

Zoning Board of Appeals Meeting  
January 22, 2014

Present: Tom Burgie  
Mary Faulk  
Ken Hanvey, Chairman  
Matt McDonald

Guests: Dr. and Mrs. Nemani  
Stacie Whitbeck

The regular meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:00 P.M. followed by the Pledge of Allegiance. Attendance was taken and all board members were present.

Chairman Hanvey called for a motion to approve the October 23, 2013 minutes as written. Ken Hanvey made said motion which was seconded by Tom Burgie. Both Ken Hanvey and Tom Burgie were part of the quorum of three members that attended the October 23, 2013 meeting and by their votes to approve the minutes of that meeting they represented a quorum (2) of the October 23, 2013 quorum (3) so the minutes were approved. Both Mary Faulk and Matt McDonald did not vote as they were not present at the October 23, 2013 meeting.

Old Business

There was no old business.

Board member, Tom Burgie, explained the Rules of Order to the applicants. He said that the board members were the applicants' friends and neighbors and, as such, would grant relief whenever reasonably possible. He said that the board needed to balance the wants and needs of the applicants, if granting the variance, against the potential detriment to the community-at-large as defined in the town code. He also said that the board must, by statute, only grant the minimum variance it deems necessary while at the same time preserving the general character of the neighborhood. In addition, he then said that the board may, at its discretion, impose reasonable conditions that are directly related to and incidental to the proposed use of the property.

New Business

PUBLIC HEARING-NEMANI-REQUEST FOR SPECIAL USE PERMIT

Chairman Hanvey: One bed & breakfast per lot containing not more than five rentable bedrooms for 10 or fewer lodgers is allowed without needing a special use permit. The sixth bedroom is the reason you had to apply for a special use permit. I don't know if anyone ever mentioned that to you or not.

Mr. Nemani: No, we did not know that.

Ms. Whitbeck: I think we'll proceed even though we are not quite sure what the plans are finally going to end up being, in order to give us some flexibility.

Chairman Hanvey: You've got nothing to lose. I guess the reason I brought it up was if this was not to work out tonight you could always go for the bed and breakfast. You just have to get it to five bedrooms total.

Chairman Hanvey then proceeded to read the Legal Notice as published.

Chairman Hanvey: Okay. At this point, we would like to have you step up to the microphone and tell us what you want to do and where and why.

Mr. Nemani: First, thank you for giving us this opportunity. Rick Wyffels, who is a friend of ours, is planning to move out and he wanted to offer us a chance to purchase his existing structure which we saw as an opportunity, given its proximity to Bristol Mountain Ski Resort, as a place to potentially open it up as a residential housing unit for rental income. It is a fairly large structure and is about 4,000 square feet total. Not all of it is built out yet. The existing structure has two bedrooms in the first unit and one bedroom in the ground floor unit. There is certainly the potential to add a third bedroom in the existing unit that is upstairs and it would be very easy to do. The structure that is not finished is attached to the house with a breezeway and it is a fairly large structure that could easily accommodate a two-bedroom unit. Our goal is to have three separate units consisting of a three bedroom, a one bedroom and a two bedroom for rental use. Our assumption is that it will be a seasonal rental for people who want to ski at Bristol which attracts people from not just around here but also from such locations as Ohio and Toronto. We are all skiers and we have met people from many different parts of New York State as well as other states.

We think there is a potential for rental accommodations in the area so we think it would be a good thing to have here. We would not be adding anything physically to the structure itself that is already there. There is enough square footage. We would just renovate each unit into a single unit rental.

Mr. Wyffels has three separate parcels. He has an acre behind this parcel which I think is about 4.6 acres or so. He also owns acreage right next to Route 64 which is another 2.2 acre parcel. Our purchase offer is to purchase all three parcels. We want keep everything together. I believe that the other two parcels are zoned commercial. We actually own the log home right in front of his so we actually have a residence here as well and we want to preserve that area for our purposes, as well to keep the value of our log home up. So we don't want to have a large commercial operation or a nightclub next to our home. Therefore, we want to purchase all three parcels together not only to develop rental property behind us but also to keep that area the way it is.

Chairman Hanvey: Does anybody have any questions?

Mr. Burgie: Looking at the map, I did not see it in the application, but it looks like you are in a neighborhood commercial zone.

Mr. Nemani: I believe so.

Mr. Burgie: All the parcels that you are talking about are zoned neighborhood commercial?

Mr. Nemani: The parcel closest to Route 64 is zoned commercial and I think the parcel behind it is zoned commercial also.

Ms. Whitbeck: Our understanding is that where the residence is currently it is zoned for residential only, not neighborhood commercial.

Chairman Hanvey: That is something that I really would have liked to have Phil here with us tonight to clarify that for us.

Board Secretary: It is zoned neighborhood commercial which is a mix of residential and commercial with the commercial portion being the area closest to Route 64 and the residential portion being in the back of that.

Chairman Hanvey: With it being 2.2 acres, that would probably be an R-1 because R-3 would be a minimum of three acres.

Board Secretary: That whole area there is all zoned neighborhood commercial allowing for residential in the back and commercial in the front along Route 64.

Mr. Burgie: The only reason I am asking is to determine what section of the code we are talking about with respect to the special use permit. To me, it is NC.

Board Secretary: That correct. It is NC.

Chairman Hanvey: Yeah, I was actually asking them about that earlier tonight. We have a parcel that already has an existing structure on it and it could be zoned differently. If the neighborhood commercial came about afterward then it could be a mix.

Mr. Nemani: I believe the structure to the north of the Wyffels residence is also a log home that they use for rental income.

Chairman Hanvey: I know there are rental properties on Route 64. I know there some farther up in Bristol.

Mr. Nemani: I think it's a family from Toronto. They bought it and renovated it. I know they use it and I think their friends use it as well. I believe they also rent it out as well.

Mr. McDonald: Were you looking for a longer type rental like a on a yearly basis or for vacationers for just summer or winter?

Mr. Nemani: We are looking more towards short term vacationers but if somebody wanted to propose renting it long term it would certainly be something we would consider.

Mr. McDonald: It's nice that you live right there so you have a vested interest. Did we get anything from the neighbors or anything like that?

Board Secretary: No. They were notified.

Chairman Hanvey: Normally this is where the code enforcement officer would explain his rationale for requiring you to apply for a special use permit. Like we were talking earlier, right now it appears that the number of bedrooms and the occupancy is what is making it necessary for you to go for a special use permit. Regardless of whether you are in the R-1 or in the NC, one bed & breakfast per lot containing not more than five rentable bedrooms for 10 or fewer lodgers is the standard you can go to without needing a special use permit. Okay, so you are anticipating six bedrooms and you could conceivably have more than 10 lodgers so by special use permit you would be allowed up to 15 lodgers and it does not specify how many bedrooms so that is basically why you are here.

Mr. Nemani: Thank you.

Chairman Hanvey: Visitation reports? Comments?

Tom Burgie: I've been going by there for quite a few years.

Chairman Hanvey: I drove by. Quite honestly, the pictures that were supplied from Ontario County are aerial views which were helpful because from the road it is kind of hard to figure out exactly what is going on. However, I drove by and looked at it anyway. I then came to the conclusion that the aerial photos gave us a much better indication of what is actually there. It seemed to me like you actually have a fair amount of parking space. To me, normally that would be a concern because with a normal residential house you might only have a short driveway or small space for parking. It seems like you could probably park 5 or 6 cars there and not affect anything. That was probably the biggest thing that I noticed.

Mr. Burgie: There is very limited visibility as to what is going on at the house from the road.

Chairman Hanvey: Yeah, that's another plus. Also, to state the obvious, it is an existing structure so they are not talking about doing any kind of massive refurbishing or building a three-family house that is not there. For all intents and purposes, most of the changes that they want to make will involve interior construction.

Mr. McDonald: Of course, with the existing traffic pattern I don't think it will have an adverse effect on the skier traffic at Bristol Mountain. The lengthy driveway that comes all the way back, is that owned solely by you or is it a shared driveway?

Mr. Nemani: I think it is shared because the other two residences also use that driveway to get up to their houses.

Mr. McDonald: Does everybody split the cost of maintenance on the driveway or has it not been in an issue yet? What about plowing?

Mr. Nemani: Plowing costs are split and I think that is the only thing that needs to be done.

Chairman Hanvey: Does anybody else have anything? (No one) Okay, at this point, we have a little housekeeping to do. Part of the proceedings is for the board to make a determination about the environmental impact of what you are planning to do. It is the State Environmental Quality Review Act and because you have applied for a special use permit it puts you in what is called an Unlisted Action. There are Type I actions which involve construction that will destroy all kinds of things and when you do an environmental impact review for something like that you also have to do all kinds of other things. A Type II action is for something where you are not going to disturb anything basically and, according to the State you are allowed to do whatever you want to do without the board taking any further action. Unlisted Actions kind of pick up all the things that are not in the Type I or Type II categories. Therefore, being that this is for a special use permit, this falls automatically into that Unlisted Action category.

This is the Short Environmental Assessment Form and you, as the applicants, have completed the first part of it. We will go through that and then once we get done with that there is another section somewhat similar to what you completed which we have to go through and once we have done that we need to make a determination as to what kind of impact it is going to have on the environment. So that is what we are going to do now. The board went through the Short Environmental Assessment Form.

Part 1 is Completed by Applicant/Project Sponsor. Chairman Hanvey first read aloud Part 1 as completed by the applicants as follows:

Name of Action or Project: Ajai & Jyoti Nemani Boardinghouse/Lodging House  
 Project Location: 5601 Route 64, Canandaigua, NY 14424  
 Name of Applicant or Sponsor: Jyoti and Ajai Nemani  
 Address: 7 Bromsgrove Hill, Pittsford, NY 14534

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? Response: No

2. Does the proposed action require a permit, approval or funding from any other governmental agency? Response: Yes, a building permit from the Town of South Bristol
3. Total acreage of the site of the proposed action? Response: 2.2 acres
4. Check all land uses that occur on, adjoining and near the proposed action. Response: Commercial and Residential
5. Is the proposed action,
  - a. A permitted use under the zoning regulations? Response: Yes. It is allowed by special use permit.
  - b. Consistent with the adopted comprehensive plan? Response: Yes
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? Response: Yes
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? Response: No
8. a. Will the proposed action result in a substantial increase in traffic above present levels? Response: No
  - b. Are public transportation service(s) available at or near the site of the proposed action? Response: No
  - c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action? Response: No
9. Does the proposed action meet or exceed the state energy code requirements? Response: No
10. Will the proposed action connect to an existing public/private water supply? Response: No. We will add septic tanks which will handle the three separate units.
11. Will the proposed action connect to existing wastewater utilities? Response: No. We will add septic tanks which will handle the three separate units.
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? Response: No
  - b. Is the proposed action located in an archeological sensitive area? Response: No
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other water bodies regulated by a federal, state or local agency? Response: No
  - b. Would the proposed action physically alter, or encroach into, any existing wetland or water body? Response: No

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply. Response: Suburban (Residential)
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?  
Response: No
16. Is the project site located in the 100 year flood plain? Response: No
17. Will the proposed action create storm water discharge, either from point or non-point sources? Response: No
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?  
Response: No
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? Response: No
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? Response: No

The form was then signed by Ajai and Jyoti Nemani affirming that the information they provided was true and accurate to the best of their knowledge.

Mr. McDonald: I just have one quick question. Your address was listed on the form as being Pittsford, NY. Is the home you have in South Bristol a vacation home that you come down to?

Mr. Nemani: That's correct.

Mr. McDonald: Okay. I was wondering because I don't see vehicles there all the time. It's a beautiful house.

Board Secretary: That's what I was just going to say. It's beautiful. I live just up the road and I go by there all the time and it is just so beautiful.

Chairman Hanvey: Just so you don't think Matt is a stalker. He is an Ontario County Sheriff so he doesn't just randomly drive by.

Ms. Whitbeck: You look familiar to us and we were trying to figure out how we know you.

Mr. McDonald: I am an investigator for the Ontario County Sheriff's Office.

Ms. Whitbeck: So you haven't stopped us for speeding.

Mr. McDonald: I investigate robberies and murders. Speeding tickets I don't deal with. I'm up and down the road everyday and I try to pay attention to cars in the neighborhood and who belongs and who doesn't. Obviously, there is a concern with burglaries in the daytime and things like that. That is the only reason I have noticed that cars aren't at the house all the time and if, all of a sudden, there is an odd car there and it does not look like it belongs I would probably be stopping there in an unmarked car asking if they belong there.

Mr. Burgie: That probably makes you feel pretty good.

Chairman Hanvey: Okay. Now we need to complete Part 2 of Impact Assessment. He then read aloud from Part 2 as follows:

The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

Chairman Hanvey then stated that he wanted it to be clear that this is an existing structure. It is not as if this is a clear piece of land where you need to dig a basement, etc. The structure is existing so that kind of sheds a little bit of a different light on the things. Mr. McDonald then added that it would make it a lot easier. Mr. Hanvey then continued to read aloud the questions contained in Part 2 as follows: (He noted that the board's choices for answers were either "No, or small impact may occur" or "Moderate to large impact may occur")

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? Response: No
2. Will the proposed action result in a change in the use or intensity of use of land? Response: No. Maybe a little bit but it would come under a small impact
3. Will the proposed action impair the character or quality of the existing community? Response: No, the structure is there and people are living in it. The quantity of people may increase a little bit but nothing earth shattering.
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? Response: No
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? Response: No, there will be a very small impact



6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?

Response: No, this is a residential house and energy consumption should be relatively small

7. Will the proposed action impact existing:

a. public/private water supplies? Response: No

b. public/private wastewater treatment utilities? Response: No

There is going to be a small impact on both but the applicants will be doing whatever is necessary to meet both water and sewer requirements

8. Will the proposed action impair the character or quality of important historic, archaeological or aesthetic resources? Response: No

9. Will the proposed action result in an adverse change to natural resources (e.g. wetlands, water bodies, groundwater, air quality, flora and fauna)? Response: No

10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? Response: No

11. Will the proposed action create a hazard to environmental resources or human health? Response: No

Part 3 ó Determination of significance. The lead agency is responsible for the completion of Part 3. For every question in Part 2 that was answered òmoderate to large impact may occurö, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3, should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Chairman Hanvey explained that he had gone to the State Environmental Quality Review book and a Type II action requires no further action on the board's part. He said that one of those was that you can literally build a three-family home from scratch and it is considered a Type II action with nothing being required to be done by the board. Based on this information, the board's statement in Part 3 was as follows:

òA three-family structure built from scratch would be a Type II action. This structure is already existing and will cause less effects than a new similar structure.ö

At the end of Part 3, the board then checked the box preceding the statement that read: òCheck this box if you have determined, based on the information and analysis above,

and any supporting documentation, that the proposed action would not result in any significant adverse environmental impacts.

Chairman Hanvey: I would like to propose our first finding of the night which would be that we have determined based upon the information and analysis provided on the Short Environmental Assessment Form and any supporting documentation that the proposed action will not result in any significant adverse environmental impacts.

Mr. McDonald: I will second that.

Chairman Hanvey: All in favor, say "Aye" All - Aye

Chairman Hanvey: At this point, I would like to open the public hearing portion of our meeting. (Time: 8:05 P.M.) Basically, you are the applicants and we have no other people from the general public present to speak regarding your application. Is there anything you would like to say? Being the realtor, is there anything you would like to say?

Ms. Whitbeck: I would just like to say that I think that the board can have great confidence that this project will be handled beautifully and it is going to enhance the area and enhance the experience for visitors coming into the area.

Chairman Hanvey: Okay. I will now close the public hearing portion of this meeting. (Time: 8:07 P.M.) Deb, do we have any other communications from any other officials, neighbors or any other written documentation?

Board Secretary: No. No letters have come in.

Chairman Hanvey: Discussion and debate?

Mr. McDonald: I think the proposed use would not adversely affect the current neighborhood situation or the public-at-large. As you stated earlier, the structure is currently existing there. The only change would be the occasional small influx of people and cars. As it was explained to us, it will be on a short term basis during the busiest time of year for Route 64 so I don't think it will have much of an impact at all.

Chairman Hanvey: Debbie, would you please include in the minutes the comments from the Ontario County Planning Board regarding this application. Basically, what we are talking about is that for a special use permit one thing that has to happen is it has to be referred to the Ontario County Planning Board for their review and input. They reviewed your application at their December 11, 2013 board meeting.

The comments and the motion made by the Ontario County Planning Board were as follows:

Comments: The adjoining landowner is proposing to purchase the existing residence and convert it into a three unit "board house". It is located across the street from Bristol

Mountain Ski Resort. The project is located in the Mud Creek subwatershed to Hathaway Circle.

Visitor Accommodations. This project will expand and diversify lodging opportunities for visitors to the Bristol Hills throughout the year which is very important to the tourism industry.

As proposed, the owner/operator will not reside on the parcel but next door in their private residence as would be customary in a bed and breakfast arrangement. It is not clear whether the approval will be dependent on the owner continuing to occupy the adjoining parcel or could potentially become stand-alone operation with no onsite management should the current owners decide to relocate. Is there a time limit for the guest's stay? Will extended stays or year round rental be allowed?

Onsite Wastewater Treatment. No information was provided regarding the capability of the existing septic system and well to accommodate three guest units. The Ontario County Soil and Water Conservation District should be contacted (Tad Gerace 585-396-1450) regarding onsite wastewater treatment. The application is looking into this issue.

Water Supply. The referral form indicated that water is supplied by a well. The applicant is looking into the water supply issues.

Board Motion: Finding that application #166-2013 has no significant county-wide or inter-municipal impacts, the Board returns it to the referring agency as a Class 1 with comments.

Chairman Hanvey: Some of their comments had to do with the water and septic and, quite honestly, you will have to take care of that when you go through the building permit process. Those things will be taken care of at that point.

Ms. Faulk: I feel that there will be no significant increase in traffic because if you have three or four groups that's only three or four cars. That would be insignificant in my opinion.

Chairman Hanvey: I agree.

Mr. McDonald: I agree with that, too.

Chairman Hanvey: Okay, now we will deal some of our housekeeping. We've already got our first finding. Would anyone like to propose a finding?

Mr. Burgie: I would like to make a finding that the proposed use of the property and structure is consistent with the comprehensive plan of the town.

Chairman Hanvey: I will make a motion that we make that Finding #2.

Ms. Faulk: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye  
I would like to make a finding that no one appeared at the meeting in opposition to the application.

Mr. Burgie: I make a motion that we make that Finding #3.

Mr. McDonald: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye

Mr. McDonald: I make a finding that there will be no significant environmental impacts due to the fact that the structure is already existing.

Chairman Hanvey: I make a motion to make that Finding #4.

Mr. Burgie: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye

Mr. Burgie: I would like to make a finding that the proposed use is in harmony with the purposes of the Zoning Law and with the regulations of the zoning district within which the special use is to be located.

Chairman Hanvey: I make a motion that we make that Finding #5.

Ms. Faulk: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye  
I make a finding that this application is in keeping with the character of the neighborhood. There are other boardinghouse/lodging house rental properties in the area.

Mr. Burgie: I make a motion to make that Finding #6.

Mr. McDonald: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye

Mr. Burgie: I would like to make a finding that the proposed use will not be detrimental to nearby properties.

Chairman Hanvey: I make a motion that we make that Finding #7.

Mr. McDonald: Second.

Chairman Hanvey: All in favor, say ðAyeö. All ó Aye  
Do I hear a motion to approve or deny the application?

Ms. Faulk: I move that we approve the application.

Mr. Burgie: Iðl second that.

Chairman Hanvey: Roll call vote.

Board Secretary:	Mary Faulk	- Aye
	Tom Burgie	- Aye
	Matt McDonald	- Aye
	Ken Hanvey	- Aye

Chairman Hanvey: One thing we are allowed to do is to apply conditions to special use permits. Normally, a special use permit goes with the property. So, once this is approved it goes to the property not to the owner. The condition that I would like to put on it is that the granting of the special use permit is contingent upon Mr. and Mrs. Nemani purchasing the property. In other words, if they decide for whatever reason in the next couple of weeks not to buy the property, then there will not be any special use permit applied and the next person interested in it canø do whatever they want to do with it. They would have to apply with a new application. I would like to make a motion that the granting of the special use permit is contingent upon Mr. and Mrs. Nemani purchasing the property.

Mr. Burgie: Second.

Chairman Hanvey; All in favor, say ðAyeö. All ó Aye  
Okay, your special use permit is approved with the condition that you purchase the property.

#### Other Business To Come Before The Board

Board Vacancies-The board secretary told the board that the Town Clerk had put an ad in The Daily Messenger for people interested in filling the current vacancies on the ZBA. She said that one person had responded and that the Town Clerk had forwarded it on to Chairman Hanvey.

Board member, Matt McDonald, then told the board that due to his impending divorce he was going to have to resign from the board due to the fact that he had been advised by his divorce attorney that his membership on the board had been raised as in issue in his divorce with regard to the custody of the children. He said that he had been advised to vacate his position on the board until his divorce proceedings are finalized and then perhaps reapply should another position on the board become available. He said officially he had now informed the board that he will be resigning but that he did not have to go anywhere until the town can fill the position so the board is not left without enough members to conduct business. Chairman Hanvey then added that, if need be,

perhaps a leave of absence could be arranged for six months or something like that. Matt then said that if he could walk into court and officially say that he has tendered his resignation and that the town was working on filling his position it and that he was trying to fill in until the town finds someone that should be sufficient. Therefore, Matt said he would be available for future meetings until his position can be filled and that he would like to be kept on the list for a ZBA position for the next opening so he could return as a ZBA member. It was noted during discussion that the board usually only has sporadic meetings during the year resulting in 1 or 2 meetings in a 6 or 8 month period.

There being no other business to come before the board, Chairman Hanvey called for a motion to adjourn. Matt McDonald made said motion which was seconded by Mary Faulk. The motion was unanimously accepted and the meeting adjourned at 8:30 P.M.

Respectfully submitted,

Debra Minute  
Recording Secretary