

**Town of Fishkill  
Zoning Board of Appeals  
September 11, 2007**

**Minutes**

**Members Present**

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

**Members Absent**

Maureen Kangas-Vice Chairman  
Ronald Critelli

**Other Officials Present**

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

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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.

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The meeting of the Zoning Board of Appeals was called to order at 7:06 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 Members Marc Breimer and April Callahan were on the Board for this meeting with full voting rights.

## **Minutes**

Chairman Silverstein called for motion to accept the minutes from the August 21, 2007 meeting.

April Callahan made the motion to accept the minutes as written from the August 21, 2007 meeting.

Lynne Raver seconded.

Motion Carried

Barry Silverstein – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

April Callahan - Aye

## **New Business**

### **Appeal Number 1**

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

Chairman Silverstein read a communication from the DC Department of Planning stating the ZBA should view this as a Use Variance and not an Area Variance as the Town of Fishkill's Code does not allow for internally illuminated signs. They advised that the variance should be denied as the Applicant can not meet the criteria for a Use Variance. They noted that regarding a hardship issue that it is self-created in that the Applicant elected to purchase and construct an illegal sign. It is the Applicant's responsibility to ensure that the site conforms to the Town Code. The DC Department of Planning did conduct a site visit and noted that there are several signs on the property and requested that it be determined if all of the signs have valid permits and conform to an approved site development plan. In regards to the recommendation of the DC Department of Planning to deny the variance, they stated that if the ZBA decides to grant the requested variance, it do so by a majority plus one of the full membership and notify them of reasons for the decision.

Janis Anderson reminded the Board that the interpretation taken by this ZBA is that this should be viewed as an Area Variance not as a Use Variance. Ms. Anderson advised the Board that she has spoken with Jennifer Coccozza from the DC Department of Planning regarding the interpretation.

The Chairman called for the representatives. Kashmir Virk presented to the Board.

Mr. Virk commented that the property is on Route 52. He stated that the current sign was the same dimensions as the original sign, which was not electronic and that the oil company came in and advised him that all of their signs in the area were being changed to electronic signs.

He stated that he did not know whether a permit was required to change the sign, but that the company came in and installed it without his knowledge. Mr. Virk stated that he has since been advised that the sign is not permissible and would need a variance and he was in this situation because of his ignorance.

Chairman Silverstein expressed concern that that the property not only has this sign but has numerous signs throughout the site. He asked Mr. Virk if he had permits for any of the additional signs. Mr. Virk stated that there is an entrance sign which he was given a permit for but there is now a controversy and Chris Colsey advised him that the permit should not have been issued. He must go before the Town Planning Board to resolve this issue. The Chairman asked Mr. Virk if he was referring to the monument sign. Mr. Virk confirmed that it was.

Chairman Silverstein asked if anyone had the packet of pictures taken of the signs. Chris Colsey presented the packet of photos to the Chairman and advised that they were taken last Thursday (September 6) by Don Cocker, who was present at this meeting.

MaryAnn Leenig commented that the picture of the sign given in the ZBA application is not the same as the current sign. Chairman Silverstein agreed and stated that he will address it.

Chairman Silverstein advised Mr. Virk that although he is asking for a variance for one sign, the Board is concerned about all of the other signs on the property. He also expressed concern that the top of the existing sign is different from the photo submitted in the application. Mr. Virk stated that the top of the sign is the same dimension but the new management company came in and changed the sign.

Chairman Silverstein asked Janis Anderson if the Board should address the additional signs at this time or focus only on the sign for the variance. Ms. Anderson stated that it was her understanding that a notice of violation has been issued for all of the signs. Mr. Virk did not respond. Chairman Silverstein asked Mr. Virk if he had been notified that the signs were not legal. Mr. Virk stated that he did not remember being notified. Mr. Colsey asked for the answer to be repeated. The Chairman stated that Mr. Virk stated that he did not remember. Mr. Colsey advised the Board that to refresh Mr. Virk's memory, he has had several conversations with him regarding the signs. He also had a discussion with a member of his management group Splash. During that conversation, he went through each sign with the representative from Splash and received a commitment from them and has a follow up email verifying that they discussed the signage issue with Mr. Virk. Mr. Virk stated that the representative from Splash had advised him that this is an issue of the sign after-the-fact and that he (the representative) had to deal directly with the Town regarding it. Mr. Virk is not getting involved with it.

Mr. Virk stated that the electronic sign is his doing but all of the other signs on the property are the responsibility of the new management company. Mr. Colsey advised the Board that signage runs with the property and not with the management company. Chairman Silverstein agreed and asked who the property owner was. Mr. Virk confirmed

that the property was in his name. The Chairman advised that the Board will speak with him. Mr. Virk stated that he has been a member of the community for 35 years and does not want to do anything that is not right. He stated that he wants to make his site comply with the Town Code.

Janis Anderson advised the Board that the one option that they have at this point is to adjourn the Public Hearing for one month to give the Applicant time to meet with the Building Department to determine which signs need permits, get them, and have them legalized. For the signs that can not get permits, either submit a variance application or remove them. Then the Hearing can move forward with all of the signs together. In order to proceed, an applicant should not have violations on their property. The notice of violation issued for the signs may not have been broken down by each sign. Regardless, the violations need to be resolved prior to the Board proceeding.

Chairman Silverstein advised Mr. Virk that if the Board agrees they will adjourn this Hearing until all of the violations have been resolved either by having permits, removing signs or requesting variances.

Chairman Silverstein verified with Mr. Virk that the large freestanding sign has not changed in size. Mr. Virk confirmed this. He asked Mr. Virk how he received approval for this sign. Mr. Virk stated he came in because the maximum height allowed in the Town is 20 ft. The Chairman agreed and reminded Mr. Virk that he made a presentation to the Board to get a variance for this sign. Mr. Virk stated that he did come before the Board for a height variance. He commented that his architect handled the variance application. The Chairman agreed and commented that when Mr. Virk came to the Board, was very knowledgeable regarding the requirements for the Town regarding signage. The Board granted the variance. He stated to Mr. Virk that he is now stating that someone from CITGO came to him and advised him that the sign could be changed without the Town's knowledge or approval. The Chairman stated to Mr. Virk that as a businessman, you would have had to have known the regulations as you did everything required of you to obtain the original variance for this sign. To now stand before this Board, that approved this sign originally, and state that you had no knowledge that everything you fought for and received, to just arbitrarily change to neon signage, add all of the additional signs and now state that you didn't know that permits or variances were required is very difficult to believe. Mr. Virk apologized. Chairman Silverstein stated that for him, this is not going to be an easy appeal. The Chairman continued pointing out that the top of the sign originally said "Fishkill Car Wash". It now reads "\$5.00 Car Wash". Mr. Virk stated that the new manager changed it. The Chairman stated that it was not the new manager. If he allowed the new management to make these changes, he now has to deal with them. The Chairman commented that when the station was first opened, it was very attractive and the ZBA granted a new sign. Now there are several sign, including ones across the street. He commented to Mr. Virk that he doesn't understand how he could change these signs without coming before the Board. Mr. Virk apologized again and stated that it wasn't his intention and that he doesn't want to do anything which is not acceptable to this Board.

Chairman Silverstein agreed that the new sign is easier to maintain than the manual ones where one has to remove the numbers. Modern technology is great, but he should have come before the Board to discuss it first. Lynne Raver agreed. MaryAnn Leenig also agreed and commented that the top of the sign was also changed without approval.

Chairman Silverstein called for questions from the Board or Floor. Chris Colsey requested that each sign be discussed on the record to ensure that there are no misunderstandings regarding which sign need permits or approvals. The Chairman agreed but suggested that this discussion be deferred to someone who has better knowledge of the signs and if they meet code. Mr. Colsey stated that both he and Joel Petrus could handle it for the Board.

Janis Anderson suggested that the photos be numbered on the back during the discussion to make it easier for Nancy Lecker to differentiate them for the minutes. Mr. Colsey agreed. The first photo was of the top of the freestanding sign originally showing Fishkill Car Wash, was changed without the benefit of a permit. The normal practice would be for the applicant to go before the Planning Board. He does not see any reason for the Planning Board to deny that request for the change, but the Applicant did not follow that procedure.

The second photo is of the yellow tent-style sign and he is not aware of any permit for this sign. Joel Petrus verified that there was no permit issued. Mr. Colsey stated that Planning Board approval is required for this sign. Janis Anderson asked if this sign meets code. Would he be allowed to go to the Planning Board for approval. Mr. Colsey suggested that if the site was in compliance, the Planning Board may consider it as part of a package.

Mr. Colsey stated that Mr. Petrus has pointed out a blue flag in front (photo 3) does not meet code and would not be accept by the Planning Board, and has been determined to be signage by Mr. Volkman, the Planning Board Attorney.

Mr. Colsey continued with photo 4 and stated that there are two signs one says car wash exit and an identical one which reads entrance. These signs were presented at a Planning Board meeting, possibly December 2005. Mr. Virk was not present at that meeting, but the architect who represented him was told to remove the sign from the site plan in order to receive approval for a gazebo. The signs were withdrawn by the architect but were installed.

The next photo is just a close up of photo 2.

Photo number 5 is a picture of a car wash sign. Mr. Colsey stated that he does not recall seeing this before but is willing to research it further. Mr. Petrus stated that it was not there. Chairman Silverstein agreed that he didn't remember seeing it before.

Nancy Lecker asked if there are any regulations regarding the American flags. Mr. Colsey stated that there are no prohibitions regarding American Flags.

Regarding photo number 6, Mr. Colsey confirmed that Mr. Virk agreed that this sign was erected in error. Mr. Colsey reiterated that there were three signs that had been withdrawn at the Planning Board meeting in November or December 2005. The minutes of that meeting reflect that the architect did withdraw them. Be it a misunderstanding or mistake, Mr. Virk brought the plan to Mr. Peters and was issued a building permit. The site plan that was given to Mr. Peters was not the approved site plan. It did not have Planning Board approval. The Planning Board did review the site plan and denied the signs. Marc Breimer asked for verification that this was in reference to the monument sign. Mr. Colsey confirmed that it was.

Janis Anderson questioned the window sign for the repair shop. Joel Petrus stated that was for the Brinckerhoff Auto Repair and was separate.

Mr. Colsey continued with photo 7a (two views) of a temporary yellow sign advertising window tinting and a third photo, 7b of an identical sign placed across the street in the DOT right-of-way. Regarding the sign that is on the property, Mr. Virk is allowed to seek a 60-day temporary permit for this sign, but he did not. Town Code specifically states that a temporary sign must be on the property so the Town does not have jurisdiction regarding the sign across the street and deferred to Janis Anderson concerning the possibility of getting a sign permit for the DOT right-of-way. Ms. Anderson stated that she was not aware that the DOT issued permits for signs in their right-of-ways. Mr. Virk would have to contact the DOT directly. Mr. Colsey referred back to the sign that is on Mr. Virk's property and reiterated that he does not have a permit but can apply for a temporary sign permit for a maximum of 60 days. Joel Petrus stated that the temporary can not be renewed. Mr. Colsey agreed and advised the Board that a temporary sign is usually tied to an event, such as a grand opening, or under new management.

Mr. Colsey reiterated that the entrance and exit signs were withdrawn at the 2005 Planning Board meeting. Janis Anderson asked if Mr. Virk could make a new presentation to the Planning Board to gain approval for those signs. Mr. Colsey agreed and advised that there is a provision in the code for directional signage.

Mr. Colsey addressed the next picture (photo 8) regarding the propane filling station. He stated that this was not presented to the Planning Board. It is fairly new and he admitted that he was not aware that there was a propane tank on the property. Joel Petrus stated that the tank has been there. Mr. Colsey accepted that the tank has been there but reiterated that the signage for it is new. Mr. Colsey advised the ZBA that the Planning Board did have one other propane tank come before them approximately a year ago and the Board did not give authorization for the owner to put signage advertising it. Mr. Virk has not asked for approval for this sign and given the history that the Planning Board has with the precedent of propane tanks, they may deny him this sign.

The next picture (photo 9) is in regards to the menu board for the car wash. The bottom section of the photo with the menu board for the car wash was approved. The additional signs do not have approval and Mr. Colsey stated that he was not aware that they had been installed until Don Cocker took the pictures.

Photo 10 may be considered directional signage. These have not been presented to the Planning Board for approval or to the Town for permits.

Photo 11 is of the monument sign that had been discussed earlier.

Mr. Colsey commented that the photo 12 (additional car wash sign) is similar to other temporary signs and suggested that the Planning Board may not approve of it.

The last photo is a different view of photo 8 (propane filling station sign) .

Mr. Colsey requested permission from the Chairman to address Mr. Cocker directly to verify that no additional signs were missed. Chairman Silverstein approved. Mr. Colsey asked Mr. Cocker if there were any additional signs. Mr. Cocker stated that an additional banner had been added over the entrance to the window tinting area since the photos were taken. Councilman Zack corroborated this statement. Mr. Colsey presented photo 2 to the Board and advised that the banner has been installed above this entrance.

Chairman Silverstein strongly urged Mr. Virk not to put up anything else.

Marc Breimer asked Chris Colsey if the word “ice” on the ice machine also constitutes a sign. Mr. Colsey stated that although technically it is a sign, there are cases where the Planning Board does not enforce it. Some machines come with sign details on them. The ice machine and propane tanks that say propane on them are examples.

Chairman Silverstein advised Mr. Virk that there was a lot of work that needed to be done on the property before the next meeting. He stated that although he isn't sure how much of the work will be done prior to the next meeting; there was a possibility that the ZBA may close the Hearing regarding the sign for this application. The additional signs need to be either legalized or variances requested for them.

Mr. Virk stated that he would get rid of his current architect, get new people involved and resolved this to the satisfaction of everybody. Janis Anderson advised Mr. Virk that if it is not resolved, the Town is prepared to proceed with notices of violations and pursuing it in Justice Court. Mr. Virk commented that he hoped it would not come to that.

Councilman Dennis Zack referenced the comment made by Mr. Virk stating that the oil company replaced his sign with this new sign without his knowledge. He commented that there are numerous gas stations in the Town and several CITGO stations in the area, and none of them have electronic signs. This variance is for just this one sign. All other signs are a separate issue. The Applicant can come back for a variance for all additional signs. This one variance should be acted upon separately. The ZBA would set a dangerous precedent if this variance is granted by allowing an applicant to come before this Board and state that they had no knowledge, someone else did it and I'm sorry, it won't happen again and just give it to me.

Chairman Silverstein stated that although he has no way of knowing how a vote will go, the Board has gone on record stating that they do not believe the Applicant's comment that all of this was done without his knowledge, especially when so much time and effort was spent getting the original sign approved.

The Chairman called for a motion to Adjourn this Public Hearing  
Lynne Raver made the motion to Adjourn the Public Hearing  
MaryAnn Leenig seconded  
Motion Carried

Barry Silverstein – Aye  
Lynne Raver – Aye  
MaryAnn Leenig – Aye  
Marc Breimer – Aye  
April Callahan – Aye

Chairman Silverstein reiterated to Mr. Virk to advise his new management company not to add any new signs. Mr. Virk stated that he would advise them.

Chris Colsey asked the Chairman to instruct the Building Inspector to do an on-site visit prior to the next ZBA Meeting., Chairman Silverstein agreed and so instructed.

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

April Callahan made the motion to Adjourn the ZBA Meeting  
MaryAnn Leenig seconded  
Motion Carried

Meeting Adjourned at 7:38pm

Respectfully Submitted,  
Nancy Fitzgerald-Lecker