

ZBA MEETING – FEBRUARY 28, 2013

(Time Noted – 7:47 PM)

ZEF GJURASHAJ

34 PLANK ROAD, NBGH
(84-2-1.1) B ZONE

Applicant is seeking area variances for the minimum lot area, the front yard setback (Stone Street), the front yard setback (Plank Road), the side yard setback, the minimum lot width and the minimum lot depth to convert an existing residence into an 80-seat restaurant.

Chairperson Cardone: Our next applicant Zef Gjurashaj.

Mr. Raab: For the record my name is Jim Raab...

Ms. Gennarelli: You need the microphone.

Chairperson Cardone: Mic.

Ms. Gennarelli: Thank you.

Mr. Raab: I love this microphone system. A...for the record my name is Jim Raab, I'm with a...the a...engineering firm of Talcott Engineering. I'm also here with Charles Brown who is the principal of the firm and the owner Zef Gjurashaj. A...when we a...when we elected to keep the Public Hearing open last month a...there was a number of things that a...you wanted us to address. I believe I put them, most of them in a letter I re-submitted to the...to the Board...earlier this month. One of them was the building renovations, we submitted a...plans that are actually works in progress to the Building Department to make sure that there wouldn't be any impact on the variances we're requesting a...from the Board based on the...the renovations we're doing to the interior of the building. A...a...Charlie will speak on that a little bit more later but as of that...as that goes we submitted them to the...to...to Jerry for his review. The one thing that came up while we were doing that is that we realized that the stone patio was over a foot high so that the variance really needed to be taken from the corner of the stone patio and not the corner of the house so we...we made the adjustment a...in the variance we need. It's about a (2) two foot difference and we changed the a...a...the variance table that we submitted to the Board a...early in...at the first meeting. Second thing was the Stone Street improvements a...we met out in the field with Darryl Benedict a...we spent about an hour out there, me and him, a...and we came to the conclusion that we wanted...lets widen this...the road, (24) twenty-four feet along our entire frontage. That's what we have the ability to do a...and curb it the entire way. To cut off the drainage that flows down there, we pick it up with a trench drain which he suggested and run it down into the swale that exists, further down Stone Street. A...one of the other things that he requested that we...that we attempt do, okay, is to approach the Town Board about getting No Parking along the west side of Stone Street. We can't do anything about North Plank Road Tavern and their parking on...on Stone Street but we can keep

them, if we get No Parking signs, at least there is an attempt made for nobody to block Stone Street the way it is now. It's really not as...it is narrow in some places but it's not as narrow as I originally thought but this should help, widen it by about an average of (3 ½) three and a half feet across our frontage and a...that should help...I think should help immensely. A the traffic flow, we met with both a...I met with the facilities manager for 250 Lake Street Properties a...earlier this month to discuss the letter I submitted to the Board and also the easement rights we have across their property and what we could do about forcing the traffic out Stone Street and back to Plank Road and he said that a...both him and his boss would do whatever they could to...they don't want traffic going through their property to 9W. Not from our property, not from Stone Street, not from anywhere so a...once this...if we can move the access down a little, there was a lot of things discussed and we're willing to work out whatever we need to work out to make it...make it work between us and them because we want to be friendly neighbors and I think they do to. A...easements as...that was something else we discussed, I supplied them to the...both planning board and your attorney for review a...they are...it's clear that we have the right to park along the property line on...on the 250 Lake Street property side and we have ingress and egress to Stone Street, not to 9W, to Stone Street. And again, we're willing to do whatever it takes to make those easements work with 250 Lake Street Properties. If it means a...working out a...a different type of a...wording for a new easement that's a...protects both of us, both parties, then we're willing to do that too. I don't think there's any problem with that and my client has no problem with it. As far as the parcel size I did a lot of research on the other privately owned restaurants in Newburgh and more than half of them are on parcels that are under a half an acre. A...and most...and almost all of them are on Municipal water and sewer, which we will be. Which brings me to the part...the next subject which was when's the sewer going to be available? Right now it's hung up with the D.E.C. a...I spoke with a...Jim Osbourne about when it would be available. He says it's with them. As soon as it clears them and they get...get the final approval from the D.E.C. that they are going to put it out to bid. They want to get it out as quickly as possible to...the E.P.A. deadline is June...June this year and they want to get this done as quickly as they can to avoid any kind of problem with the E.P.A.. So, that being said, that's...that's really most of the things that were discussed at the meeting last month and we have looked into what we could to make it...make this work better. What we can't do is there's no way this...we have attempted to buy the property next door from Mac Cullum and he refuses to...he's just not interested. And even if we could buy property from 250 Lake Street Properties it would have no impact on the variances whatsoever. Most of the variances we need are all up in here. And we believe we can buffer them a...satisfactorily once we get to the planning board and work with their landscape architect, we can buffer the...the closeness this is to...to the two roads a...by...with landscaping. I'm going to turn it over to a...Mr. Brown now who will speak on the a...structural part of this.

Mr. Brown: Thanks Jim, a...let me back up a little bit, as far as the sewer a...at request of the planning board there is an existing manhole out in front of this property. We would have to trench through North Plank Road or a...Plank Road

which is an expensive proposition but if in the event the sewer does not go into Stone Street a... we still a...because we are in the sewer district have the right to do that so that is shown on the plans as an alternate with respect to the sewer. A...as far as the building changes...thank you, Jerry...we're not going to extend the footprint at all a...going to make some minor changes to the roofline which would be in the rear facing our proposed parking lot. A...there is a shed roof across this portion of the building right now that is a...creating leakage problems into the building and what not...(Inaudible) has put a reverse on that a...and are a (Inaudible) entrance off the parking lot, we would create a new roof off over that also. Again, we are not going beyond the footprint or beyond the existing a...ridgeline so we're not making the a...the overall height of the building any higher.

Ms. Drake: Based on the renovations that you're doing in the building will it still be an (81) eighty-one seat restaurant?

Mr. Brown: Yes.

Ms. Drake: So therefore parking...

Mr. Brown: (80) Eighty seats.

Ms. Drake: (80) Eighty seats okay, so parking or anything like that has not changed based on the renovations?

Mr. Brown: Correct. Correct, it's not changed in the floor area either, it's...it's actually just creating more you know, architectural a...ambience to the restaurant itself. The...the floor area will stay the same. The footprint will stay the same.

Ms. Drake: Thank you.

Mr. Manley: Mr. Raab, you had indicated a...in your letter to the Board that Talcott Engineering argues that more than half of the privately owned restaurants in the Town of Newburgh, not located in a mall or shopping center are on parcels in less than an acre in size. Ninety percent of those restaurants are served by Municipal sewer and water. So my question is that being the case, do you have or did you provide any documentation to back that up?

Mr. Raab: A...well I...I could name them off. I didn't really think that it was going to be necessary to name them off but...a...I can go with a...a...the a...The Lake...Lakeview House, okay? Il Ceno Cola although it has an...it has almost an acre of property because of the pond it's limited to half acre use, okay? A...Pamela's which is really not in the Town of Newburgh. It's really in the City of Newburgh but it's, you know, it's (Inaudible). The North Plank Road Tavern a...Adiamo's ...a...ah... there's in...believe it or not there's not that many privately owned restaurants in...in Newburgh any...anymore but a...a...and I believe if you think

about if there's is any more than I just named a...there...a...no...it...I can't...I can't think any over the top of my head I...I had like ten...

Mr. Manley: The reason why I asked that question is, you know part of the Board's deliberation process is having something in hand that we can see and that you're, you know, giving the Board as evidence to...to make your case either for or against what you're looking for and that certainly would be helpful if we had something, you know, with maybe the tax map on it showing the acreage to make that comparison...

Mr. Raab: Understood.

Mr. Manley: ...so that if indeed that is the case, you know, if...maybe gives us something to...to sway our decision either way.

Mr. Raab: I didn't...I...I would Jim, if I had thought about it I probably would have done just that.

Mr. Manley: Okay.

Mr. McKelvey: Well the restaurant...the restaurant across the street right next to you is on a small piece of property.

Mr. Raab: Yes.

Mr. McKelvey: And they don't have the park...parking that you're going to have.

Mr. Raab: Well, you know, the parking we're just supplying...there's sufficient amount of parking to...to support our restaurant. Okay? And not many restaurants that exist right now can...can speak to that. Okay? Based on the kind of flow they get, especially the popular ones. Okay? Lakeview, they park up Rayland Avenue, you know, a...a...it's just and because they're popular. Okay? And we understand that. We, at least, would like to work out a...a...a situation with 250 Lake Street Properties. Okay? That if we do have an overflow maybe we can go to them. Okay? If that...if that in fact happens but we've got to get that far first. Okay? But a...we have the required number of spaces you need for an (80) eighty seat restaurant and in...and...and that...that's the...that's the biggie I think here. Oh and...I'm sorry. And I'd be willing to supply that information to the Zoning Board if they required it. Okay? If that...they...they in fact...if you in fact want that backup information I go...but like I said there's between (6) six...between (7) seven and (10) ten restaurants in...that are privately owned and half of them are on half acre a...on less than half acre properties.

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

Mr. Kelson: Good evening ladies and gentlemen, my name is Todd Kelson; I'm an attorney, New Windsor, New York. I'm...I'm speaking tonight on behalf of 250 Lake

Street LLC, the adjoiner to this property. I've had a chance to review the plans, I've had a chance to have some conversations with the a...representatives of the applicant and of course, with my client. My client is not taking a position for or against the application. We're not speaking against the application this evening. What I do want to bring to the Board's attention however, is that I do take issue with the characterization of the easement a...effecting my client's property. It's our position that the proposed a...use of...of the parking spaces is an overburden of an existing easement. Counsel can discuss that with the Board if it wishes. An overburden is where we take an existing easement and use it for a...for a purpose more extensive that was originally contemplated by the parties. In this case, the original easement was...was a...retention with a residential use and not with a...not in connection with this commercial use. Having said that, my client has indicated, as...as Mr. Raab has...has alluded that we are willing to engage in good faith negotiations with the applicant with the hope of coming to a...a...a proper resolution of the matter. What we really have is an obsolete agreement, an obsolete document and a...what we would seek is I guess a modern easement agreement that a...adequately protects the parties and adequately a...defines what the rights are. The rights are very ill-defined. I think...have you all seen the...the...the language of the existing easement?

Mr. Donovan: I don't know if all the Board Members, I certainly have and I'll speak to the issue briefly.

Mr. Kelson: Thank you David.

Mr. Donovan: Number one, as I indicated at the last meeting there's no a...parking issue before the Zoning Board. There is not a request for a variance for parking, ZBA (planning board) didn't refer it for this matter obviously it's come up because it's important to the site. I don't know that it's important to the ZBA in our deliberations though because there's request for a parking variance. In terms of the documents that were delivered to me by Mr. Raab that I have reviewed, I can't indicate whether or not they can provide for or they allow for the type of use that is proposed. Mr. Kelson has identified the issue that's there which is the overburdening of...of the easement or whether or not the easement when granted was intended to accommodate the use that's proposed. Again, I'm not sure it's an issue for our Board. It's certainly an issue for the planning board. I did speak to the planning board attorney this evening before I came and what Mike Donnelly indicates to me is that at the end of the day, should this get approval from this Board and site plan approval, a condition of the site plan approval would be a recorded agreement between the applicant, a...250 Lake Street LLC that whatever parking is required by the site plan is in fact, agreed to by 250 Lake Street LLC. So there would need to be...the planning board would require, according to what Mr. Donnelly told me, as a condition of approval once you get that far that you agree to provide...your client agrees to provide the parking as shown on the site plan.

Mr. Kelson: And that think that analysis is exactly right, Mr. Donovan. Thank you.

Ms. Pearl: Hi, I'm Christine Pearl; I was before the Board last time as well on this issue. I think most of my problem is the parking and I understand what you're saying about it going before planning but a...it's something that really, really needs to be dealt with because like I said last time if North Plank Road Tavern is crowded and this restaurant is crowded and like one of the gentlemen just said that a...they're willing to let it go, you know, they just don't want the traffic flow through their property yet they're creating the traffic flow and then the traffic flow then goes right past my property or the other residents of Stone Street. That has to be resolved in some way. There has to be...once they work together I will be willing to speak with them as well but something has to be resolved in terms of how people are going to get in and out of this restaurant. You're hoping that it's very busy, both of them but I've lived by the North Plank Tavern which is only a (50) fifty seat restaurant. I worked there for (7) seven years and I lived right next door to it so I know the traffic that's created. If you put No Parking on one side of west of Stone Street or the lane as it's called in the deeds then they have no choice but to come up Stone Street and park if they want to eat in the restaurant, in either one of them. It's happened for years it's going to continue to happen so it has to be resolved. But there was one question I had too. You mentioned drainage and putting in something to fix the drainage. Where does the...?

Mr. Raab: Not fix the drainage no...I... (Inaudible)

Ms. Pearl: Divert it? Just wondering where it comes from?

Mr. Raab: Oh, it was the concern of Mr. Benedict that the drainage along...the drainage along Stone Street especially coming from Plank Road wouldn't cut across this property like this. Right now it runs down Stone Street towards the...the dead end portion of this lane. What we're doing is we're picking up with a trench drain and forcing it back into the swale that carries the water now. What we would be doing with the entrance would be cutting off the swale and with the trench drain what we're doing is picking up the water that would be going down the swale anyway, down the side of a...Stone Street and forcing it back into the swale that carries it back down to the dead end portion of Stone Street. A...that's...that's what I was talking about.

Ms. Pearl: But where does all the water come from? It's part of what tears up Stone Street all the time, there's pot holes and ditches, all between that piece of property and the Tavern. I just don't know where all the water comes from. What's the requirement for the parking, is there a per person in a restaurant? We've been saying (20) twenty seats (spots) is good for (80) eighty...for (80) eighty people, the requirement plus staff. You have (80) eighty people plus staff.

Mr. Raab: Yes, yes, that's...that's the way the...that's the way the a...requirement reads is that it's a...one space per (4) four seats.

Ms. Pearl: (1) One per (4)? (4) Four people come in one car?

Mr. McKelvey: I have to...I have to agree I went by the other restaurant well down Plank Street and the other restaurant at 11:30 in the morning, the parking lot wasn't full but there was a car parked on Stone Street and I don't see how they get away with it.

Ms. Pearl: Was it a green van?

Mr. McKelvey: No, it was a black car.

Ms. Pearl: Oh, okay, the green van is Mr. Costa, that's how he gets away with it.

Mr. McKelvey: No this was a black car.

Ms. Pearl: Okay. It happens all the time and if you drive through Stone Street you'll see what my frustration is. Again, I'm not against your project. Anything to make the area look nicer, the same with Ted buying the...the whole thing, it...it can only be great for the area but there's so much else that has to be dealt with at the same time. It's probably more a commitment from the Town rather than this gentleman because he is obviously willing to do a lot.

Mr. McKelvey: We've all been by the property, we know...we know what the...

Ms. Pearl: Up and down Stone Street?

Mr. McKelvey: Yes.

Chairperson Cardone: Yes.

Ms. Pearl: Yeah, someone passes you, you have to pull over and stop and let them go. It's a big issue and complicating it with more traffic doesn't...doesn't help us.

Mr. Maher: Have you or your neighbors ever petitioned the Town for No Parking signs on Stone Street?

Ms. Pearl: There are...No Parking...well the regular winter signs, you know that go up throughout the Town I guess...during...

Mr. Maher: Right.

Ms. Pearl: ...you know, from maybe a...October to April, No Parking during the night...

Mr. Maher: Right.

Ms. Pearl: It doesn't matter if they don't have driveway space they're, they're on the street.

Mr. Maher: So you mean...so you mean residents are parking on the street then?

Ms. Pearl: As well, yes.

Mr. Maher: So residents add to the problem not only the businesses in the area?

Ms. Pearl: Correct. The street has to be fixed is what I'm saying; you know the whole area which I was hoping when the sewer went in that a lot of that would be dealt with.

Mr. Maher: Well true...

Mr. McKelvey: I'm sure it will.

Mr. Maher: ...by fixing the street though is not going to add parking places on private residents' property though.

Ms. Pearl: That part is true too then enforcement...

Mr. Maher: But you still have the same issues...

Ms. Pearl: Then it's enforcement you know, and...and it doesn't get enforced either.

Mr. McKelvey: The problem you have in that area is all the houses are so close together.

Ms. Pearl: Correct.

Mr. Manley: I think the one concern that I have is you have a bad situation and potentially this is going to make it a lot worse than where it's at right now but...traffic is not our issue. Correct?

Mr. Donovan: Correct.

Mr. McKelvey: Traffic will have to be taken up with the planning board. I would assume.

Ms. Pearl: I certainly will.

Mr. McKelvey: Because we don't...we don't...we can't control that.

Ms. Pearl: Right...right but you have to...they have to be able to get in and out of this restaurant. You're approving variances and there has to be worked out ingress and egress.

Mr. Manley: Mr. Raab, you had indicated at the last meeting that you believe that there may be some outside music, maybe entertainment...?

Mr. Raab: No, no, no and I did not say that when you asked me that question and I said no.

Mr. Manley: Was there...was there music...?

Mr. Raab: I said there's going to be outside tables, no music.

Mr. Manley: Any, any music at all?

Mr. Raab: No, none, absolutely none. That's...that's...you did ask me that question, Jim and I answered it and I said yes, there's going to be outside tables.

Mr. Manley: Absolutely not?

Mr. Raab: There are going to be on the patio that's why we're roofing that front stone patio but there will be no outside music, no entertainment.

Chairperson Cardone: Anything else from the public? Mr. Hughes?

Mr. Hughes: Mr. Donovan, maybe you can enlighten me on a couple of items here that just seem to be slapping me in the face and I can't imagine why none of the Board have picked this up. We're talking in a hypothesis here that these two adjoining properties are going to work out a way to create parking, six or seven of them are which are on someone else's land and don't show anywhere in the formula that I've seen where that variance is needed to sustain this restaurant and the number of parking spaces that have been provided provide for the (80) eighty seats only. Are they hiring ghosts to work in the kitchen that come in on brooms or what are we doing with the help? So to me the parking war here that exists that hasn't been addressed or is not cognizant by anyone in the room is blowing my mind. You've got (6) six of these (20) twenty parking spaces they talk about on somebody else's land. And I agree with Mr. Kelson that this is way overboard on what the original intention was. When this was granted it was a residential grant for an easement to Mr. Augustino so he could get in and out of his house because when the properties were chopped up and North Plank Road was cut off he had no way to get in and out of there. Another big thing that just is blowing my mind is everybody keeps referring to this (30) thirty foot lane as a road. It was never a road. It's not a road. The Town plows it and whatever back scratching over the fence goes on that's not a legitimate road in the Town nor is it wide enough to service or is it enforceable to service with the proposal as it stands. So I'd like to know how no one has picked up on this parking that's on someone else's property and why it's not a requested variance? And I can't imagine why there hasn't been any appropriate parking spaces for the help as well.

Chairperson Cardone: I think that you gave the answer when you said that the parking is not an issue before us. You said, I can't understand why they're not requesting...

Mr. Hughes: Oh, I think it should be an issue.

Chairperson Cardone: ...a parking...but that's not before us at this time.

Mr. Hughes: Well then the application is incomplete and I...at this point I would think that the Public Hearing should be held open until you can get all the ducks in a row that's necessary to make a project that could become complete at some point. There's another thing too...

Mr. Donovan: Well you're making a presupposition that a property owner couldn't enter into an easement with another property owner to provide the parking.

Mr. Hughes: Oh I'm not, I don't...the most of the people here that are a part of that said that they were willing to work something out but the application as it stands on its face right now is wrong. You don't have secured parking spaces under your control, there's no lease agreements, there's nothing going on that says so and there's no indication that there's any appropriate spaces for help as well. Madam Chairman, there was a report from the Orange County that you read in at the last meeting and...

Chairperson Cardone: Correct.

Mr. Hughes: ...and there was an abeyance in that report that said at this time they weren't going to get into something. Do you have a subsequent report that narrates what they were talking about?

Chairperson Cardone: No I don't. Would you like me to re-read that report?

Mr. Hughes: Well no but I...I would...well for those that weren't here the last time, for the benefit of the public.

Chairperson Cardone: Okay. The report from the Orange County Department of Planning, the proposed action is in conformity with the existing surrounding land uses. Our office will have some comments related to the site plan yet will reserve those for when the application is referred by the planning board in accordance with the GML 239. County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood and/or community. So my understanding is they are waiting for a referral from the planning board when it reaches that point.

Mr. Hughes: I follow the logic...

Chairperson Cardone: When it becomes a site plan application.

Mr. Hughes: I follow the logic in that but again I'll say that this application isn't complete for the required number of variances because the parking is way out of line and so is a lot of other stuff. There are many substantial things that exist here. You don't even have (15,000) fifteen thousand square feet, you're supposed to have (40) forty and it goes on and on. There were (8) eight things that were listed, (7) seven of them were deficient and (3) three of them were substantial so with the lane not being a real road and the parking not being worked out and the application appearing to be incomplete because all of the variances that would be required are not listed at present I would ask this Board to keep this Public Hearing open until this went on further because if it gets passed through here with the "if's" and it doesn't get scrutinized at the planning board we have we have another neighborhood with another mess created because nobody is talking to each other. Thank you for listening to what I have to say. I'd like some answers to.

Chairperson Cardone: Okay, perhaps Mr. Donovan can clarify it but my understanding is we can only act on the application that is before us.

Mr. Hughes: Knowing that it's incomplete?

Mr. Donovan: Well that is a conclusion that's you're reaching. I don't know that the conclusion for this Board to reach. If you recall the application before us was referred for (5) five different variances. They determined they needed (3) three variances. There application was for (3) three variances. The planning board didn't refer this matter for a parking variance. The applicant has not asked for a parking variance. Parking...that's not to say parking is not an issue. Parking is clearly an issue. It's clearly an important issue but it's not an issue before the Board. And in terms of Stone Street, Jerry do we know is that a Town road?

Mr. Canfield: I had a conversation with Darrell Benedict, the highway superintendent today; he indicated that it is a Town road. However, I should comment that is not my area of expertise.

Mr. Donovan: Understood, understood. I guess my question would be if it's not a Town road what the heck is it doing out there.

Mr. Hughes: That was a road that was left over from the John's estate and it was a back road to get into there and... (Inaudible) Stone Street went east and west...

Ms. Gennarelli: You have to use the microphone. You need a microphone.

Mr. Hughes: Do I need a microphone?

Ms. Gennarelli: Yes, please it's not going into the record.

Mr. Raab: Yeah, you do.

Mr. Hughes: I thought I was loud enough to (Inaudible)...

Ms. Gennarelli: You know it doesn't work that way.

Mr. Hughes: Stone Street runs east and west, this is a lane that crossed Stone to go to the back to the John's home, then it went around the back of all those houses on Stone Street. This is not Stone Street, this is a lane, this is an access lane, it served the North Plank Road Tavern and the John's home and some houses in the back there on Stone Street. It was never a road.

Mr. Donovan: Well, my...my question is a legal question.

Mr. Hughes: So is mine.

Mr. Donovan: You can call a lane, you can call it a way, you can call it a road, is it maintained by the Town of Newburgh Highway Department?

Mr. Hughes: Very poorly.

Mr. Donovan: And if it is...if it is then it's a Town road if not, if we don't have a deed to it then it's a Town road by use.

Mr. Kelson: Thank you Mr. Donovan that is exactly what I was going to say. Thank you, Town road by use.

Mr. Hughes: So then tell me...the statue

Ms. Gennarelli: Ron, mic.

Chairperson Cardone: Pick up the microphone please.

Mr. Hughes: Are we going to go by the lady with the blindfold and the scales or the three monkeys, see no evil, hear no evil, when we know there is something wrong here but we're not going to look at it?

Mr. Donovan: Look at...look at what?

Mr. Hughes: The parking deficiencies.

Mr. Donovan: If there's not an...if the planning board...

Mr. Hughes: It's not on the application so we're going to go with the monkeys?

Mr. Donovan: No, we're not going to go with the monkeys. Okay, what we're going to do is we're going to rule on the application before the Board.

Mr. Hughes: (Inaudible) ... want some questions I just want a straight answer, that's all.

Mr. Donovan: You always get a straight answer from me and you know it.

Mr. Hughes: And then I'm giving you a straight thing to think about to and you know it.

Mr. McKelvey: Got a hand up back there.

Chairperson Cardone: Yes, please take the microphone; don't know where it ended up.

Mr. McCullum: I've been listening to this and all the arguments make sense. My concern is twofold really. There is a supposition here, the supposition is that the sewers are going to be approved and go it. That's a supposition, there's nothing written and etched in stone about that. Okay? That bothers me that it's a supposition still...

Chairperson Cardone: Could I just stop you, you did not give your name; we just need that for the record.

Mr. McCullum: Sure, Ben McCullum...

Chairperson Cardone: Okay.

Mr. McCullum: McCullum.

Chairperson Cardone: Thanks.

Mr. McCullum: ...the McCullum property

Chairperson Cardone: Thank you.

Mr. McCullum: So that's a supposition. That bothers me a little bit also with all due respect to Jimmy, how many properties have two restaurants side by side on half acre properties? Okay? That's the question I got. And thirdly, I'm not against this thing, I'm trying to get some answers here. So what happens on the overflow? Your client is entering you know conversations right? There's nothing written in stone about that is there? Am I correct?

Mr. Kelson: Not at this time but there have been substantive conversations and...and I have been advised that a...the parties are...are...are...he's willing to enter into an appropriate agreement with respect to the parking subject to a...a...working out the details with the applicant.

Mr. McCullum: Thank you but still a supposition. A...and that's not really my point, my point is if we get these...if these suppositions are still hanging in the air, what happens? That's the question I have for the Board. A...are we approving or disapproving on these suppositions? Are they part of this? That's the question a...it's not so much a statement or a comment or am I worried. Look we have property there; is there going to be overflow or people driving onto our property and...and really creating a liability for us as such? I don't know. Is it possible? Yeah. So but the other suppositions are still in my mind, hanging out there. I just don't understand, I...I don't see anything concrete there, that's the question. Is there? So...

Chairperson Cardone: There wouldn't be anything concrete until it goes before the planning board. And that's when all of these issues have to be resolved.

Mr. McCullum: Okay, I'm just...I'm just asking the question.

Chairperson Cardone: Right.

Mr. Manley: Now from what I gather with respect to the sewer you've indicated if Stone Street is not available to hook up to sewer that there is a second alternative which you've indicated which is Plank Road where there is the main.

Mr. Brown: (Inaudible) Existing manhole...

Ms. Gennarelli: Just grab...grab that mic, I'm sorry.

Mr. McKelvey: And you already have water on the property.

Mr. Raab: I'll speak to that. A...we have the alternate to go directly into the main, yes, we already...no, we have to connect...this parcel is on a well right now we're going to have to run and connect into the waterline on Stone Street. We need to do that anyway because the restaurant needs to be sprinklered.

Ms. Drake: (Inaudible) ...you're going to need an easement to get all ...on to somebody else's property?

Mr. Raab: No, no we're going right on back onto Stone Street after we leave our property we're going right on back out on to Stone Street. As soon as...as soon as we leave our property...

Ms. Drake: (Inaudible)

Mr. Raab: ...we are going on...back onto the Stone Street.

Ms. Drake: And you don't have your separation distance from the proposed sewer main then?

Mr. Raab: Oh, yes, absolutely we wouldn't do it any other way.

Mr. Brown: (Inaudible)

Mr. Raab: Can it...yeah, there's also water on Plank Road if we needed to do that. We're just thinking of a...a less expensive way to do it than going under Plank Road because it would have to be burrowed.

Ms. Drake: And provided you were able to address all the parking whether it be on your property or through the easement you would not be, obviously, fixing the parking issue for the other restaurant? That's still going to stay there because that's an existing situation that you have no control over.

Mr. Brown: That's correct.

Ms. Drake: Right, just wanted to make that clear.

Mr. Manley: In the event that you're not able to secure an agreement with the other party with respect to those (6) six parking spaces that would leave you then (14) fourteen, correct? At that point what would you do if that happened in your...in your process?

Mr. Brown: It would actually be (15) fifteen because we have (21) twenty-one spaces. So, we would have to reduce the seating in the restaurant to correspond to the parking.

Mr. McKelvey: You...you...it was stated though that you are going to need parking for the help.

Mr. Brown: Well we're following the Zoning now if the Zoning specifies (1) one space for (4) four seats a...and doesn't specify additional parking for a...help then that's what's in the Zoning a...and that's, you know that's would be it. And again, we're...we're not here for a parking variance a...you know these issues will be worked out with the planning board a...and for the people in the audience we do another Public Hearing at that a...at that level and that would address all these issues that a...you seemed to be concerned about.

Mr. Maher: One more question for you Charlie, I notice on the note that...that Jim has sent that in conversation with Mr. Costa a...advised that he does have a plan to remove the septic and connect to sewer once its installed and to expand his parking area, that's a conversation you've had with him so far?

Mr. Brown: A...yeah now I don't know how he would expand his parking area because Tommy has not elaborated on that with me and back to his septic there has been problems with that and that could be some of the a...water issues that have

gotten into Stone Street a...but you know, we really have no control over his property. I have no idea what his intentions are as far as expanding his parking.

Mr. Raab: Just to speak to that Mike is that, he would...he...right here in front of his...his property where the septic is that's where he would expand his parking to and that's just for his...probably for his residence because they share the parking and they're the ones that are basically parking on the street along with the customers for...for North Plank Road Tavern but they...they're the ones that are all the time parked on the street.

Ms. Pearl: Since you spoke to that and this isn't about Mr. Costa where is...isn't there a wall...a wall here, like where is his septic as opposed to that wall?

Mr. Raab: Over here.

Ms. Pearl: So the wall gets taken down?

Mr. Raab: We...we only...again...

Ms. Pearl: So well...then you can't really say that that's going to happen right?

Mr. Raab: No, (Inaudible)

Mr. Brown: (Inaudible)

Ms. Pearl: Because he's got a...he's got a huge stone wall around that septic system, the parking lot is over here so you can't say that that's going to solve a problem though, right?

Mr. Brown: No.

Mr. Raab: No.

Ms. Pearl: Okay, forgive me because I've been dealing with it for (20) twenty years, okay.

Mr. Brown: The septic for the restaurant is actually under this parking lot.

Ms. Pearl: Under the parking lot?

Mr. Brown: Yes.

Ms. Pearl: So how is going to the septic (sewer) going to make this parking lot bigger and relieve this problem?

Mr. Brown: Again, I can't...

Ms. Pearl: Yeah, it's not, okay. Thank you.

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

(No response)

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

Ms. Drake: I'll make a motion we close the Public Hearing.

Chairperson Cardone: Do we have a second?

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The Public Hearing is closed. Jim, a...later I'll ask you. Okay, before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight's applications. If I could ask in the interest of time if you would wait out in the hallway and then we'll call you back in for the decisions shortly.

(Time Noted – 8:29 PM)

ZBA MEETING – FEBRUARY 28, 2013 (Resumption for decision: 8:44 PM)

ZEF GJURASHAJ

34 PLANK ROAD, NBGH
(84-2-1.1) B ZONE

Applicant is seeking area variances for the minimum lot area, the front yard setback (Stone Street), the front yard setback (Plank Road), the side yard setback, the minimum lot width and the minimum lot depth to convert an existing residence into an 80-seat restaurant.

Chairperson Cardone: On the next application Zef Gjurashaj, 34 Plank Road, seeking area variances for the minimum lot area, the front yard setback, the front yard setback (Plank Road and on Stone Street), the side yard setback, the minimum lot width and the minimum lot depth to convert an existing residence into an 80-seat restaurant.

Chairperson Cardone: This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

Ms. Drake: So moved.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Manley: I have concerns with the minimum lot area, and there's other factors but the biggest is the...the minimum lot area.

Chairperson Cardone: Is there any other discussion?

Mr. Maher: I think the...obviously there is some a...issues with the parking that were highlighted but unfortunately we're not looking at any of those issues at this time, that is definitely a planning board a...problem to review and approve. There was some discussion as far as helping a...the Town out...I'm sorry, the residents out with in the Town with the a...size of the road and make sure the road is done. Based on Mr. Raab's letter it appears they're...they've talked to the Highway Superintendent and they're looking at some options to a...take care of some of the issues on the east side of the property on Stone Street there.

Chairperson Cardone: Do I have a motion for approval on this application?

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: No

John Masten: No

Roseanne Smith: Yes

Grace Cardone: Yes

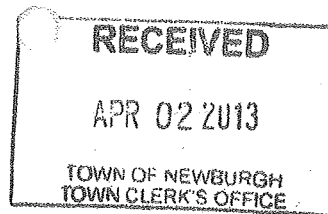
Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE
JOSEPH MATTINA, CODE COMPLIANCE (Time Noted – 8:47 PM)



Section 84, Block 2, Lot 1.1

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of
ZEF GJURASHAJ

DECISION

For area variances as follows:

- *Grant of a variance allowing a minimum lot area of 14,218 square feet where 40,000 square feet is required;*
- *Grant of a variance allowing front yard setback (Stone street) of 32.4 feet where 50 feet is required;*
- *Grant of a variance allowing a front yard setback of 29.85 (Plank Road) feet where 50 feet is required;*
- *Grant of a variance allowing a side yard setback of 10.5 feet where 15 feet is required;*
- *Grant of a variance allowing a lot width of 100.4 feet where 150 feet is required;*
- *Grant of a variance allowing a lot depth of 141.45 feet where 150 feet is required.*

-----X

Introduction

Zef Gjurashaj seeks to convert an existing single family residential dwelling to a restaurant. In order to accomplish this objective, the following area variances are required: (1) Grant of a variance allowing minimum lot area of 14,218

square feet where 40,000 square feet is required; (2) Grant of a variance allowing a front yard setback (Stone Street) of 32.4 feet where 50 feet is required; (3) Grant of a variance allowing a front yard setback (Plank Road) of 29.85 feet where 50 feet is required; (4) Grant of a variance allowing a side yard setback of 10.5 feet where 15 feet is required; (5) Grant of a variance allowing a minimum lot width of 100.4 feet where 150 feet is required; and (6) Grant of a variance allowing a minimum lot depth of 141.45 feet where 150 feet is required.

The property is located at 34 Plank Road in the B Zoning District and is identified on the Town of Newburgh tax maps as Section 84, Block 2, Lot 1.1.

A public hearing was held on January 24, 2013, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

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.

These schedules require, for this conversion of an existing single-family dwelling in the B Zoning District to a restaurant a front yard and rear yard setback of 50 feet and a side yard setback of 15 feet. These schedules are also require minimum lot area of 40,000 square feet, a minimum lot width of 150 feet and a minimum lot depth of 150 feet¹.

¹ The deficiencies identified herein were permitted as pre-existing nonconforming conditions. The protections afforded the property, however, were lost when the house was proposed to be converted to a restaurant.

Background

After receiving all the materials presented by the applicant and hearing the testimony of Charles Brown, P.E. and James Raab of Talcott Engineering at the public hearing held before the Zoning Board of Appeals on January 24, 2013, which public hearing was continued until February 28, 2013 the Board makes the following findings of fact:

1. The applicant is the owners of a 14,218 +/- square foot lot (tax parcel 84-2-1.1) located at 34 Plank Road.
2. The lot is improved by a single family residence. The applicant wishes to convert this residence into an 80-seat restaurant.
3. The applicant's proposal is set forth on a series of photographs and site plans prepared by Talcott Engineering Design PLLC dated November 28, 2012 and last revised December 4 2012. Those photographs and plans 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 (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Minimum Lot Area	40,000 S.F.		14,218 S.F.	25,782 S.F.	64.4%
Front Yard Setback	50		32.4'	17.6'	35.2%
Front Yard Setback	50'		29.85'	18.7'	37.4%
Side Yard Setback	15		10.5'	4.5'	30%
Minimum Lot Width	150		100.4'	49.6'	33.1%
Minimum Lot Depth	150		141.45'	8.55'	5.7%

5. Members of the public were heard during the hearing. Much of the discussion concerned the sufficiency of the proposed parking for the

proposed restaurant and the adequacy of the surrounding streets to accommodate the traffic anticipated to be generated by the proposed restaurant. While the discussion is important to the project, these issues were not part of the application before the Zoning Board. They are properly left to the Planning Board during the site plan review of this project.

6. The applicant was referred to the Zoning Board of Appeals by the Town of Newburgh Planning Board pursuant to correspondence from their counsel dated December 26, 2012.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decided 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 variance.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the restaurant would be in harmony with the existing, mature, neighborhood and do not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

Testimony was submitted at the Public Hearing by members of the public that contradicted the testimony submitted by the applicants. While it is difficult to reconcile the conflicting testimony received, the Board notes that the use proposed by the applicant is allowed in the B zone and is thus presumed to be compatible with the neighborhood.

Accordingly, based upon the evidence and testimony submitted to the Board, and upon due deliberation, the Board finds that the requested area variances will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible for the applicant to have a restaurant in a way

that would have any meaningful use and benefit to the applicants without the requested area variances.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot 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, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the variances requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony or evidence was received by the Board indicating that the requested variances would cause any adverse physical or environmental effects.

Accordingly, based upon the evidence and testimony received, The Board finds that the variances requested will not adversely impact the physical or environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the Zoning Ordinance and while aware of the need to obtain variances in order to construct the restaurant on the property that they have.

However, given that the structures improve the appearance of the house,

the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of these variances.

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 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 (architectural refinements aside) 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.
3. This approval is not issued in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Town of Newburgh Planning Board). As such, this grant of variance is conditioned upon approval of the application now pending before the planning board. This approval of the ZBA is intended to do no more than vary the

specified strict limitation provisions of the Code identified; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The planning board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before it. Should the planning board require changes in the size, location or configuration from what is shown on the plans before the ZBA that require greater or different variances, the applicant must return to the ZBA for further review and approval.

4. 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. As noted above, this application is not decided in a vacuum but is rather tied to a specific application for approval pending before the Town of Newburgh Planning Board and this approval is conditioned upon the applicant diligently pursuing his application before that board. Provided that the applicant shall report to this board monthly on the progress of the application pending before the planning board, and provided that such reports demonstrate a diligent pursual of that application, the time period within which the planning board application is processed shall not be included within the initial six-month limitation of Section 185-55 D.

Dated: February 28, 2013



Grace Cardone, Chair
Town of Newburgh ZBA

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

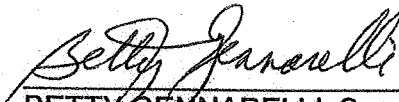
AYES: Chair Grace Cardone
Member Brenda Drake
Member John McKelvey
Member Michael Maher
Member Roseanne Smith

NAYS: Member John Masten
Member James Manley

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 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 *January 24, 2013*

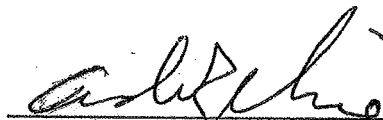


BETTY GENNARELLI, SECRETARY

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

APR - 7 2013



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH