

**Village/Town of Mount Kisco
Zoning Board of Appeals
Minutes of Wednesday, January 25, 2017**

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

Members Absent: Kim Lapple
Dan Guyder

Staff Present: Peter J. Miley, Building Inspector
Michelle Lailer, Secretary

Staff Absent: Whitney Singleton, Board Counsel

Chairman Boxer called the meeting to order at 7:38 p.m.

Minutes

Chairman Boxer stated welcome to the meeting January 25th meeting. First order of business I guess is to approve the minutes from last month or earlier this month, do I have a motion?

Mr. Rose stated so moved.

Chairman Boxer stated second?

Ms. Richards seconded the motion.

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

Chairman Boxer stated okay, I guess, do we have to call those four and say they're coming back.

The Secretary stated you should open them and then make a motion to adjourn them.

Chairman Boxer stated and before we get started we will look at the agenda and we will open case number ZBA16-12, 16-19, 16-20 and 16-21 and do I have motion now to adjourn them?

Ms. Richards stated motion to adjourn. Mr. Rose seconded the motion.

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

Mr. Rose stated what about Bagnato?

Chairman Boxer stated they didn't come back.

Ms. Richards stated they adjourned to the next meeting, that's what...

Mr. Rose stated but don't we also have to open that again and adjourn it.

Chairman Boxer stated not if they don't ask us to.

Mr. Miley stated it's up to them. My understanding is they will be prepared for next meeting. There may be one or two depending on the extent or the length of the case. We currently have outside counsel reviewing all of these projects because we have a conflict with our Village Attorney.

Ms. Richards stated all of these projects.

Mr. Miley stated yeah, essentially with Lexington Properties, counsel represented him in some transactions...

Ms. Richards stated oh okay.

Mr. Miley stated so he's going to recuse himself, therefore outside counsel that I met with last week needs an additional opportunity to review because they're pretty complex so actually the request to adjourn was by the Building Department.

Ms. Richards stated okay.

Chairman Boxer stated do you have any materials you can hand out on those.

Mr. Miley stated currently, no because the memos I provided are still being edited by the attorney.

Chairman Boxer stated okay.

Mr. Miley stated but you'll have a full package for each individual one that does appear on the agenda.

Chairman Boxer stated try and get it to us a little bit earlier.

Mr. Miley stated more than adequate time.

Chairman Boxer stated thanks. Okay, I'm going to call case ZBA 16-16, Gas 21 Realty Inc. anybody here for that?

**1. Gas 21 Realty, Inc
192 North Bedford Road
Mount Kisco, NY 10549
(SBL) 68.58-4-2**

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

Mr. Paul Berté of Petrucelli Engineering; Mr. Tony Singh; and Mr. Sam Adaken were present.

Mr. Berté stated Paul Berté, I'm principal of the firm Petrucelli Engineering.

Chairman Boxer stated can you spell your name, please.

Mr. Berté stated yes, it's Paul and the last name is B-E-R-T-E, Petrucelli Engineering.

Mr. Singh stated Tony Singh.

Chairman Boxer stated you name?

Mr. Adaken stated Sam Adaken.

Chairman Boxer stated okay, alright.

Mr. Berté stated good evening, we are here before you to discuss the variances that would be required for our proposal at 192 North Bedford Road, which is an existing gas station.

Chairman Boxer stated just a quick question, do you own both buildings?

Mr. Berté stated yes, it is actually one parcel.

Chairman Boxer stated it is two buildings on one parcel. Peter, has that been...

Mr. Miley stated excuse me.

Chairman Boxer stated they have two buildings on one parcel, that's allowed.

Mr. Miley stated yes, well it had preexisting, nonconforming.

Mr. Rose stated well but the new building doesn't exist.

Mr. Miley stated correct, that is what the use variance would be demonstrating, you'll need to issue a use variance for that piece.

Mr. Rose stated not just the use, for the prohibition against two buildings on one lot.

Mr. Miley stated there is currently a building there, they have a kiosk there, they do have structure.

Chairman Boxer stated what about the Kentucky Fried Chicken building.

Mr. Miley stated yes.

Mr. Berté stated right.

Chairman Boxer stated that's there too?

Mr. Berté stated that's there too.

Mr. Miley stated they actually have a C.O. for an office space, that's considered an office structure.

Chairman Boxer stated alright.

Mr. Berté stated so the proposal, I can start out with an existing condition plan to take you through what's there...

Ms. Richards stated that would be good, yeah.

Mr. Berté stated and then we can show you what we are proposing to do. So existing right now is an 8 pump gas station with a canopy covering the pumps as well as an outparcel that we all know, I think it was a Dunkin Donuts, Kentucky Fried Chicken, the last use was an Enterprise Rental Car facility...

Chairman Boxer stated and that is within your property line?

Mr. Berté stated yes, that is within the property line which extends...

Chairman Boxer stated you own half of the hill.

Mr. Berté stated half of the hill, yeah. There's a retaining wall and then this is a really limited view from there. So we're here before you tonight because in updating the gas station to be competitive with the other gas stations, our owners are looking to improve their existing small kiosk with a more traditional convenience store that's associated with a gas station. Unfortunately in this zone, that use is not permitted which requires a variance. The other variances that were cited for being required is the canopy which would be an existing condition, the proximity of the pumps to the property line which measuring from the property line to where we were relocating the pumps, we will eliminate that variance.

Ms. Richards stated so you're not going to need that one.

Mr. Berté stated we're not going to need that one and that will be section 110-30 G subsection 2.

Mr. Rose stated is that a replacement canopy or is just the one that's there now?

Mr. Berté stated we're going to replace it, relocate the columns and improve the visual...

Mr. Rose stated what's the setback down on the canopy?

Mr. Berté stated canopies are not allowed in this zone in the gas station and right now our setback is 11 feet from the property line and 10 feet on the other side and we're looking to maintain that, actually we're improving it just slightly, we're coming to 14 ½ feet, so we're increasing the location of the canopy with relation to the property line.

Ms. Richards stated so you said you're not going to need, you're moving the gas pumps so you're not going to need 110-30 G 2, the fuel dispenser, so that's going to be out.

Mr. Berté stated going to the first variance 110-30 G 1, which restricts gas stations within 1,000 feet of another. Again, this is an existing gas station that's been operating for decades so although it would be a variance before you this evening because we're coming for a revision to the plan, it is an existing nonconformity.

Ms. Richards stated was this gas station before some of the other gas stations?

Mr. Singh stated what do you mean?

Ms. Richards stated well like you have a row almost of gas stations there, I'm just curious was this one first, do you know? Were the other ones...?

Mr. Adaken stated it's been there for 40 years.

Mr. Miley stated we have plan from 1983 that shows a Texaco.

Mr. Adaken stated yeah, it used to be Texaco.

Mr. Rose stated are you the owners?

Mr. Singh stated yes.

Mr. Rose stated and how long have you owned?

Mr. Singh stated since 184, '86 but the property we bought in 2000.

Mr. Rose stated 2000.

Ms. Richards stated oh you ran it before then and you own the BP.

Mr. Singh stated yes.

Ms. Richards stated not that means anything but just saying.

Mr. Berté stated the other station down at the intersection of Barker is the gas station that's within 1,000 feet, I can research the records and see if that's the, to see which one was built first.

Ms. Richards stated it doesn't matter, I'm just curious.

Chairman Boxer stated and how close are you to the line of residential district?

Mr. Berté stated we're actually, the residential district is on the other side of the street, so we are on the boundary.

Chairman Rose stated what about behind?

Mr. Berté stated same thing.

Mr. Adaken stated we have the mountain.

Mr. Berté stated so our property is...

Chairman Boxer stated so you're more than 200 feet away?

Mr. Berté stated the pumps are, yes.

The Secretary stated please don't cover the microphone in the center of the table, thank you.

Chairman Boxer stated but not the pumps but I don't think it deals with the pumps, it just says you can't have it all so you'll need 2 variances then probably, 1,000 and the 200. Do you know the distance from the back line to the residential line?

Mr. Berté stated we're, our...

Chairman Boxer stated I know we are but did anybody ever measure that? Do you have a measurement on the side there? You didn't put in the distance to the side line. That's just something you should find out.

Mr. Berté stated I'll confirm that for the next meeting.

Ms. Richards stated yeah because that may be two separate ones, it may not be combined.

Mr. Miley stated Chairman, can you repeat that?

Chairman Boxer stated they're going to have to tell us whether the boundary lines within 200 feet of the residential district that's up on Valley View.

Mr. Miley stated thank you.

Mr. Berté stated I'll confirm that. So we've talked about the first variance, the 110-30 G 1, the 1,000 feet, the second variance the proximity of the dispenser to the property line, we're taking off the table because

we're going to meet that requirement. The canopy is to remain except we're moving it a little bit further away from the property line but we're looking to rebuild that and maintain and continue an existing nonconforming use?

Chairman Boxer stated Peter, is that correct?

Mr. Miley stated I'm sorry, I was trying to read the...

Chairman Boxer stated is the canopy existing nonconforming, it's always been against the rules.

Mr. Miley stated it has a C.O., there's a number of things, that's why I need to vet this with our counsel because the gas station itself has a C.O.

Chairman Boxer stated okay.

Mr. Miley stated the canopy has a C.O., so there's some of these things that may be deemed legally nonconforming, so long as they're not changing where they're located and they stay in the exact same location, they may not require a variance. So some of these things, we may have to add one, we may have to you know...

Ms. Richards stated but you're moving the canopy?

Mr. Berté stated yes right because we're moving the pumps back, we're relocating it and reestablishing the columns for support.

Chairman Boxer stated is the canopy going to touch the building at any point.

Mr. Berté stated no.

Mr. Rose stated let me ask for the record, do you have an existing drawing, so that you can verify that the canopy is not being moved closer to the street.

Mr. Miley stated I do, I pulled one today. We have an existing site plan from 1983 and we have an existing conditions plan that illustrate the locations of all the pumps, the dispensers and the canopy.

Ms. Richards stated and actually you just said it's being moved back and not closer.

Mr. Miley stated correct, its improved by I believe 6 feet.

Chairman Boxer stated okay and what, it starts at 300 feet, what's the top...

Mr. Berté stated this is 340 down to 300 and at the street we're down at 292.

Chairman Boxer stated so it's not a big slope.

Mr. Berté stated the height of this canopy is going to be approximately 310, between 312 and 315, I will show you a section in a second here.

Chairman Boxer stated okay.

Mr. Berté stated and the last variance is for expanding the kiosk use to a more traditional convenience store that would be associated with a gas station. Although, modest in size, just with the limitations of the site constraints.

Mr. Rose stated that's the use variance.

Mr. Berté stated correct.

Mr. Rose stated are you aware that that use variance requires a different set of data and it meets different tests from an area variance.

Mr. Berté stated correct.

Mr. Rose stated for the record because I think all the Board Members may not be aware of the difference. There's a 5 test, I think we all know from the area variance, there are 4 factors for the use variance and they're more stringent. First, the state law requires the applicant to show all of the following, 1. That the

property is incapable of earning a reasonable return on the initial investment if used for any of the allowed uses in the district, actual dollars and cents proof must be submitted. 2. That the property is being affected by unique or at least highly uncommon circumstances. 3. That the variance, if granted, will not alter the essential character of the neighborhood. And 4. That the hardship is not self-created. It's not a...

Ms. Richards stated it's not a, if it is okay you can grant it.

Mr. Rose stated it's not one that can be...

Chairman Boxer stated can't be waived. Can you make a copy of that for us?

Mr. Rose stated this is not from the Code, this is from something for...

Ms. Richards stated have you looked at that at all?

Mr. Berté stated yes and that's why we're here. The sales at this station compared to the other station...

Ms. Richards stated being the BP?

Mr. Berté stated they have another station that has a, the BP. What we will do then is we will gather that information, that financial information.

Ms. Richards stated but that self-created one is a little bit of a difficult one.

Mr. Berté stated it wasn't customary 30 years to have a convenience store associated with a gas station and now it's almost and that's not...

Chairman Boxer stated right but just because everybody else does it, doesn't mean that if you have too many variances that you can still do it.

Mr. Berté stated understood, our contention is that we have, hopefully receding down to one variance is what...

Chairman Boxer stated yeah.

Ms. Richards stated I do think the look is much better than the way it looks now.

Chairman Boxer stated are there any plans for the second building?

Mr. Berté stated we're proposing the line along the sidewalk, just to improve that right now...

Chairman Boxer stated okay but what are you going to do, what use is that second building going to have?

Mr. Berté stated we don't have a tenant at the moment but...

Chairman Boxer stated are you looking for a tenant?

Mr. Berté stated looking for a tenant, if you know anybody.

Mr. Rose stated but it was Enterprise.

Chairman Boxer stated but its zoned business?

Mr. Miley stated it has a C.O. for office.

Chairman Boxer stated so if you put in a commercial that's not an office, you have to come back again.

Mr. Berté stated understood. So what we'll do is we'll prepare that documentation the financials and we'll prepare a written response for those to address those four points and hopefully that data will be significant to show that it isn't a self-created, it's not a self-created variance just in terms of the progression of the use of convenience stores associated gas stations and the area variance.

Chairman Boxer stated we understand.

Ms. Richards stated is there anyone in the audience?

Chairman Boxer stated probably, the people in the back.

Mr. Berté stated I can take you through the details, the other part of the additions is to eliminate, to replace the underground storage tanks to upgrade those to double wall conforming, remove the two 20,000 gallon tanks with four 10,000 gallon tanks.

Mr. Adaken stated no, we have four 10's now, we're going to get rid of that and put in the new two that is going to be divided.

Mr. Berté stated two, okay.

Chairman Boxer stated and is there any known leakage from the tanks right now?

Mr. Berté stated there is not but part of the State permit would require to do that testing as its excavated.

Chairman Boxer stated right.

Ms. Richards stated what are the neighborhoods that you're too close to? You said across the street meaning...?

Mr. Adaken stated our neighbor on one side is Burger King because we have the street going out and then there's Burger King and then you have a hill, and the other side is Mavis.

Ms. Richards stated okay but the residential I'm talking about is Knowlton...

Mr. Berté stated Knowlton and Valley View.

Ms. Richards stated okay.

Chairman Boxer stated Valley View is at the top of the hill. Knowlton is the street that you [inaudible] for winter.

Mr. Rose stated yeah, I don't think there's a house before you get almost to the top.

Ms. Richards stated to the top?

Chairman Boxer stated almost to Valley View, right.

Mr. Berté stated and just the views here, as you're even driving up, it's masked...

Ms. Richards stated I know where Knowlton is, I just wasn't sure what else...

Mr. Berté stated we're complying with the parking requirements for the use, the existing use as an office space. There are parking requirements for the addition of the convenience store as well as the stacking requirements for the gas pumps.

Ms. Richards stated okay.

Chairman Boxer stated okay, just confirm that with the Building Inspector.

Mr. Berté stated of course.

Mr. Miley stated yeah, we reviewed it, it's compliant with the more stringent retail code which is 1 per 150.

Chairman Boxer stated alright.

Ms. Richards stated yeah, keep in mind too that if you change the use from office, there could be parking implications.

Chairman Boxer stated we mentioned that, he already knows that he'll have to come back for another meeting.

Mr. Berté stated right, we actually used the office space well if it is different then we will come back with a different plan.

Chairman Boxer stated okay, any other questions for the applicant?

Ms. Richards stated not from me.

Mr. Rose stated I'm just wondering since they've owned since 2000, if there's anything that should have been known at that point in terms of site development or use, I don't know how far back the use restrictions are in that particular zone.

Mr. Miley stated well in '84 was the new zoning Code, '87 amended and then in 2003, so prior to '83 this was already established as a gas station, prior to the change in the Code. And that's where I obtained the site plan of record.

Chairman Boxer stated and right now there's an existing C.O.?

Mr. Miley stated there's an existing C.O. correct, yeah. So again, there's not changes, I would recommend that the applicants, once they make the necessary changes to help reduce the variance needs to come back and we'll vet it one more time and then I need an interpretation or at least a clarification from counsel to determine those nonconforming, already established uses with respect to, because they are improving them, the nonconformities, a number of them.

Chairman Boxer stated do you have any of the proposed as-built that you can shrink down to send to us or is it just too big?

Mr. Berté stated you mean the as-built survey?

Chairman Boxer stated the nice drawing, the rendering.

Mr. Berté stated the rendering, yes, it's digital.

Chairman Boxer stated okay, if you could submit that with your package.

Mr. Berté stated sure, we can do 11 by 17 and submit that.

Chairman Boxer stated and do we have this in our package?

Ms. Richards stated we do, it's in there. It's in here. Oh, that's good to have.

Chairman Boxer stated okay, we will see you when you come back.

Mr. Rose stated do you want to invite public comments?

Chairman Boxer stated I am going to do that once they get out of the way.

Mr. Berté stated I'll leave this here.

Chairman Boxer stated you can do that if they want to refer to it. Just put it on the table outside there, if they want to look. Okay, are there any people here that want to speak to this application? Do you want to take a look or do you have any comments you want to make?

Unknown Female Speaker stated where is that going to be? Bottom of Knowlton Avenue? Right behind you, he lives right behind those trees. It looks better than it does now.

Unknown Male Speaker stated that's not why I'm here thought.

Chairman Boxer stated we can...

The Secretary stated want to act on your meeting schedule?

Chairman Boxer stated we're going to keep the public hearing open. Now we have the more mundane, we have a schedule here for our meetings and these are the regular Tuesday meetings.

The Secretary stated regular Tuesday meetings, except for January 24, 2018.

Ms. Richards stated I really can't say that I'm okay for that date yet, January 24, 2018.

Mr. Rose stated if we're here.

Chairman Boxer stated yeah, okay, so do we have any motion to adopt the schedule?

Ms. Richards stated I make a motion that we adopt the schedule. Mr. Rose seconded the motion.

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

Chairman Boxer stated since there is nobody here that wants to comment, I guess I'll entertain a motion to close the meeting.

Mr. Rose stated I move that we close the meeting. Ms. Richards seconded the motion.

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