

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, February 20, 2018 at 7:31 pm** in the Frank J. DiMicco Board Room, Village Hall, 104 Main Street, Mount Kisco, New York

Members Present: Chairman Harold Boxer  
Donald Rose  
Linda Greenberg  
Barbara Richards  
Nancy Coyne

Staff Present: Whitney Singleton, Board Counsel  
Peter J. Miley, Building Inspector  
Michelle Russo, Secretary

Chairman Boxer stated okay, we'll open the February 20 meeting of the ZBA and we will do the Gas 21 first.

**1. Gas 21 Realty, Inc.  
192 North Bedford Road  
Mount Kisco, NY 10549  
(SBL) 69.58-4-2**

**Case# ZBA18-1  
Use Variance**

Mr. Paul Berté of Petruccelli Engineering; Mr. Sam Adaken, Mr. Inder Singh, Mr. Tony Singh were present.

Mr. Berté stated Good evening.

Chairman Boxer stated Good evening.

Mr. Berté stated hi, we're back. We have been to the Planning Board, made some site plan changes to accommodate the comments from all of the consultants. We are right there we believe. We've addressed landscaping issues, we've address turning movement issues for getting the trucks in and out. So they're not backing out onto [North] Bedford Road. We have addressed parking issues. We don't have any parking variances, we've addressed all of their comments. However when the building was laid out by the owners, the original layout that you guys approved was 43.5' by 13' deep and there were some restrictions that made the building to be that narrow, which is why we started there. The new site plan, we are revising the location of the pumps so instead of it being too deep from the front to the back, we are making them long and linear which allowed us to reconsider the size of the building which gave us a little bit of extra room, same length. It shifted a little bit because the parking changed but we're able to try and make a building that's 20 1/2' instead of 13.

Chairman Boxer stated okay.

Mr. Berté stated so the use is the same, same convenience store use associated with the gas station but the building is larger. I can take you through those changes inside so you can see that although it is larger, the use is going to be the same use. Same number of tanks is proposed as before so no additional traffic is anticipated. The existing convenience store layout was kind of narrow. There were just reach in refrigerators and that's not ideal especially with the size of this softer because there is no place to store the cold sodas and beers or whatever is going to be sold there. So by expanding the building, we're able to get walk-in refrigerators, just a little bit more of a useable space for this use, for the new convenience store.

Chairman Boxer stated Les, I take it Jan, they know the variance for the size or that should be okay then?

Mr. Maron stated I would think that the use itself, meaning having that convenience store/minimart was not permitted under the Zoning Code they were at this. This Board had granted a use variance for that to have that kind of establishment there. The fact that they are seeking to change the size of it after having appeared before the Planning Board, in my opinion, is that they can seek to amend the previous approval of the Board, assuming that this Board doesn't think there are any other detrimental impacts or any other issues. I don't think they have to go back to square one with this because you've already approved having a minimart. The minimart that they are proposing is larger, so I had advised the Planning Board that if in fact they wanted to do this, they have to come back to this Board to at least seek an amendment of that, if not some other variances for some other aspects of the project. As it turns out, I know he hasn't gotten to it yet, but as long as I have the floor, in connection with moving that they also changed the canopy.

Chairman Boxer stated right.

Mr. Maron stated and the previous canopy, which was a prior legal nonconforming use, in other words you couldn't have a canopy under the current code but they said we're not moving it, so they could have kept it. But now that they want to change the canopy, any extension or change of the dimensions of a nonconforming use, have to come to this Board, at this time for an area variance. Assuming everything else they're proposing, I looked at the plans and it did appear that they met the setbacks, but when went to the Building Inspector, they would still need a variance from this Board for the additional, I think it's the additional width of this canopy...

Chairman Boxer stated okay.

Mr. Maron stated and I don't recall if its additional depth but basically it's larger than the canopy was before, so they need an area variance for this larger canopy.

Chairman Boxer stated okay.

Mr. Maron stated I think there may have been some issue, as Mr. Miley had also mentioned when I was talking to him earlier. We may be able to cut it short now or he can bring it up later, but there may have been some issues with their plan. They may not completely comply with the widths of the driveways in and around the parking spaces, so that needs to be verified by them. I hate to have this Board look at it and then have to come back after being told that their spaces didn't comply and then have to seek another variance and be back for a third time. So I think you can have Mr. Miley go into more detail, but I think they may have to address that issue also.

Mr. Miley stated do you want me to go into it now?

Chairman Boxer stated sure.

Mr. Miley stated what part do you want to start with first?

Chairman Boxer stated your choice.

Mr. Miley stated okay, the canopy itself, the original canopy was smaller than what was proposed today, the distance now, I'm just looking at the distance, Paul, the submission on January 5<sup>th</sup> changed from my January 4<sup>th</sup> memo.

Mr. Berté stated no, it has not. Repeat that again, the dates?

Mr. Miley stated the distance, from my memo dated January 4th, this plan received January 5th, shows a dimension of 15-6...

Mr. Berté stated that's it.

Mr. Miley stated where it's required 20 that you did indicate on this plan not indicated in my memo. However, an addition to that would require a variance for the canopy itself, for the existing one because they're nonconforming. They're increasing the enlargement of the nonconformity and the relocation of same.

Mr. Berté stated so there was a canopy but because of the reconfiguration of the pumps and the layout, we're not able to reutilize it so we're looking to rebuild the canopy.

Mr. Rose stated is the from edge of the canopy closer or farther away...

Mr. Miley stated it's improved from the setback. The previously approved canopy is now being further back from the street line.

Mr. Berté stated as are the pumps too, the pumps are further back from the street.

Mr. Miley stated it was just a section of the Code that was removed later on.

Chairman Boxer stated are you proposing to bring that before us tonight?

Mr. Berté stated yes.

Chairman Boxer stated do you have paperwork on it?

Mr. Berté stated for the?

Chairman Boxer stated for the area variance.

Mr. Berté stated I believe our submission included that.

The Secretary stated yes. They checked the box for area variance as well as use variance.

Chairman Boxer stated okay, I just thought, I don't have the last, I didn't bring my whole file with me.

Mr. Miley stated if I could just interject...

Mr. Maron stated do you want my copy.

Mr. Miley stated Number 6 of the land banked spaces, I didn't see any change to the aisle width, I think it can be accomplished if you just put the spot 24 even with the property line because you're going to need 12 1/2 feet there and it's scaled at 10'. Otherwise you're going to need an additional area variance if you can't make that work. I'm trying to avoid you having to come back here.

Mr. Berté stated that's for the land banked spaces, right?

Mr. Miley stated yeah. Is there a possibility you can make that work by shifting that space more towards the property line because it's land banked and it's not actually being constructed, and then shift the pumps a little bit closer to the convenience store so you can get the extra 2 1/2'.

Mr. Berté stated I can't be closer than 20' to the pumps. I'm sorry no, I have a 10' requirement from the pump to the building. So yeah, I can shift that.

Mr. Miley stated okay, great, because I don't want to make you come back.

Mr. Berté stated yeah, yeah.

Mr. Miley stated let's just assume that we're not going to include that as part of the area variance and we'll correct it before Planning.

Mr. Berté stated and that means that the canopy would come further away, go further away from the regulated line.

Mr. Miley stated correct.

Chairman Boxer stated so...

Mr. Miley stated we're going to make all of that Code compliant.

Chairman Boxer stated so make the changes, so they don't need the variance then?

Mr. Miley stated yeah.

Chairman Boxer stated okay, good.

Ms. Richards stated just for the canopy?

Mr. Miley stated no, for the parking also.

Ms. Richards stated and the canopy.

Mr. Miley stated for the land, if you look at the plans for the land banked, it's not actually being constructed. But if it was needed, if the spaces were needed, then they'd have to come back.

Mr. Berté stated okay, so we're talking about these spaces down there not having the aisle width. So if I just push this back 3 feet, I get a little bit closer there, there's room for, it actually helps my turning movement because my trucks are coming, my tanker is coming in this way, backing up and then going out the same way, so it does improve my...

Chairman Boxer stated and we're not doing anything with the building up here?

Mr. Berté stated it is a Change of Use, it is before the Planning Board for a retail food...

Chairman Boxer stated anything good?

Mr. Berté stated I think its going to be, you might...

Chairman Boxer stated you don't have to tell us, its up to you.

Mr. Singh stated he is proposing mostly to go, different kinds of food.

Mr. Berté stated not a salad bar but fresh food or...

Chairman Boxer stated like we have everywhere. Alright, so...

Mr. Berté stated so we are asking for a modification to the existing use variance for the increase in size and an area variance for the installation of the canopy.

Chairman Boxer stated you're not going to need the other variance?

Mr. Berté stated we will.

Mr. Miley stated yes, for the actual canopy.

Chairman Boxer stated the actual canopy.

Mr. Berté stated there was another variance that might have been required for the parking that will be...

Chairman Boxer stated okay. Any discussion?

Ms. Richards stated okay, just explain to me. You just said we need a parking variance and you just said we don't need it.

Chairman Boxer stated they're going to switch that, they're going to change it so they don't need a parking variance.

Mr. Miley stated I'll explain it one more time.

Ms. Richards stated okay.

Mr. Miley stated there was a condition on one of the memorandums that wasn't addressed on the plan but speaking with Paul, he indicated that we could make some modifications so another area variance would not be required. So he will be able to meet the Code requirement, the Zoning Code required.

Ms. Richards stated so then we need for the canopy...

Mr. Miley stated you need for the actual canopy.

Ms. Richards stated yes.

Mr. Miley stated only. The distance we're going to adjust so you're not going to need any variances for that as well.

Ms. Richards stated so just to allow the canopy.

Mr. Miley stated correct.

Ms. Richards got it.

Mr. Miley stated the law to permit.

Ms. Richards stated well there was a canopy and there is a canopy and its further back, so I'm okay with that calc.

Chairman Boxer stated its going to have better fire suppression also.

Mr. Berté stated yeah, it will meet Code for fire suppression.

Chairman Boxer stated and it won't interfere with the neighbors because they're very far, right? The closest neighbor put up a really pretty fence around his property, so he won't have to worry about it, so. Okay...

Ms. Richards stated I'm okay with it.

Chairman Boxer stated okay, then we need a resolution.

Ms. Richards stated Don, you make a resolution, you sound better than me.

The Secretary stated close the public hearing.

**Ms. Richards stated I move to close the public hearing. Seconded by Mr. Rose.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Mr. Rose stated it's just the canopy?

Ms. Richards stated it's just the allowing of the canopy.

Mr. Rose stated there are no other area variances required, changes to the... I make a motion that we approve the change, approve the existence of the canopy there which is different from the one that had previously been on the site according to the dimension, the dimensions will not change from the drawings shown but...

Mr. Berté stated yeah it's a 24' wide by 80' canopy.

Mr. Rose stated just for the record, although it's not required as part of the variance, just to nail it down, it's a 24 by 80' canopy, so the motion should reflect...

Ms. Richards stated the size of the, right, okay.

Chairman Boxer stated right.

Ms. Richards stated do we need 5 factors now?

Mr. Maron stated I recommend that either he or someone run through the 5 factors for the area variance. I'd also respectfully request that the motion include amending your prior use variance to permit the change inside of the minimart.

Chairman Boxer stated what he said. Will you go through the 5 factors...

Mr. Berté stated yes.

Chairman Boxer stated we don't have a second for this motion yet.

Ms. Richards stated I second it. I thought we should go through the five...

Chairman Boxer stated why don't we get that out of the way...

Mr. Rose stated I revise the motion to [inaudible].

Mr. Berté stated if I can read my 5 factors that would be great. So, whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to nearby properties would be created by the granting of the variance: Our response is the proposed development includes the construction of the convenience store and the variance that was previously approve is regarding...

Mr. Maron stated if I may Mr. Berté, I tried to break it out for the Board as changing, modifying the use variance the canopy was just an area variance so if you could simplify it just...

Mr. Berté stated just for the area?

Mr. Maron stated just address the area variance issues.

Mr. Berté stated so the undesirable change, there's an existing canopy there now, we're looking to put a new canopy, which will improve visual impacts of the property, new fire suppression, new lighting compliant with the Town Code. Benefit sought by applicant being achieved by some feasible method other

than a variance: canopies are customary ancillary structure for gas stations and not having one would be hurtful to the applicant and the use of this property. The requested variance is substantial: We feel that we minimized the size of the canopy to cover the area of the pumps...

Chairman Boxer stated what size is that?

Mr. Berté stated that's 24' wide by 80' long which was designed based on the reconfiguration of the pumps to have a linear lineup versus a stacking of two deep, units. So it is our opinion that we've minimized the size of the canopy to just stay within the limit of the tanks. Will it have an adverse effect on the physical, environmental conditions of the neighborhood or district: The canopy that's there now, is there now, we're looking to replace it so we feel that if the benefit will be that there's a newly painted canopy that will enhance the streetscape of the, and be consistent with other gas stations along, throughout the Village. And whether it was self-created: again, we contend that all gas stations are being built with covers and but for the zone, CL zone not permitting, the kind of canopy would be otherwise approved.

Chairman Boxer stated do you foresee any problems with the Sign Code?

Mr. Berté stated we do not.

Chairman Boxer stated okay. Alright, we have a motion, we have a second. All in favor?

**Mr. Rose stated the motion should reflect the two items, the change in dimensions of the earlier approved building and the presence of the canopy which is not the same as what is proposed...**

**Ms. Richards second the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Chairman Boxer stated any opposition? Okay, it carries.

Mr. Berté stated thank you very much.

*Off topic conversation.*

125 Grove Street

Chairman Boxer stated okay, we are Case 18-2, Joseph and Galia Ferraro.

**2. Joseph & Galia Ferraro  
125 Grove Street  
Mount Kisco, NY 10549  
(SBL) 80.33-3-10**

**Case# 18-2  
Area Variance**

Mr. Elliot stated good evening, my name is Ed Elliot and I'm the architect that was working on this, assisting the Ferraro's to first fix their porch and then to add the roof, two separate projects, both building department. This one required the zoning variance because of the front yard setback. When we calculated it out, the front yard is supposed to 30 feet, we have 26-6 to the existing porch. The porch is being reconstructed to the same dimensions it was before and the other houses in the neighborhood have porches with roofs that look very similar to what we're proposing here. So this is very consistent with what's going on in the neighborhood and will actually be an improvement to their house to make it more like the rest of the houses in the neighborhood. So the setback line cuts across the porch, the existing porch roof that was there before stick out almost 4' beyond what we've got there, so the part that we're asking for a variance is actually less of a variance than what the existing roof is.

Chairman Boxer stated okay.

Mr. Rose stated where is the point closest...?

Mr. Elliot stated right now this is the closest point to the property lines, about 3 1/2' closer than out 26 1/2'.

Mr. Rose stated okay.

Mr. Elliot stated and we feel that this is not an undesirable effect for the neighborhood, it should help establish the neighborhood being more consistent and it looks like the possibility that this had a previous roof because the design of the roof is there now, it doesn't quite match anything along the street, about a 120 year old house. We have a feeling that originally there was roof on there, someone removed it because

it was too expensive to replace it at the time and they replaced or let the porch go and because it was now exposed to the weather. It has rotted out, which is why they had to fix the porch in the first place. You have tongue and groove boards that don't allow the moisture to go through it, it has to drain in those painted grooves. Eventually if you don't paint it, it rots out and that's where they were at when they started having a contractor come into this.

Chairman Boxer stated okay.

Mr. Elliot stated we have photographs I submitted of their porch under construction and some of the other houses along the street front. This one is their house, that's 125. This is 131 up street. This one is on the cross the street that does have a roof over it, the porch is facing the other way, it's a much simpler roof. This one is just about directly across from them. It has the same design but it's turning the corner and going back. Aain this one is 117, going down the hill from them, is very similar to what we're doing and then one more that just doesn't have the gable over the entranceway, but again covering the whole wrap around porch.

Chairman Boxer stated okay, discussion.

Ms. Richards stated it seems like a pretty small variance, its 3'-6".

Chairman Boxer stated right, brings the neighborhood into conformity.

Mr. Rose stated I don't see any issues.

Ms. Richards stated I don't see any issues either.

Chairman Boxer stated would you like to go through the 5 points, which you kind of did but you didn't do it...

Mr. Elliot stated I did but I didn't do it in the order that's on here.

Chairman Boxer stated right.

Mr. Elliot stated undesirable change: it's very similar to everything else in the neighborhood. Some other method: the porch is existing, it looks like it may have had a roof over it before, so its not something we can do in another way. It's not substantial, we're looking at a 3 1/2' variance on a 30' setback. And the adverse effect: it's not because it is actually an improvement to the way the neighborhood looks. And the self-created: it was existing, it probably was there before. We just haven't had a chance to have the contractor go up since the weather turned bad to remove some of the siding where we were going to put the new roof to see if there were nail holes or things from an old roof. We think there was one there before.

Chairman Boxer stated right.

Ms. Richards stated want me to make the motion, Don? I make a motion ZBA case 18-2 to grant the area variance of 3'-6"...

The Secretary stated close the public hearing.

**Ms. Richards stated oh, I make a motion to close the public hearing first.**

**Mr. Rose seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Whitney Singleton stated there are draft resolutions for you.

Ms. Richards stated okay.

Whitney Singleton stated Michelle doesn't like when I get behind so I'm coming to meetings prepared for Michelle.

Ms. Richards stated so why do I need this?

Whitney Singleton stated because there are some conditions in there, page 3.

Ms. Richards stated what are the conditions.

Chairman Boxer stated page 3.

**Ms. Richards stated okay. So I make a motion, just like I said before, the variances are solely for the plans presented, reviewed and considered by the Zoning Board, any modification to such plans will require further review and approval by this Board. They're conditioned on the lighting or glare from the proposed signage?**

Whitney Singleton stated proposed lighting.

Ms. Richards stated okay, you have proposed signage.

Whitney Singleton stated do you have any proposed lighting on this?

Mr. Elliot stated only the existing light by the front door.

Ms. Richards stated just that there's not any change in the lighting and that...

Whitney Singleton stated I didn't know where you wanted that, you didn't want the, I didn't know if you wanted the porch to remain unenclosed...

Ms. Richards stated well it is unenclosed on the plan.

Whitney Singleton stated but very often people close them...

Chairman Boxer stated just say that...

**Ms. Richards stated yeah and that should you want to enclose the porch at any point in the future, you would have to come back to this Board for approval. So this is being based on your plan showing an open porch.**

Mrs. Ferraro stated yeah.

Ms. Richards stated okay.

Chairman Boxer stated okay, that was very good.

**Mr. Rose seconded the motion.**

**Chairman Rose asked for all in favor. The motion carried by a vote of 5 to 0.**

Mr. Elliot stated thank you very much.

Ms. Richards stated you're going to have to give more advance notice...

Whitney Singleton stated I gave them to Harold...

Ms. Richards stated it says signage and I cannot read your writing.

Chairman Boxer stated okay...

Whitney Singleton stated can I just ask a question of Peter, just so that we're on the same page. The variance that was requested, page one of two, I think the section that you referred to 35 D, it says without the granting of variance you can't construct something that is already noncomplying. So I think that 4. 1. is almost unnecessary because they're getting a variance. But I put it anyway, I didn't know what your thoughts were.

Mr. Miley stated I could agree to that.

Whitney Singleton stated so I'll finalize this for you. You're okay.

Ms. Richards stated no, that's just internal conversation.

Mrs. Ferraro stated okay, thanks.



**3. 100 South Bedford Road LLC c/o Diamond Properties  
100 South Bedford Road  
Mount Kisco, NY 10549  
(SBL) 69.73-2-1**

**Case# 17-9  
Area Variance**

Chairman Boxer stated we have to act on the 100 South Bedford proposal.

Ms. Richards stated right.

Whitney Singleton stated and do you want to go through what the request was of, you didn't include that request from Mr. Diamond?

The Secretary stated I have hard copies, oh what request from Mr. Diamond?

Whitney Singleton stated the one I forwarded you to change the language in the resolution.

The Secretary stated no, I evidentially did not.

Whitney Singleton stated there was a resolution that I drafted that I shared with the applicant and the Building Inspector and Harold that the applicant had a problem with the proposed language, one of the proposed conditions. The language in condition number one, it says that the variance is solely for the plans and uses, occupancy levels presented, reviewed and approved by the Zoning Board of Appeals and that no medical use, starting at that comma, including medical records or storage thereof, accounting and bookkeeping and medical administration or any other medically related activity can be accommodated except the 16,000 square feet. The applicant has a problem with that because if they want to go and that was the language that came from the original 1993 site plan approval, what the applicant's point was he's fine with that restriction with the Planning Board but because your application before your Board deals with a parking variance and not with a prohibition on the use of the building under the zoning, he feels as though he shouldn't have to go to two Boards should he find a tenant that wants to do medical storage, medical billing, medical collections. He feels as though he should be able to go to the Planning Board and amend his site plan resolution or his change of use, as opposed to having to come to your Board because your Board is not really going to grant him relief for a use that's already allowed. He's saying your Board is granting relief for the parking and if he changes to one of those other uses, it will not result in a parking increase and that he should only have to go to one Board, not two and as I indicated in an e-mail to Harold, he set forth what his rationale was, I said I don't really care, I simply was tracking the language from prior resolutions and I don't see a problem with that.

Ms. Richards stated we're just changing the language.

Whitney Singleton stated I've given you a revised page 4, I gave it to Harold to hand out. It's the same language with the underlined portion deleted. So they will limit their medical usage to 16,000 square feet but they will not be restricted from accounting, administration, collections...

Ms. Richards stated I'm fine with that, as long as medical usage is not allowed.

Whitney Singleton stated because if they go over in medical, it does change the parking requirements and they will have to come back to your Board.

Ms. Richards stated right, I'm okay with that.

Chairman Boxer stated okay, so we need to read the resolution, which...

Whitney Singleton stated you've already acted on this subject to seeing a written version of it, so if somebody wants to make a motion to approve it, subject to the requested revision date made, that should be sufficient.

**Ms. Richards stated I make the motion to accept the resolution for ZBA17-9, with the changes noted. Subject to the written resolution with the changes noted.**

Whitney Singleton stated close enough, just as long as Don votes no, I'm fine with it.

Ms. Richards stated is there a second?

Ms. Greenberg seconded the motion.

Chairman Boxer asked for all in favor...

Mr. Rose stated can I still vote or am I voting yes on the fact that this represents...

Whitney Singleton stated you're the naysayer...

Mr. Rose stated well if I'm the naysayer, then...

Whitney Singleton stated you have to maintain the consistency.

**Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 1.**

**Chairman Boxer stated any opposition.**

**Mr. Rose stated aye.**

Whitney Singleton stated and there's one more application that's one for tonight that I guess Michelle and I discussed earlier. He called me earlier today. I don't know if you recommended that?

**4. 474 Lex, LLC  
474 Lexington Avenue  
Mount Kisco, NY 10549  
(SBL) 80.64-1-5**

**Case# 17-10  
Area Variance**

The Secretary stated no, he wanted to call you all on his own, I tried to avoid that.

Ms. Richards stated the vet?

Whitney Singleton stated this is the vet, the vet has requested as of this morning to adjourn this meeting for one month and rather than to have to re-notice it, re-notify people, if you open your public hearing tonight and continue it to your next meeting, there's no need to re-notice.

Chairman Boxer stated okay.

Whitney Singleton stated so you would have to open the public hearing for this and then adjourn...

Chairman Boxer stated do we need a motion for that?

**Ms. Richards stated I make a motion to open the public hearing for ZBA case# 17-10.**

**Mr. Rose seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

Whitney Singleton stated and adjourn to the March meeting.

Chairman Boxer stated and adjourn to the March meeting, correct.

Whitney Singleton stated that's it.

Ms. Richards stated okay.

Chairman Boxer stated okay. Motion to adjourn.

**Ms. Richards stated motion to adjourn.**

**Chairman Boxer stated second?**

**Mr. Rose seconded the motion.**

**Chairman Boxer asked for all in favor. The motion carried by a vote of 5 to 0.**

The meeting adjourn at 7:38 p.m.