

**Town of Fishkill
Zoning Board of Appeals
October 16, 2007**

Minutes

Members Present

Barry Silverstein-Chairman
Ronald Critelli
MaryAnn Leenig
Lynne Raver
Marc Breimer-Alternate
April Callahan-Alternate

Members Absent

Maureen Kangas-Vice Chairman

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Christopher Colsey, Director of Municipal Development
Don Cocker, Deputy Building Inspector

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:00 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman informed those present of the procedures regarding the ZBA.

The Chairman announced that Alternate Member Marc Breimer was on the Board for this meeting with full voting rights and April Callahan was on the Board for this meeting without voting rights.

Minutes

Chairman Silverstein called for motion to accept the minutes from the September 11, 2007 meeting.

Ronald Critelli made the motion to accept the minutes as written from the September 11, 2007 meeting.

Marc Breimer seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Old Business

Continued Public Hearing for:

Application Number ZB07-011, submitted by Kashmir Virk, requesting a variance to legalize an existing electronic gas pricing sign and monument sign. Said request is a violation of Chapter 150-30 of the Code of the Town of Fishkill.

The Chairman called for the representative. Kashmir Virk presented to the Board. He reminded the Board that his original application did not include the monument sign and he has since submitted an amended application to include it.

The Chairman asked where the Applicant was in regards to the additional violations at the site. Chris Colsey advised the Board that Donald Cocker, present at this meeting, has been to the site. He commented that Mr. Virk has made strides to clean up the site, but sign violations still exist. He presented pictures taken on October 11. He advised that some of these signs still exist and a sign that was on the garage door has either been added or altered. The original sign in the picture had red letters and when Mr. Cocker was at the site today, the letters were changed to black.

Mr. Colsey advised the Board that it was just noticed today that the monument sign that was added to the variance request appears to be internally illuminated. This is another consideration for the Board. Janis Anderson reminded the Board that the Applicant still has not submitted a building permit application for the changes he made to the signs.

Chairman Silverstein commented that after all of the time that has been spent discussing the legal and illegal signs, upon passing the station a few days ago, the Chairman noticed a new sign on the property. The Chairman expressed concern that Mr. Virk is ignoring the Town Code. Mr. Virk stated that it was not his intention to ignore the Town and he will do what ever the Town requests of him. He commented that there are still two signs on the road. Mr. Virk stated that he advised his tenant to remove the signs and was told by the tenant that the signs were not on his property and he can not tell him to remove

them. Chairman Silverstein reminded Mr. Virk that he owns the property and who he rents to is his responsibility. The Chairman commented that as the owner, he applies for the sign permits and is responsible to follow the laws. To request a variance for some existing illegal signs, then ignore the requests from the Zoning Board to remove the additional illegal signs only to return 30 days later and tell the Board that your tenant doesn't want to listen to you. This is your responsibility. Mr. Virk stated that most of the signs have been removed. He advised that one of his tenants put up a banner and he advised him that it was not allowed and to remove it.

The Chairman called for questions from the Board. None voiced. The Chairman asked if there was anything additional that needed to be reviewed prior to closing this Hearing. Janis Anderson advised that the Board needed to declare themselves Lead Agency for this appeal as an unlisted action.

The Chairman called for a motion for Lead Agency
Marc Breimer made the motion for the ZBA to be Lead Agency
MaryAnn Seconded

Barry Silverstein – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
MaryAnn Leenig – Aye
Marc Breimer – Aye

Chairman Silverstein called for questions or comments from the Floor.

Ozzie Alvarez asked if anyone has shown the Applicant what needs to be done. Has a site visit been done? Chairman Silverstein stated that not only has the Applicant been shown, the Board went through picture by picture of each sign and exactly what needed to be done. Almost every sign was just a matter of removing it from the ground or taking down a banner. A great deal of time has been spent with Mr. Virk attempting to resolve this. The Chairman continued and advised the Floor that Mr. Virk did come before the Board on a previous occasion and made a presentation requesting a variance for one sign. He presented pictures of the sign and the ZBA approved it. The sign that that was constructed is completely different from the one that the ZBA approved.

Chairman Silverstein commented that now Mr. Virk is before the Board again because of issues and violations that he has received regarding the changing of the signs without permission. The Public Hearing from the last meeting was adjourned in hopes that Mr. Virk would correct the violations. Mr. Virk advised that four or five of the signs have been removed. He stated that he has one tenant that will not cooperate. Chairman Silverstein commented that four signs out of twenty were not very much.

Chris Colsey commented that the minutes of the previous meeting show that the ZBA did go through picture by picture and also Mr. Virk just met with Joel Petrus and him on Thursday (October 10) to review what was still in violation. Mr. Virk was told at that meeting to amend his variance application to include the monument sign.

Mr. Colsey asked Nancy Lecker if a copy of the September minutes would be available if Mr. Alvarez wanted them. Ms. Lecker stated that they were available.

The Chairman called for any additional comments or questions. Hearing none he called for a motion to Close or Adjourn this Public Hearing.

Marc Breimer made the motion to Close the Public Hearing

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Chairman Silverstein asked if a recess was needed at this point. Janis Anderson asked if they wanted to recess now or wait until the end of the meeting. The Chairman decided to continue with the rest of the meeting.

New Business

Appeal Number 1

Grid Number: 6055-20-757155 Address: 224 Henry St

Application Number ZB07-012, submitted by Eric Warren, requesting a 5ft variance creating a 30ft front yard setback where 35ft is the minimum and a 9ft variance creating an 11ft right side yard setback where 20ft is the minimum in an R-20 Zoning District to add a dining room and front porch. Said request is a violation of Chapter 150-33.A of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning citing this as a matter of local concern.

Town of Fishkill Planning Board citing this as a matter of local concern

Henry Sylvania, Washington Ave, stating that he has no objection to the project.

The Chairman called for the representative. Eric Warren presented to the Board. He presented pictures to show the current house with an outline of the addition. Mr. Warren stated that the house is currently 37ft from the property and the requirement is 35ft. He is requesting a reduction to 30ft to give him a 7ft porch. He presented pictures to the Board which had an outline of where the porch would be and the new distance. Mr. Warren advised that the house is grandfathered in and he is only looking to continue the line of the house along the side yard. This is the way the house was when he purchased it.

Chairman Silverstein asked him how long he owned it. Mr. Warren advised that he purchased it in 1999. Mr. Warren asked why most of the houses across the street are at 15ft to 20ft from the road. He commented that he doesn't understand the zoning. Ron Critelli asked when the house was built. Mr. Warren advised that it was built in 1950. Mr. Critelli commented that the house was built prior to the town's zoning laws. Chairman Silverstein advised Mr. Warren that one of the considerations the ZBA makes is whether the variance requested would affect the characteristic of the neighborhood.

Ron Critelli asked for verification that the applicant was also going to add a dining room. Mr. Warren confirmed that he was. He commented that he was going to square off the house. MaryAnn Leenig made the same comment. Lynne Raver asked what kind of roof was going to be added. Mr. Warren stated that the front of the house would have a shed roof and a small gable roof over the dining room area. He presented a drawing of what the finished house would look like.

Lynne Raver asked if Mr. Warren was an architect or if he did the drawings. Mr. Warren stated that he was a carpenter and that he did do the drawings.

The Chairman called for additional questions or comments from the Board. Marc Breimer reviewed the drawing again and commented that the dining room will extend a current setback variance.

The Chairman called for questions or comments from the Floor. Hearing none, he called for a motion to Close or Adjourn this Public Hearing.

Ron Critelli made the motion to Close the Public Hearing

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Appeal Number 2:

Grid Number: 6055-15-661404 Address: 557 Route 52

Application Number ZB07-013, submitted by Healey Chrysler-Dodge-Jeep, LLC, requesting the following variances: 1) Four Wall mounted signs where only one is allowed; 2) replacement of pole sign where poles signs are not allowed and 3) Internal illumination on all signs where only external illumination is allowed in a GB Zoning District. Said request is a violation of Chapter 150-30 of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning sent an extensive letter with responses to each variance requested. They commented that the requests for the pole sign and the internal illumination should be viewed as use variances as they are not allowed by town code. They commented that the applicant can have signs constructed which utilize external illumination. The hardship question does not give an appropriate response as the Applicant's answer could lead to business competition and the approval of more variances. Product names for car dealerships may lead super markets to request signage for their individual product names. The Board should consider what precedent would be set if granting this request and how it may negatively affect the characteristic of the neighborhood. The Applicant also stated that the dealership has "much more to offer". The addition of the words "Chrysler", "Jeep", and "Dodge" do not show that the dealership has much more to offer. The Applicant is not advertising any special service or unidentifiable product. The DC Department of Planning has recommended that the variance be denied. If the Board chooses to act contrary to this recommendation, it must do so by a majority plus one of the full membership and must notify this department with the reasons for its decision.

Town of Fishkill Planning Board offered an adverse recommendation. The Planning Board suggests the Applicant comply with §150-30 of the town code. The Planning Board reserves the right to review the sign permit subsequent to the issued decision of the ZBA.

Robert Slater, objecting to the project
Arthur Mendoza, Spring St, objecting to the project

The Chairman called for the representative. Pat Boni from Saxton Sign Corp. presented to the Board. He stated that the reason for the change is that Chrysler Corporation wants all of their dealers to comply with their national corporate image. He stated that if the Boards approved the variances, all of the existing signage on the building will be removed. The current square footage for the existing signs is 138.26 sq. ft. The new sign will add up to 97.6 sq. ft. This will be a large reduction in the total square footage. Janis Anderson asked for verification regarding the total square footage. Mr. Boni reiterated the amounts. Ms. Anderson stated that the application states that the square footage being replaced was 101.6 sq. ft. Mr. Boni advised that when the application was submitted, there was a sign that they were not aware of.

Mr. Boni continued with the pole sign. He advised that the current sign is 76.6 sq. ft. If approved the new sign will be 31.8 sq. ft. He commented that they were aware that pylon signs were prohibited by the town, but traveling north and south on Route 52, a driver is not able to see the building until they are right on top of it. Chairman Silverstein asked for verification why the pylon sign is needed. Mr. Boni reiterated that the wall sign will not be visible. Chairman Silverstein asked why then was the Applicant was looking to put up wall signs. Mr. Boni stated that the wall signs were needed to identify the brands once a driver was there.

Mr. Boni continued and advised that the signs need to be internally illuminated because that is the corporate image. The signs are mass produced by the thousands and these are the signs that Chrysler wants them to have. Every dealership in the country has the same signs. Chairman Silverstein disagreed and advised that many dealerships in towns that have zoning regulations prohibiting illuminated sign do not have illuminated signs. He stated that they may have the same logo but not lit. Mr. Boni agreed and stated that this is the request of Chrysler, but if the town does not allow illuminated signs, then they can't do it.

Mr. Boni continued with the wall signs. He stated that four signs will be required. The first one to identify the dealer name and the additional signs to identify which cars they sell. Mr. Boni stated that he disagrees with the County. He stated that when a person goes grocery shopping, they know that the stores have all these different brands. When a person drives by a car dealership, they aren't going to know what kinds of cars they sell without wall signs. Marc Breimer disagreed. He stated that the dealerships put the cars in the front and advised that Jeep went as far as to sue Hummer over the 7-slotted grill as a trademark of Jeep Corporation. This is an indication that the vehicles are easily and readily identifiable.

Mr. Boni stated that in regards to the internal illumination, again this is a request of Chrysler for their corporate image.

Chairman Silverstein asked if there was a representative from Healey with him. Mr. Boni stated that it was just him tonight. The Chairman speculated if the Applicant was asking for more hoping for a compromise. Mr. Boni stated that sometimes they do that, but this was not the case here. The signs are the smallest they can make. They are reducing the size of the pylon from 79ft to 31ft. He asked that if the Applicant is not allowed to replace the pylon sign that the current one can remain. The Chairman agreed and asked Chris Colsey for verification. Mr. Colsey agreed. He commented that the current law has a sunset provision for ten years. Janis Anderson commented that the ten years is from notification and that has not happened yet.

Janis Anderson commented that the application states that the current pylon sign is 75 sq. ft. and was being replaced with a sign that was 48 sq. ft. Mr. Boni doubled checked his specs for the sign. He stated that the new sign will be 31.8 sq. ft. The information on the application is incorrect. Chairman Silverstein stated that the ZBA must deal with the figures supplied and he was not comfortable continuing the Hearing at this time. He

stated that in order for the ZBA to consider what the Applicant wants, the Board requires accurate information on an application. Janis Anderson advised Mr. Boni that he was making an argument that the new sign was in their favor being only 31 sq. ft. but the application and record do not reflect it. Mr. Boni asked that instead of having the Applicant reapply and attend another meeting, would the Board consider this information and vote on it. Chairman Silverstein said no. The Board would adjourn the meeting and the Applicant can reapply or amend the application. Chris Colsey and Janis Anderson stated that the Applicant could amend the application. The Chairman reiterated that a representative for the Applicant will need to meet with the sign company to ensure that the information supplied on the application is correct and agrees with the presentation made. Mr. Boni asked what the next step was. Chairman Silverstein advised that they need to amend their application, resubmit it and return to the next meeting. Mr. Boni asked for verification that the Board was not going to vote at this meeting. The Chairman stated that the Board does not vote the same night. Mr. Boni asked for verification that the Board was not going to vote on the application until they attend another meeting. Chairman Silverstein explained the voting process of the ZBA. He stated that the Board discusses the issues, will do individual site visits and instead of going with the emotion of the meeting, they wait for 30 days until the next meeting and have a constructive vote based on facts.

The Chairman called for questions or comments from the Floor.

Suzie Korn, York St, stated that she and her partner purchased a house four years ago. She stated that she doesn't have to turn on the lights in her house because there is so much light pollution coming from Healey. Ms. Korn stated that this should be a matter of common sense. You can't miss it when you drive by it. There is also a matter of noise pollution. If you are there in the evening and it is quiet, you can hear the buzzing from all of the lights. They have enough signs to show what they are selling and they put up banners every time they have a sale. Adding more signage at this point is out of control.

Laura Bell, Mt. Laurel Florist, stated that she was before the Planning Board a few years ago when she opened her business and had to comply with the regulations regarding signage and lighting. Healey has been there longer so most of their signage and lighting are grandfathered in. Additional signage and lighting are not needed as one can tell exactly what they are selling. She commented that pole signs are not allowed and if the ZBA grants a variance to allow this pole sign then she will also submit an application to get a pole sign which she was denied when she opened her business. Ms. Bell continued and commented that regarding the illumination, the Applicant should not be allowed to have the neon lighting. Chairman Silverstein stated that the Town Code prohibits internal illumination and the signs must be lit externally. Ms. Bell commented that the dealership does not need four signs. One sign on the front of the building would be enough.

Alicia Carbella, York St, stated that the cars on the lot are parked too close to the road. They are practically on her property and they have several lights. She stated that she has a 17 year old son and is concerned when he has to make the left turn by the Healey property. She advised the Board that she is against the variance request.

Larry Roberts, Old Glenham Rd, commented that their back yard faces Healey. It is approximately 600 ft away. They can not use their deck any more since Healey extended their service hours. This is a residential area. The dealership does not need additional signage for advertising or additional business. There is no financial hardship for the business that would require a variance from the zoning to allow more signs. There is no pressing need for this to be granted.

Chairman Silverstein called for any additional comments or questions. Janis Anderson stated that prior to the Hearing being closed a motion needed to be made to declare this Board as Lead Agency on an uncoordinated review. Chairman Silverstein called for the motion.

MaryAnn Leenig made the motion to declare this ZBA as the Lead Agency for an uncoordinated SEQR review.

Marc Breimer seconded

All in favor

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Janis Anderson advised the Board that it was within their right to request that a representative from Healey be present at the next meeting. The Chairman agreed and commented that he was going to make that suggestion. He asked Chris Colsey if he would make that call or to have Ms. Anderson make it. Mr. Boni stated that he would make the call.

The Chairman called for a motion to Close or Adjourn this Public Hearing

MaryAnn Leenig made the motion to Adjourn the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Nancy Lecker advised Mr. Boni that the application was on line and if they wanted to complete the revised application and forward it to her she would make the necessary copies for the Board.

Deliberations

07-011 Virk

Chairman Silverstein stated that there is too much going on at the site. He can not agree with the gas pricing sign. He stated that he has a problem with the ZBA approving a sign based on the diagrams and having a different sign replacing it. There are a number of violations on the site and he is not comfortable approving this request. The Chairman asked Chris Colsey if the Applicant will be required to cover up the electronic sign and return to the original design. Mr. Colsey stated that this is a new territory for the Town. The Applicant has literally replaced the entire sign. The initial response would be that the sign must be returned to the original look. Janis Anderson stated that would be the best case scenario. He could be required to completely remove the sign. The Chairman stated that depending on how the Board votes, if it is not approved, Mr. Virk will have to speak with Mr. Colsey regarding whether the sign will come down or if it can be changed back. Marc Breimer advised the Board that research has disclosed that gas stations are not required to have the large signs with the gas prices on them. Janis Anderson and MaryAnn Leenig stated that they are only required to have the price on the pumps. Marc Breimer stated that not having the large sign will not violate any state requirements. Chairman Silverstein commented that he was not swayed by the fact that the company prefers the Applicant have this sign. The Chairman called for comments from each Member. Ronald Critelli stated that there has been too much confusion and undisciplined control and he is not for it. Lynne Raver stated that she also has to say no. She commented that Mr. Virk has had more than one chance to make changes and additional time and it hasn't worked in his favor. MaryAnn Leenig agreed and also stated that he has had several chances and she will vote no. Marc Breimer stated that there seems to be a mass production of signage on the site including today. The Applicant is trying to put the blame on unruly tenants, but the bottom line is that the property owner is responsible for the activity of the tenants. Mr. Breimer stated that he could see the benefit of having the internally lit and electronic sign, but it is obviously that the site holds a gas station and he stated that he can not justify approving this request.

07-012 Warren

Chairman Silverstein stated that he has no problems with the request. It is a minimal amount and will not affect the character of the neighborhood. Ronald Critelli commented that it will be an improvement. MaryAnn Leenig and Lynne Raver agreed. Marc Breimer also stated that it was an improvement.

07-013 Healey Auto

Chairman Silverstein stated that a discussion is not needed at this point. The Applicant needs to return with the amended application.

Miscellaneous

Janis Anderson advised the Board that if they wanted to vote on the Virk application they needed to take a recess at this time. Chairman Silverstein agreed. He commented that the application was held over for one month. The Chairman asked the Board if they would like to take a recess at this time. All Members agreed.

Chairman Silverstein called for a motion to for a recess.

Marc Breimer made the motion for a recess.

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

The ZBA meeting was recessed at 8:00pm

Marc Breimer made the motion to reconvene.

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

The ZBA meeting reconvened at 8:35pm

The Chairman advised that the final order of business would be the vote on the Virk application. Nancy Lecker advised that a vote was also needed for the Negative Declaration.

The Chairman called for a motion to accept the Negative Declaration.

Marc Breimer made the motion to accept the Negative Declaration

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

The Chairman advised that there were two resolutions for the variance request for ZB07-011, Kashmir Virk. The first resolution was for the electronic gas pricing sign and the second resolution was for the monument sign.

The Chairman called for a motion to Grant or Deny the variance for Resolution 1.

Lynne Raver made the motion to Deny the variance request for Resolution 1.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

The Chairman called for a motion to Grant or Deny the variance request for Resolution 2.

Ronald Critelli made the motion to Deny the variance request for Resolution 2.

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Janis Anderson commented that the County may still need to be notified of the ZBA decision. Nancy Lecker stated that she would advise them.

The Chairman reiterated to Mr. Virk that both variance requests had been denied. He advised Mr. Virk that he must meet with Mr. Colsey during the next week to get guidance regarding what to do next.

Chairman Silverstein called for any additional business. Hearing none, he called for a motion to Adjourn the ZBA Meeting.

Marc Breimer made the motion to Adjourn the ZBA Meeting

MaryAnn Leenig seconded

Motion Carried

Meeting Adjourned at 8:40pm