**Zoning Board of Appeals**
**Minutes**
**March 20, 2014**

**Present** **Absent**

Chairman John Dole
Michael Flavin
Mark Unvericht
Dale Kellerson
Diana Powell Keery

**Also Present**

Village Attorney Eric Stowe
Building Inspector Patrick Smith
Deputy Clerk Pam Gilbert
Thomas West, DPW Superintendent
Donna Stassen, Secretary ZBA
Carol Nellis Ewell, Village Board Liaison

Joan Quigley
Matt Brooks
Mike Lopresti
Russell Maralastan

Chairman Dole led the Pledge of Allegiance.

**Public Hearing**

The application of NGPT, LLC for a special permit to operate a physical therapy facility located at 37 N Union Street, Spencerport NY. Whereas, pursuant to Chapter 340-19-B(8) in a B District is a permitted use subject to the granting of a special permit by the Zoning Board of Appeals.

Russell Maralastan will be representing Lattimore Physical Therapy this evening.

Mr. Maralastan stated to the board that they just bought the business this past fall there had been a physical therapy facility there for many years. When they bought the business it was brought to their attention that the business had never been a permitted use and a special permit was required. They are here tonight to get everything legal.

Building Inspector Patrick Smith stated to the board that it was only by accident that his office found it was not a permitted use. The business has been there for many years and needs to be compliant and he asked them to come in and make it right and that is why we are here this evening.

At this time the following resolution was offered:

Resolution No 236 — Introduced by Diana Powell Keery
March 20, 2014 — Seconded by Mark Unvericht

Motion made by Diana Powell Keery seconded by Mark Unvericht and carried unanimously to approve the application of NGPT, LLC for a special permit to operate a physical therapy facility located at 37 N Union Street, Spencerport. Whereas pursuant to Chapter 340-19-B (8) in a B District such facility is a permitted use subject to the granting of a special permit by the Zoning Board of Appeals.
Furthermore such special permit is deemed a Type 2 action and no further environmental review will be required.

Ayes: Dole, Flavin, Unvericht, Kellerson, Powell Keery
Nays: none

Next on the agenda is the application of Ogden Rentals, 2800 Spencerport Road, Spencerport NY to convert an existing building into 4 townhomes on property located at 115 Clark Street. The applicant received approval on May 19, 2011 (Resolution No 213) to convert existing building into 4 single family apartments on property located at 115 Clark Street. The applicant has since decided to convert the existing property located at 115 Clark Street into 4 single family townhomes. Said change does require approval from the Zoning Board of Appeals. On May 19, 2011 such applicant was granted front and rear setbacks the applicant is requesting to amend such approved variances and is asking for the following setbacks:

1. Front setback of 12.7 ft whereas 14 ft was granted on May 19, 2011.
2. Rear setback of 5 ft whereas 8.9 ft was granted on May 19, 2011.

Mike Lopresti stated to the board that when he originally came to the village with this project they were named apartments on the plan and he thinks that is where that came from. They were always intended to be townhomes and are being built to NYS Code as per townhome requirements. The variances that he is asking to be amended should have been what was granted in 2011 the building and garages are still the same as shown on plans in 2011. Again there must have been some confusion with the measuring from the road but that the setbacks he is asking for today should have been what was granted in 2011.

Patrick Smith stated that when Mr. Lopresti came in for permits to start this project these discrepancies were found and needed to be cleared up before he could issue any building permits.
Patrick Smith also stated that if they are called apartments a sprinkler system will need to be installed and this would be a huge expense to the developer.

At this time the following resolution was offered:

Motion made by Diana Powell Keery seconded by Dale Kellerson and carried unanimously to approve the application of Ogden Rentals, 2800 Spencerport Road, Spencerport NY requesting to convert an existing building into 4 townhomes on property located at 115 Clark Street. The applicant received approval on May 19, 2011 (Resolution No 213) to convert existing building into 4 single family apartments on property located at 115 Clark Street. The applicant has since decided to convert the

existing property located at 115 Clark Street into 4 single family townhomes. Said change does require approval from the Zoning Board of Appeals. On May 19, 2011 the applicant also was granted front setback of 14 ft and a rear setback of 8.9 ft. At this time the applicant requested and the Zoning Board of Appeals approved the following amended setbacks pursuant to Chapter 340-16.

1. Front setback of 12.7 ft.
2. Rear setback of 5 ft.

Furthermore such variances are deemed a Type 2 action and no further environmental review will be required.

Ayes: Dole, Flavin, Unvericht, Kellerson, Powell Keery
Nays: none

Next on the agenda is the application of Matt Brooks, McColley's 89 S Union Street to renew a special permit for the metal fencing on the sidewalk on property located at same. Such special permit was granted for one year and will expire on March 21, 2014. Whereas, all fences in non-residential districts shall not be erected without a special permit from the Zoning Board of Appeals pursuant to Chapter 340-32. B (1) & (2) in a Commercial B District.

Matt Brooks stated to the board that there are some sticky issues relating to this fence.

- The fence is serving as a guard from the front doors of the business and is needed for insurance purposes.
- Fence is bolted into place.
- The fence is not in the right of way.
- The sidewalk is on his property.
- The fence has become part of the façade of the building.

Matt Brooks stated that now we are in a situation where this will be used for a sidewalk café too.

Matt Brooks also stated that the fence withstood the strong winter we had and that he kept his sidewalk clear all winter.

Matt Brooks stated that it is his opinion that 33 ft of sidewalk is ample room for this fence. He feels it should go under the realm of a building permit and he shouldn't have to come in every year for approval.

The fence can't be removed because of insurance purposes and the need for clearance to keep pedestrians and bicyclists safe.

Diana Powell Keery stated that she is hearing two different things from Mr. Brooks that the fence needs to be there for insurance reasons and that he is using this area for a café and asked if he could clarify for her. She stated that she noticed a bench already inside the fence area presumably for seating.

Matt Brooks stated that yes he need the fence for insurance purposes but has already purchased tables and chairs for out there so it is both. The bench was only in there for St Patrick's Day if you went there now it would be gone.

Superintendent Thomas West: Matt has done a good job of keeping the sidewalk clear all winter I have no issues with the fence. My concern is in the future a new owner needs to be made aware that keeping

the sidewalk clear and any other maintenance will be their responsibility.

Attorney Eric Stowe: Any change in owner would not be transferable through this special permit. This fence is on private property and will require an indemnification agreement filed with the Village Clerk.

After further board discussion the following resolution was offered:

**Resolution No 238** **Introduced by Chairman Dole**
**March 20, 2014** **Seconded by Michael Flavin**

Resolved that the application of Matt Brooks/MGB 89 S Union Street, Spencerport NY for a special permit to allow existing metal fencing 5' x 16' on the sidewalk on property located at same in a non-residential district pursuant to Village of Spencerport Code 340-32-B (1) (2) be granted for a period of five (5) years such special permit and will expire on March 21, 2019. Such special permit is not in effect until the applicant executes an indemnification agreement agreeing to forever defend, protect indemnify and save harmless the Village of Spencerport, its officers, agents and employees from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs which may arise out of the applicants placement of such fencing. Such agreement must be reviewed and approved by the Zoning Board Attorney before filing in the Village Clerks Office.

The following conditions are imposed on the special permit:

1. Applicant is responsible for the maintenance of existing fence.
2. Applicant is responsible for snow removal around existing fence.

The Zoning Board of Appeals based their approval for such renewal after comments from village officials stating that in the past years there have been no issues and that the applicant has kept the sidewalk clear at all times from snow. The Zoning Board of Appeals does not feel that such fence will have any adverse effect on vehicular and pedestrian passage or the safety and welfare of pedestrians.

Ayes: Dole, Flavin, Unvericht, Kellerson
Nays: none
Abstain: Powell Keery

**Approval of Minutes**

Motion made by Dale Kellerson seconded by Diana Powell Keery and carried unanimously to approve the December 19, 2013 minutes as written.

**Adjournment**

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously to adjourn the meeting at 7: 50 pm.