: 86-1-86

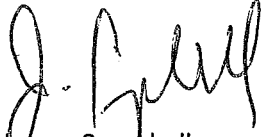
Dear Mr. Michalski,

It has come to the Code Compliance Department's attention that massages are being administered for pay at the premises are not being performed by licensed massage therapists or by physicians, surgeons, chiropractor, osteopaths, or duly licensed physical therapists, occupational therapists.

Accordingly, the use for which a permit and certificate of occupancy for the premises were issued, "Massage Body Relaxation", and the establishment fall within the definition of "Massage Establishment" under Section 185-67 of the Town of Newburgh Zoning Code. The use is now considered a non-conforming adult oriented business subject to the mandatory termination provisions of Zoning Code 185-75. The Department is hereby providing notice to you, as the owner/mortgagee of the premises; that the non-conforming use must terminate within two years, on or before February 6, 2018. You have

the right to appeal this determination to the Town of Newburgh Zoning Board of Appeals and to request an extension of the two year time period pursuant to Zoning Code Section 185-75.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Campbell', written in a cursive style.

James Campbell
Building Inspector

Cc: Mark Taylor, Town Attorney
Gerald Canfield, Code Compliance Supervisor