

Minutes of the **Regular Meeting** of the Zoning Board of Appeals of the Village/Town of Mount Kisco held on **Tuesday, October 17, 2017 at 7:31 pm** in the Community Room, Mount Kisco Library, and 104 Main Street, Mount Kisco, New York

Members Present: Chairman Harold Boxer
Barbara Richards
Linda Greenberg

Members Absent: Dan Guyder
Donald Rose

Staff Present: Whitney Singleton, Board Counsel
Robert Melillo, Assistant Building Inspector
Michelle Russo, Secretary

Staff Absent: Peter J. Miley, Building Inspector

Chairman Boxer stated okay, we're going to open the meeting of the Zoning Board of Mount Kisco on October...

The Secretary stated 17th.

Chairman Boxer stated 17th, okay. First and the only case that is here tonight is case number 17-7, Townsend Street Associates, 360 North Bedford Road.

Mr. Ryan stated good evening.

Chairman Boxer stated good evening, now before we start...

Mr. Ryan stated sure.

Chairman Boxer stated we have reviewed everything and we're going to declare, we're going to take a vote on it, that the proposed signage is not considered a roof sign because it's not higher than the top of the building.

Mr. Ryan stated okay, thank you.

Chairman Boxer stated anyone want to make a motion?

Ms. Richards made the motion. Seconded by Ms. Greenberg.

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

Mr. Martabano stated I'm opposed, I don't want to sign to be there.

Chairman Boxer stated you'll get your chance afterwards, don't worry.

Mr. Martabano stated okay.

Chairman Boxer stated that just leaves the question of the additional sign on the side.

Mr. Ryan stated on the side and what we're calling tag signs.

Ms. Richards stated and the other signs.

Chairman Boxer stated right, yes.

Mr. Ryan stated thank you. And just for further clarification, I noted in Mr. Miley's correspondence that the monument sign complies with the zoning, so we wouldn't require a variance that was original part of our application...

Ms. Richards stated right.

Mr. Ryan stated so is that the Board's determination as well, on that matter?

Chairman Boxer stated yes.

Mr. Ryan stated okay, so well thank you and for the record my name is James Ryan, I'm principal with JMC, we're the planners and engineers for the plaza owner, Mindy Schmidt is here tonight on behalf of ownership, if there's any specific questions of her. Kevin Masciovecchio is my associate and Mark Schulman is the architect, if you have any questions on that. So again, thank you to the Board on the couple of the aspects. We're asking for the additional sign for 5 Guys which is the southern end of the building, the purpose of that additional sign which is on the side too is to increase the visibility of that particular tenant, as the Board may or may not be aware, it's been very difficult in this particular center to essentially attract new tenants and part of that reason is the visibility of the center. A lot of the work that we've been doing recently with the Planning Board, Architectural Review Board and your Board really relates to that visibility. So 5 Guys is not 100% committed at this point and we have to take care of the details with each of the three Boards, including your board. I'm just going to ask Mark Schulman, the architect just to talk a little bit about that sign placement and why it's necessary. We submitted for the record the requirements in terms of the 5 balancing tests to indicate why we believe that it's appropriate for this particular business. I'll let Mark just talk about that very briefly.

Mr. Schulman stated good evening my name is Mark Schulman, partner with Design Development.

The Secretary stated please speak up.

Mr. Schulman stated my name is Mark Schulman...

Chairman Boxer stated stand over there.

The Secretary stated so there's three microphones on the table.

Mr. Schulman stated okay, my name is Mark Schulman, I'm an architect, partner with Design Development. As Jim stated we are the architects for the project and what we have here on this Board that you see, you see the southern tower which is where we have located 5 Guys signage...

Chairman Boxer stated do you want to move the...

Mr. Schulman stated I can see it, I'm fine with it, so. The front sign...

The Secretary state maybe you want to turn it so the audience can see it.

Mr. Schulman stated sure.

Ms. Richards stated well we need to be able to see it. Yeah, that's good.

Mr. Schulman stated everybody can see that, good. So this is the façade that faces the street, its parallel to the street, faces the street, so this an obvious location for their primary sign. The variance that we're requesting is for the second sign and the reason this sign, we believe is in important is because right now there are two entrances to the project, one on the far north and one on the far south. This perspective is almost taken, just a little bit north of that southern entrance and this sign becomes visible as you make that right hand turn coming off of North Bedford Road, almost more than this sign. Staples and this center share that driveway, so as you make that right hand turn, you actually get a better look at the secondary sign here and that's the primary reason to have it and that's it because it has that visibility from North Bedford. As Jim stated, visibility is the challenge with this project.

Mr. Ryan stated Mr. Chairman, we can have Mark just talk about the additional tag signs if you'd like or if you'd like to take these elements at a time.

Ms. Richards stated no, go ahead, if that's okay, talk about them all.

Mr. Ryan stated okay.

Mr. Schulman stated so the other sign that we're seeking variances for, there are individual signs, small signs, here is a little blow up of what that sign would look like, roughly a foot in height, about almost 5 feet wide and they're going to hang down under the canopy in the center. So typically in a center like this, all these tenant signs are for automobiles, people that are approaching the project, once you're on-site and underneath the canopy and walking, you don't see signs anymore. So the whole idea is to give pedestrians that are walking up and down the sidewalk some idea of where those tenants might be. So these signs would be mounted perpendicular to the store fronts, and they're small and just individual signs for each of the tenants. This is the secondary tenant sign that we're requesting.

Chairman Boxer stated how far down are they going to hang?

Mr. Schulman stated they're going to hang down, honestly, it's probably, maybe it's a foot not, nor more than a foot from the top.

Ms. Richards stated and what you're showing there where it says signage is the height.

Mr. Schulman stated these signs here, yes, approximately, that is approximately accurate there because those individual small signs would be located.

Mr. Ryan stated mark, if you can just note those awnings are new too and I think also it extends the roofline so again people in their cars can see the other signage but as you're walking through it's a little more of a protected area so visibly a person can go from one to the next store as long as they're going to stay (inaudible).

Ms. Richards stated okay.

Chairman Boxer stated okay.

Mr. Ryan stated that's really the only two variances that we're asking for, there are 9 of those signs because there are 9 tenants, there are actually 10 but we lumped on it with the 5 Guys, is that what it was, a total of 10 tenants on there too, so we'd have one per each of the tenants there too.

Ms. Richards stated okay.

Mr. Ryan stated so again, I don't know whether you want me to take you through the standards that we have to meet in order to, and we did submit the balancing factors.

Chairman Boxer stated no, I think we'll open it up to the public.

Mr. Ryan stated okay, very good, thank you Mr. Chairman.

Chairman Boxer stated anybody who would like to speak, please come forward and sign the paper.

The Secretary stated he did.

Chairman Boxer stated please state your name for us.

Mr. Martabano stated okay, my name is William Martabano and I'm the owner of 353 North Bedford Road which is the Westchester burger location directly across the street from this requested zoning variance. I am here also representing other members of my family who own 363 North Bedford Road, Mattress Firm, 325 North Bedford Road, Rivera Toyota and 255 North Bedford Road the Mount Kisco Frame Shop. All of the other of these four locations are opposed to the granting of a variances to this application at 360 North Bedford Road. The applicant requesting this variance is a nationally recognized restaurant change with locations in many states throughout the U.S. To grant them the sign variance they are requesting would be giving them a competitive advantage of existing business who have been competing for customers while complying with the signage rules and regulations of the township. This would also set a precedent for other new business requesting to exceed the square footage of signage with their applications. As a representative of these four locations that are directly across from this applicant's location, let me say again we are opposed to granting this variance, we think it sets a bad precedent for the community and we ask that you deny this application. Thank you for allowing me to voice our position on this matter.

Chairman Boxer stated how do you take that against trying to get, it's hard to get anybody to come to Mount Kisco. We've had national, we had Applebee's, we have all the national burger places and they have all come before us for variances and in most cases we have allowed them to comply with the plan that is presented to us and there is also no prohibition against you, if you'd like to raise or putting a sign somewhere or come in and ask for a variance for a larger sign.

Mr. Martabano stated well I mean you have certain regulations within the Town that we all follow and paying taxes for so many years. The Martabano has been in this Town for a long time and complying with your rules and regulations, well just to have somebody that has a chain of restaurants, okay that has far more money than most of us around here and just to let them actually change the rules, it's not...

Ms. Richards stated this is...

Chairman Boxer stated we have already approved sign variances for Siegel Brothers which is not a national chain, so it's not that we are, we look at anyone that comes in front of us.

Mr. Martabano stated so in other words what you're saying is that if they're going to put a bigger sign on our roof on Westchester Burger, we can have a big sign up on the roof and you'll okay it.

Chairman Boxer stated we're not saying that, you can ask for it.

Ms. Richards stated no, you can ask for it. Every property is different...

Mr. Martabano stated right.

Ms. Richards stated and we look at the uniqueness of each property so the properties you're listing are not, in my opinion, similar to this property.

Mr. Martabano stated because they're at road level and when you go by them, you see them and that, without their big sign, billboard sign or whatever they want to put, without knowing it's there, you're just going to drive by and you won't see anything.

Ms. Richards stated correct.

Mr. Martabano stated so I mean, how fair is that to the next person that's been in this Town.

Whitney Singleton stated Mr. Chairman, I might point out while I appreciate Mr. Martabano's participation, the properties that he's referring to as representing have recently been granted variances by your Board as well for additional signage. His family, one of the properties you're referring to is Nissan which you remember...

Chairman Boxer stated right.

Whitney Singleton stated we approved the supersized sign for Nissan and additional signage. They received three or four variances from your Board.

Mr. Ryan stated could I just clarify for Mr. Martabano, we're not asking for an increase in the size of the sign, we're asking for a sign in area which would increase our visibility and we are challenged that way and that's why you know there were some major chains that were in this that have left, Johnny Rockets left, a number of people and I think the ownership would tell you that its increasingly being challenged to keep retailers there and part of the ongoing issue that we've had and we're making a number of changes to address that, is the visibility because of how it sits up on the hill, because of the access limitations too, so you know we're trying to fill the center, we have 30% vacancy now, 5 Guys would take the endcap and we're trying to keep this vital, as you would as a owner of businesses as well, so it's a challenge but we think that this helps in this particular instance to bring in a national chain which hopefully will be bring other businesses to occupy the balance of the 20% that we still have vacant in the center.

Mr. Martabano stated well I can appreciate what you're saying but you know on the other hand, I have rented out to Westchester Burger, okay, I'm just the landlord but I'm kind of looking out for them too and you guys are like the McDonald's King, and I'm just trying to help a local business and I've had this property and paid taxes on it for year. I'm just voicing my opinion, I'd like to leave this with you people and...

The Secretary stated sir, I'll take it.

Chairman Boxer stated we'll enter that into the record.

Mr. Martabano stated as far as the properties I was speaking for that's what I was told to come down and voice my opinion to here. I don't make the rules but we do follow your rules and thank you for letting me speak.

Chairman Boxer stated you're welcome. Anybody else wish to speak? At this point then we'll close the public hearing.

Ms. Richards made a motion to close the public hearing. Seconded by Ms. Greenberg.

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

Chairman Boxer stated okay, back to the, so I guess the sign on the side has the same balancing factors that all the other signs would have.

Whitney Singleton stated excuse me.

Chairman Boxer stated the balancing factors would apply to the lesser variance that they're asking for also...

Whitney Singleton stated correct.

Chairman Boxer stated okay. Alright, would you like to present those to us?

Mr. Ryan stated so according to Town law section 267-b(3) of Village Law section 7-712(b)(3), they have established for the Zoning Board of Appeals the balancing test. Number one is to whether the undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance. This property is already in the CL district, so it is consistent with the character of the neighborhood and that is a very commercial road, its adjacent to North Bedford Road, again, all of that area is commercial. In terms of the visibility of this, it will have little or no visibility, there are residential properties in the back but we've worked very well with those residents over the years to, we're actually addressing some of the issues that came up with the Planning Board with regard to the lights and so on, in there. So we don't believe that the 5 Guys signs, nor the signs underneath which will not be visibility what so ever to them, will be a detriment to the neighborhood. On the second test which is whether the benefit by the applicant can be achieved by some other feasible method other than the variance, again this is simply to increase the awareness and you know, we're limited in terms of the signage, we are bringing some signage out front with the new monument signs, right now the signs are out there are only identifiers of what the plaza's called essentially, so we are changing that. But this, not only in our opinion, but 5 Guys allows them to sign this lease, let it come up, it's something that they felt was a difficulty and I think there is any other method by which we could achieve the same result.

Chairman Boxer stated I agree.

Ms. Richards stated I agree too.

Chairman Boxer stated its better than that tall skinny guy that flaps his hands.

Mr. Ryan stated that's right. Whether the requested variance is substantial; while it is an additional sign and I guess you could say that that is substantial one, it is really limited to this portion of the building, so we didn't believe that is substantial and again the monument signs no longer require a variance and there is simply this sign, so we think it's an insubstantial variance in that it complies. We're not asking for any increase in the size of this, only simply an additional sign. Number four, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; again, something we've talked about already is that is in a commercial district, again the impacts are only positive and we think that this something that in many communities is already allowed but we think there is not adverse impact to the community.

Chairman Boxer stated has the Planning Board addressed the environmental issues?

Mr. Ryan stated they have, well we haven't got the final decision from them, we got all their input, they are drafting a resolution, we believe that's a resolution of approval on this, we still have the ARB to finish up, they have some questions on some of...

Chairman Boxer stated but there will be no SEQRA on this?

Mr. Ryan stated they will be doing SEQRA and we submitted the environmental form.

Chairman Boxer stated okay.

Mr. Ryan stated and the lastly, whether the alleged difficulty was self-created, this is not necessary for the Zoning Board to opine on that in this case it is self-created, we acknowledge that but we don't think that's the determining test here. Again, we that this is very consistent with the neighborhood and we're just simply looking to keep the center vital, we've had some great tenants over the years here, unfortunately most of them have left and I think with 5 Guys established here and with their criteria, I think that hopefully we'll revitalize because this is the area of the center that really needs more tenants, this is where we have most of our vacancies.

Chairman Boxer stated okay.

Mr. Ryan stated thank you.

Chairman Boxer stated you're welcome.

Ms. Richards stated conditions?

Chairman Boxer stated Whitney?

Whitney Singleton stated yeah?

Chairman Boxer stated can you draft a...

Whitney Singleton stated sure.

Chairman Boxer stated the only condition we're going to put on this is that any further signage changes that you'd like to make will need another variance.

Mr. Ryan stated thank you.

Ms. Richards stated so this is only being approved to this sign package that you're presenting.

Mr. Ryan stated that's understood.

Whitney Singleton stated I think that's what he's referring to, I'm sorry, did you say, I heard something earlier in our discussions that there shall be no visibility of any lighting elements or glare from the residential district behind it.

Chairman Boxer stated sure.

Whitney Singleton stated I can draft that.

Chairman Boxer stated you addressed that already, you're addressing that.

Mr. Ryan stated we are addressing that with the lights but in terms of the signage too, there are ways to shield that one edge of that sign if we need to, we don't think its visible but we'll take a look at that if that's the requirement.

Chairman Boxer stated are the signed going to be lit, back lit?

Mr. Ryan stated the sign is going to be lit, its internally lit I believe.

Mr. Schulman stated it's actually going to be front lit, there are goosenecks.

Mr. Ryan stated oh yes, you're right.

Whitney Singleton stated I'm sorry, it's kind of been on a lower, on the back burner for me, as far as items of concerns. The signs that are hanging underneath the canopy, those were determined to be additional signs as opposed to wayfinding?

Mr. Ryan stated additional sign, yes. In most communities they are determined to be wayfinding signs but the way that I understood, this was being interpreted as we needed a variance because they are extra signs.

Whitney Singleton stated and with regard to coming back for the modifications, is that coming back for modifications as to size, location, height, stuff of that nature? If there's a tenant change there's replacement in kind, do you want to see them back?

Chairman Boxer stated no.

Ms. Richards stated no, just to change.

Whitney Singleton stated and the only issue Jim, that again I didn't think about it until the Chairman raised it, these are commercial signs, not residential and you didn't submit a separate EAF to this Board.

Mr. Ryan stated no, I mean, the variances were noted on the EAF that was submitted, I thought the Planning Board as the lead agency would do that but they're going to have to make that determination first.

Whitney Singleton stated okay.

Mr. Ryan stated can that be subject to their determination?

Whitney Singleton stated yes unless your Board doesn't have a short form environmental assessment form to entertain it separate and apart from the Planning Board application. So anything that you do here would be subject to the Planning Board issuing a neg. dec.

Chairman Boxer stated okay.

Ms. Richards stated well, that's fine.

Whitney Singleton stated they didn't make a determination of significance, yet, correct?

Mr. Ryan stated they have not no, we were expecting that, I guess the meeting is Thursday.

Whitney Singleton stated okay.

Chairman Boxer stated okay, any comments?

Whitney Singleton stated and of course the applicant has the right to a full Board.

Chairman Boxer stated do you wish to waive the right to a full Board.

Ms. Richards stated roll your dice.

Mr. Ryan stated I'll take my chances.

Chairman Boxer stated I agree that Mount Kisco needs to be revitalized, these more commercial tenants, I don't see this signage for visibility being any different than Siegel Brothers who have it worse than you do because they're stuck in a building in between two other business, or three other buildings and for them we did grant a variance because of their unique situation. So, again this variance will also state that this is unique to this particular property and that does not encompass any other commercial properties within Mount Kisco. Any other comments?

Ms. Richards stated no, I total agree with that.

Chairman Boxer stated then I propose that we grant the variance requested for the sign and the 9 hanging signs.

Ms. Richards made a motion to grant the variances. Seconded by Ms. Greenberg.

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

Mr. Ryan stated thank you very much and have a good evening.

Chairman Boxer stated you're welcome, thanks.

Ms. Richards stated are they really going to come in?

Mr. Ryan stated we're in the home stretch now.

The Secretary stated minutes?

Chairman Boxer stated alright so before we disappear, we can't approve the last minutes because she wasn't here but the one before that...

The Secretary stated the June 20th.

Chairman Boxer stated right, do I have motion to approve that?

Ms. Richards made a motion to approve the minutes of June 20, 2017. Seconded by Ms. Greenberg.

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

The Secretary stated thank you, thank you.

Chairman Boxer stated you're welcome. **Do we have a motion to adjourn?**

Ms. Richards made a motion to adjourn. Seconded by Ms. Greenberg.

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

The meeting adjourned at 7:53 p.m.