

**Village/Town of Mount Kisco
Zoning Board of Appeals
Minutes of Tuesday, June 20, 2017**

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

Members Absent: Dan Guyder

Staff Present: Robert Melillo, Assistant Building Inspector
Michelle Russo, Secretary
Les Maron, Special Counsel for Zoning Board of Appeals

Staff Absent: Peter J. Miley, Building Inspector
Whitney Singleton, Board Counsel

Chairman Boxer called the meeting to order at 7:05 p.m.

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

**Case# ZBA 16-16
Use Variance**

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

Mr. Berté stated good evening.

Chairman Boxer stated okay, call the meeting to order, the June 20th meeting of the ARB...

Mr. Rose stated nope.

Chairman Boxer stated ZBA.

The Secretary stated ARB's tomorrow.

Chairman Boxer stated what about the CDC?

The Secretary stated oh no, I don't know when they meet.

Chairman Boxer stated hi.

Ms. Richards stated do you have to call the case number, Harold?

Chairman Boxer stated no, yes, I guess, I don't even know what the case number is.

The Secretary stated 16-16.

Ms. Richards stated 16-16.

Chairman Boxer stated 16-16 that would be you.

Mr. Berté stated good evening, thanks for having us again this evening. The last meeting we adjourned, to gather some more information and to look at some alternative uses for the site and looking at the Code, we reviewed what else we were able to do, if we didn't have a gas station on this property, what else could we do to develop the property to, as a business to earn a revenue source for the owners. In looking at the possible uses, it became apparent that it really doesn't matter what it's used for if we're building a building that's either going to be bank or an office or a restaurant, there's a leasable space and the building cost that would be required to construct it to lease it. Whether it's a bank or whatever the use is, the leasable dollar is the same, for the purpose of analysis, it could be the same whether it's a bank or it's a PetSmart. So for that, we were able to just do a calculation on developing this property as a commercial use building, so that's what we did. We looked at demolition costs of the structure, removal of the tanks, we've counted for some...

Chairman Boxer stated you're talking about getting rid of the gas all together?

Mr. Berté stated if we were to get rid of the gas station all together as an alternative to using this and having the Board grant a use variance for the construction of a convenience store. So short of repurposing the building that's there now that is a usable space but any use is ancillary to a gas station, or contrast to use of a gas station would be demolition and construction of a new commercial space. So on this property, what I did is on the engineer's estimate, which is what I'm going to take you through because the other information, the other detail is, it really dials into the revenue and expenses of a gas station, comparing both one down the street with a convenience and gas and 192 North Bedford Road that doesn't have one. The lot would permit the construction of about a 11,000 square foot office building based on the acreage, zoning, we did a quick sketch in terms of how that would lay out and just for the purposes of analysis in terms of parking because that's really the only variable for the site development, of course the drainage and other, notwithstanding the drainage and lighting and all of the other components of the site plan, we stuck with an 11,000 square foot building which would be the maximum allowable for that lots size, we split it up between 4,000, a retail space which has a high density and then 7,000 square feet for an office use, to come up with 50 cars, which is about the maximum that we can fit on that lot without going back into the wall or really reconstructing that, which then would be a site plan issue which may not be viable also. So those were what we use for our perimeters of analysis and I can kind of take you through the cost but the bottom line is when constructing the new facility, demolishing the old, and factoring in a cost of the source of money to develop the property, over 20 year loan, we do the conservative 4% interest rate and you did an average of \$20 a square foot revenue for commercial space in the area, which you know sometimes, from our discussions that's what we came up with as a reasonable number that could be attained for this leasable space. And what the analysis showed is that that investment would be a negative cash generation, that was kind of how we were looking to see if is there something else that the owners can do instead of operating a cash station and having this piece of property on a highly visible commercial piece.

Ms. Richards stated and you'd still be losing money?

Mr. Berté stated still be, yes, because the gas pumps, because we have some unknowns about soils we put a conservative number in, which is not really that conservative but to remove underground storage tanks, \$150,000 isn't an unrealistic number, if there was some soil the needed to be remediated which that number will be there regardless because we're changing the tanks now anyway but in terms of the cost that other building and building that additional office building, those costs are really what drives the pro forma in these numbers. So, what we'd like to and then the other part that I can take you through is we broke out the operating expenses a little bit further into detail, if you go to 192 South Bedford Road...

Mr. Rose stated it should be North.

Mr. Berté stated North Bedford Road, you know what, I printed this and I grabbed the wrong one. We broke out the operating expenses into the different categories that are itemized by the accountant that prepared this statement for us. It broke it down, insurance, electric, trash removal, utilities and payroll to run that facility, just to get a little broader understanding of what those costs are to operate the gas facility. And in terms of still making the comparison between the two, between the 192 North Bedford Road and the 540 Main Street which is the other station that the owners operate, there is a new loss at the 192 based on those expense that are incurred now without, because you don't have the additional revenue from a retail source that would drive gas sales and drive revenue from a retail source.

Mr. Rose stated what's the nature of the taxes that you show on 192 North, 50,400 a year.

Mr. Singh stated \$50,000.

Mr. Singh stated about \$50,000.

Mr. Berté stated \$50,450.

Mr. Rose stated are those, what kind of taxes, Village?

Mr. Singh stated property taxes.

Mr. Rose stated is that just for the portion that's used by the gas station?

Mr. Singh stated it's the whole thing.

Mr. Rose stated are you including any revenue for the other building that's on the property?

Mr. Singh stated we don't have anything...

Mr. Berté stated it's been vacant, we didn't include that revenue source in this analysis.

Ms. Richards stated would there be, are you planning, you had said that you thought you might have a tenant for that space.

Mr. Singh stated we don't have right now.

Ms. Richards stated so you don't have a tenant for that space either, okay.

Mr. Rose stated if you did have a tenant, what's the potential revenue from...?

Mr. Singh stated it's about \$20 per square foot.

Mr. Berté stated do you remember what the...

Mr. Singh stated and 1,800 square feet we have there.

Mr. Rose stated 1,800 square feet.

Mr. Berté stated 3,600 per month.

Ms. Richards stated so you'd break even, maybe.

Mr. Berté stated right, we'd still be at, right, break even.

Mr. Rose stated so are you saying that you've been losing money on that parcel for years?

Mr. Singh stated if we don't have the store with that, then we're going to lose money.

Mr. Singh stated we have no income coming in.

Mr. Rose stated well you bought it when there was no store there, so you've been losing money ever since you bought it.

Mr. Singh stated there was a Kentucky Fried when we bought it and there was revenue coming from there and then from that we had to do Enterprise and revenue was coming from there too.

Mr. Rose stated but that wasn't enough to make it profitable?

Mr. Singh stated no because taxes are very...

Ms. Richards stated wait, so when you had, when you originally got the property, right and you had another business Kentucky Fried or Enterprise, were you losing...

Mr. Singh stated when we bought it there was no Enterprise, it was Kentucky Fried and after we bought it, it turned to Enterprise.

Ms. Richards stated and once you did that, were you losing money then?

Mr. Singh stated we were losing money too because convenience, there's only gas, no customer comes from, we don't have anything else to...

Mr. Berté stated but let's just break it down to the numbers because you're right, this analysis doesn't include the revenue source from that 1,800 square foot building, which would generate about \$3,000 a month...

Mr. Rose stated is that all that Kentucky Fried Chicken was generating?

Mr. Berté stated do you remember what the lease was?

Mr. Singh stated it was a long time ago.

Ms. Richards stated what about Enterprise, that wasn't that long ago.

Mr. Singh stated yeah, they were paying \$4,600.

Ms. Richards stated which would put you at just about break even, give or take.

Mr. Rose stated wait a minute, \$4,600 a month.

Mr. Singh stated yes.

Mr. Berté stated alright so that would definitely offset the losses that we're showing here between 42 and 4,000 but still at a nominal...

Mr. Rose stated I thought you said the rentable area was 1,800 square feet.

Mr. Singh stated that's about [inaudible].

Mr. Rose stated \$20 a square foot is \$36,000 a year.

Mr. Singh stated this comes from \$3,000.

Mr. Rose stated that's about \$3,000 a month and you say Kentucky Fried Chicken was paying \$4,600?

Ms. Richards no, Enterprise.

Mr. Rose stated oh, Enterprise.

Mr. Singh stated there's not gas anywhere without having a C store that draws people.

Ms. Richards stated but you did buy it that way, I mean you bought it knowing there was no store there.

Mr. Singh stated things were different, people did use credit cards, the market wasn't crazy, now everybody's very aggressive and we're not making money, we're not making a living over there the way we are right now.

Mr. Berté stated regardless of what that, you know that's why we're here, I think you're asking a valid point as to what that revenue generation from that outparcel building, what that would do to the bottom line.

Mr. Rose stated it's a little bit unfair to assign all of the expenses to the gas station when there's a big piece that's missing.

Mr. Berté stated right, and that would just be pure revenue generation because the taxes are included in this number, the payroll to operate that address would all be included, so what really just is missing is the revenue, parcel portion.

Chairman Boxer stated you're missing the gas too, don't you have to buy the gas.

Mr. Berté stated that's included, the gas sale the \$8,500, the \$8,219.

Chairman Boxer stated that's the cost?

Mr. Berté stated no that's the margin, so that revenue minus the expense. But that 1,800 square foot building which has been vacant now, at \$20/square foot would be \$3,000, we'd get close but we're still in a deficit position.

Ms. Richards stated my question when I was going by there was, there's a lot of gas stations in that little area, right up from that is the Speedway which is jam packed and then the one on the other side because those are the two cheapest gas stations. Do you really think that people will stop at the Mobil versus those?

Mr. Singh stated we cannot compete in market because the prices, we have no income from there, other stores, Speedway, they have big store, they sell beer they make money, they sell anything they make money, we're not making money for anything else.

Ms. Richards stated I'm saying if you have a store, do you...

Mr. Singh stated it will be better price...

Mr. Singh stated so we have them coming in for something else.

Ms. Richards stated so what I'm saying is I'm going up that road, why would I start there?

Chairman Boxer stated they're saying if they have other income, they'll lower the gas price.

Mr. Berté stated and also there is a market for a Mobil versus Speedway, people prefer it.

Ms. Richards stated because that Mobil has the highest price and it's packed all the time.

Mr. Berté stated so I think regardless of the price and I'm not, I'm just learning this that the brand will drive.

Ms. Richards stated maybe not right there though, that was my question is right there, you'd have to be in the same price as the Speedway and the Sunoco.

Mr. Singh stated we have to match the price because we don't have...

Mr. Singh stated most people travel from south to north, so they'll stop by.

Mr. Rose stated you can probably still be a little bit higher because you're near the big shopping center.

Chairman Boxer stated it's the first one that they see.

Mr. Rose stated but a big difference will make people just keep going.

Mr. Berté stated right.

Ms. Richards stated I think it's because I happened to be paying attention when I went, I think it's an eyesore the way it is now, you know, it doesn't look good so I would like to see improvement like this or some kind of improvement in the space.

Mr. Rose stated it would have to meet the requirements, all the requirements for Change of Use.

Ms. Richards stated for use, which is...?

Mr. Rose stated well first, I mean the most important is what they've been trying to show here...

Ms. Richards stated right.

Mr. Rose stated that there's no other legitimate allowed use on the property that will give them the profit or return on their investment.

Chairman Boxer stated yeah because they're showing on the second page on 540 [Main Street], that they get more income from non-gas than gas.

Mr. Rose stated at 540 there's another, there's really two stores there, you have the convenience store...

Mr. Singh stated only convenience store, it's empty.

Ms. Richards stated its empty, it's been empty.

Mr. Rose stated it's still empty, it's been empty a long time.

Ms. Richards stated it's ugly too.

Mr. Singh stated in Mount Kisco, there's so many stores.

Ms. Richards stated can you do this to the BP. But the funny thing is about that BP is that I go in there all the time, which you know, and so do my neighbors, like everybody goes there, its really funny.

Mr. Berté stated are there any other questions that I could...

Ms. Richards stated so you could put up an office building, what else could you conceivably put there...

Mr. Maron stated if I may, Mr. Berté, that was going to be my question to everyone else, the test that you're supposed to address is for each and every use under the zoning regulations, you can't realize a reasonable return. So the permitted uses in the zone are listed in section 110-19 B 1, so is your position

that each of these uses that are listed could be put in that building that you sketched out, that you costed out.

Mr. Berté stated whether it's a retail business, personal service establishment, restaurants, administrative, banks, counter drop-off dry cleaners, laundromats, governmental uses, educational training facilities, funeral homes, not really practical there...

Ms. Richards stated you can skip that one.

Mr. Berté stated we'll skip that.

Mr. Maron stated but it appears that for a majority of them at least, this is the kind of building costed out that would house these kind of permitted uses.

Ms. Richards stated it sounds like it, right.

Mr. Berté stated yeah, so what we did is we looked at a 4,000 square foot footprint for retail and then a second floor which would be the balance of the 7,000 so that you'd have parking underneath.

Ms. Richards stated could be any of those.

Mr. Berté stated any of these, whatever combination but I just wanted to look at a restrictive and a 4,000 square foot retail could be a Kentucky Fried Chicken or retail or laundry or any of those other uses, which is why we didn't go through each of the uses and develop a separate analysis because it just, when it comes down to it, it's the leasable, the value of the leased space, whoever the occupant is and not having a use or lessee for the old Enterprise building, that's also a little, that adds a lot of uncertainty to putting up another office space...

Ms. Richards stated when you can't even fill that one.

Mr. Berté stated when I can't even fill that one.

Chairman Boxer stated and there's a new one coming up there.

Mr. Rose stated what is the total site area?

Ms. Richards stated and there was end space in the one on the corner by Barker, too.

Mr. Rose stated we know its not flat, so...

Chairman Boxer stated they changed it, it was rent a room.

Ms. Richards oh right.

Mr. Berté stated it's just under an acre, it's 38,000 square feet. And approximately half of that is what I'll call usable but certainly this property goes all the way to back and it is a severe slope and that would be challenging to develop, you get closer to the residences, the residential development, it really wouldn't be practical to go with a 11,000 retail space which would generate 1/150 square feet, it just wouldn't be practical to do it...

Mr. Rose stated I think it's fair to say if that were an empty lot, a developer would have a tough time developing, you'd have Planning Board meetings and it's a difficult location because of where it is.

Ms. Richards stated even I think if they tried to take it down and put up a building, they're probably still have a hard time, you know.

Mr. Berté stated we'd have to max out on, not max out but we'd have to put a second story on and now we're starting to look at site lines and other reasons why I didn't think it was practical to do something more than...

Ms. Richards stated I mean it does appear that it meets the test in terms of financially, right?

Mr. Rose stated without having our own accountant to comment on it...

Ms. Richards stated are we supposed to do that.

Chairman Boxer stated so on the Bedford Road, if you put in the market, what would be the line for the non-gas revenue? Is there an estimate?

Mr. Berté stated on the 192, right?

Chairman Boxer stated that's what I'm doing, you have a non-gas revenue now...

Mr. Berté stated so what would be your projection from this convenience store, so in 540 you're doing over, approximately \$20,000 a month.

Mr. Singh stated right, so we're going to make another \$5,000.

Mr. Berté stated at the new space, what's your projected revenue at the new, with the new space.

Mr. Singh stated \$30,000 sale on top of that, \$30,000 a month...

Ms. Richards stated additional.

Mr. Singh stated additional, then there's going to 25% project, so \$7,500.

Ms. Richards stated yeah, now I understand that, I'm just talking about revenue that sounds really high.

Mr. Berté stated that's a lot of sodas.

Ms. Richards stated well because the, you know...

Chairman Boxer stated the gas, tire place next door is going to keep them in business. When you have to wait for your tires to get done.

Ms. Richards stated you're going to have nowhere to go.

Chairman Boxer stated I can notice it's far away, not it's not.

Ms. Richards stated no, it's not.

Chairman Boxer stated oh I'm thinking of that one. They have one on each end of Town.

Ms. Richards stated that's the way it's supposed to be, right?

Mr. Berté stated that's a good point.

Ms. Richards stated I personally don't drink Dunkin' Donuts, so, not my kind of coffee. So in terms of the finances it looks like that is the only viable option, would that be fair to say?

Mr. Rose stated it seems like that's the preferred way to go for an owner of that property, if everything else is going to generate loss then they know how to do that.

Ms. Richards stated right, already, they're doing that already.

Mr. Rose stated that doesn't feel so good.

Ms. Richards alright, so where do we go?

Chairman Boxer stated I would think that they have to, do they have to show a written proposal now showing how they meet all the tests for the Use Variance?

Mr. Maron stated no, they don't have to submit a written proposal but the idea is that they are supposed to convince you, they're supposed to address the five steps and convince you that they've met those five steps and for you to consider the Use Variance.

Mr. Rose stated I think there are only four steps.

Mr. Maron stated I don't recall what might have been done at the previous meetings, but what they're doing now is addressing the first item.

Ms. Richards stated are there five or four?

Mr. Maron stated there are four, sorry.

Mr. Rose stated there are four steps.

Ms. Richards stated okay.

Mr. Maron stated that they can, the applicant cannot realize a reasonable return provided the lack of return as demonstrated by competent financial evidence and I think they've done that by providing that information from their accountant and they've addressed the issue of. By addressing the issue, meaning they've raised it, it's up to you to decide if they've addressed it adequately. They have addressed the issue of looking at each and every permitted use in the Zoning regulation, what could be done there as of right, so that's their approach to item one, I don't know if they've gone through the others, as long as we're here, you might as well go through them.

Mr. Berté stated sure, we submitted on February 7th, let's go through those items, the first one is reasonable return. The second one is alleged hardship linked to the property in question, if it's unique and does not apply substantial portion of the district or neighborhood. So what we've discussed here is that there is another BP station at the corner of Barker and at 120 North Bedford Road, it is about 890 feet from the applicant's station on the same side of the road. The difference between these two is one is a service station as well and Mobil is just gas sales and there's only two gas pumps at BP, so we're saying it's a good assessment that the business generates a good portion of its income from its repair business and not gas sales. So we're saying that it is unique because this gas station is only selling gas, where the other station almost 1,000 feet down the road, also has a repair shop associated with it and most gas stations today are generating revenue from retail sales and not just gas stations. So we do think that this a unique situation for 192 North Bedford Road. The third test is whether the requested variances granted will not alter the assessed character of the neighborhood, we feel that with the enhancement of the improvements with the building, landscaping, redoing the canopy that will improve the streetscape, the building sight line, it should be out of the sight lines of any of the neighbors to the east from the residential neighborhood and its consistent with the other streetscape views of the properties along North Bedford Road. And then the last, I'm trying to think if I missed nay of my, I'm just trying to highlight, the last prong is whether the alleged hardship was self-created and we'll argue that when this, you've only owned the property for how long?

Mr. Singh stated this one we bought in 2001.

Mr. Berté stated we made an argument and did some research that as gas stations have evolved from just pumping gas to also providing a retail component to it, to generate sales, gas filling stations and convenience stores were historically two separate entities until about the '70's, when retailers began to realize the profitability of selling both gasoline and other merchandise from the same location. The last 40 years, the trend of combining both gas station and convenience stores has become less of a trend and more of a necessity if gas station owners intend to be competitive in the ever changing business retail. And this is from, we just took an article, several articles but the one that gave us the most concise information was bring Biz World 2016 an industry market research report. Some of the other numbers that were reported in that are U.S. market research from 2016 shows that standalone gas stations generated an annual revenue of 89 billion and standalone convenience stores generated revenue of 27 billion, while combined gas station/convenience stores generated 340 billion, so there's a very big swing from separate retail, separate gas, or combined which is what we're trying to do which is what we're trying to do and make this a viable thriving property for the Village, as well as the owners. And based on that market research we all know that any gas stations we go to, most of them have convenience stores, so its not just this article so we've kind of seen it wherever we're travelling and based on these, this presentation we're asking the Board to consider a Use Variance to allow a convenience store at this location.

Chairman Boxer stated any other questions?

Ms. Richards stated no.

Mr. Rose stated no, I think I tend to accept validity of the arguments, I think they made a decent case.

Ms. Richards stated argument, yeah, I agree with that.

Mr. Rose stated I do believe that it's a, it's not going to create a precedent that will then bring every other business in Town looking for a Use Variance based on...

Ms. Richards stated no, I don't think so either.

Mr. Berté stated very unique to this.

Mr. Rose stated things are very specific to the retail gas business.

Ms. Richards stated besides, every other gas station in Town already has a convenience store.

Mr. Rose stated either that or a service...

Chairman Boxer stated or service, the Shell station across the street is service.

Ms. Richards stated or a service business, yeah, it's true, yes. Okay, I'm okay.

Chairman Boxer stated I propose we take a simple and not worry about how the resolution reads. Les, can you draft a resolution if we vote yes.

Mr. Maron stated yes.

Ms. Richards stated I make a motion that we vote yes.

Mr. Rose stated grant the Use Variances.

Ms. Richards stated correct.

Mr. Rose seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

Mr. Singh stated thank you.

Mr. Berté stated thank you very much, appreciate it. Thank you so much.

Chairman Boxer stated when do you expect it to be done?

Ms. Richards stated that was my question, how long will it take to do it?

Mr. Berté stated the first thing we have to do is the tanks...

Chairman Boxer stated it depends what they find.

Ms. Richards stated so you're going to close, you have to close.

Chairman Boxer stated to take up the tanks, yes.

Mr. Berté stated yes, there will be a time when we have to close. So we'll try to do as much of the soil investigation up until closure and then at some point we'll have to send them down to 540 Main Street.

Mr. Rose stated and I guess you have to get site plan approval and all of the other things, ARB and so on.

Mr. Berté stated right, for the building. Appreciate your consideration and your time, thank you.

The Secretary stated I just need you to vote on your May minutes.

Chairman Boxer stated what?

The Secretary stated May minutes.

Ms. Richards stated I wasn't here.

The Secretary stated I still have three.

Chairman Boxer stated they were long.

Ms. Richards stated I read them all, I read the whole thing.

The Secretary stated were they?

Chairman Boxer stated yes.

Mr. Rose stated what do you think, worthy of publication?

Chairman Boxer stated yeah, I think so.

Ms. Richards stated to someone.

Chairman Boxer stated it has to be because if they go to court, they're going to subpoena the minutes. Okay, who was here that wants to make the motion?

Ms. Greenberg stated I'll make the motion to accept the minutes. Mr. Rose seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 3 to 0.

Ms. Richards abstained from voting on the minutes.

Chairman Boxer stated anything else anyone wants to bring up? Nope, then we'll take a vote to close the meeting.

Ms. Richards stated I make a motion to close the meeting. Mr. Rose seconded the motion.

Chairman Boxer asked for all in favor. The motion carried by a vote of 4 to 0.

The meeting adjourned at 7:36 p.m.