



Town of New Paltz Zoning Board of Appeals
Regular Meeting of Monday, **March 20, 2023**
In-Person, Live-streamed/Recorded at 7:00 p.m.

APPROVED MINUTES

Present: Leonard Loza, Chair
Steven Esposito, Member
John Gotto, Member
Amy Donnelly, Member
Katherine Fuller, Member

Also Present: Joseph Moriello, Esq., Counsel for the Zoning Board
Stacy Delarede, Building Inspector
Kristine Tabasko, Planning/Zoning Secretary

Chairperson Loza opened the meeting at 7:00 p.m. Ms. Fuller made a motion to open, Ms. Donnelly seconded and all voting in favor. He requested a quorum check for next month's regular meeting, resulting in all present members stating they will be in attendance except Ms. Donnelly.

Chair Loza asked if there were any questions or comments regarding the drafted version of the Zoning Board meeting minutes of February 23, 2023, and there were none. Ms. Donnelly made a motion to approve the minutes and Chair Loza seconded with all voting in favor.

Chair Loza made a motion to open public comments with Ms. Donnelly seconding and all voting in favor. Chair Loza asked if there was anyone in attendance who wished to make a public comment, and there were none. Mr. Gotto made a motion to close public comments and all voted in favor.

Public Hearings

USE VARIANCE REQUEST

ZB23-067

Location: 235 Main Street Applicant: Giuseppe Portuese, Trustee
Zoning District: B2 SBL: 86.8-4-18

Chair Loza made a motion to open the public hearing for the applicant, with Ms. Donnelly seconding and all voting in favor.

The applicant restated the reasons for his request to have the property's use changed from commercial back to residential due to hardship by the owner. In 2006 the owner had a hard time renting the offices, the house wasn't set up for handicapped access standards. They were unable to rent the offices over the years. The owner is trying to sell the property.

The Building Inspector confirmed that none of the apartments at this time have a certificate of occupancy.

The Chair confirmed that all Board Members and Board Attorney have seen the letter submitted to the Board by a neighbor of the property – Rick Alfandre – which stated some of the issues he has with the property's condition. No other public comments/submissions were received by the Zoning Board secretary, and there was no one from the public in attendance who wished to speak about this application.

The Chair told the applicant that the application must be referred to the Ulster County Planning Board for review.

Mr. Moriello voiced his concern with the legal issues of the proposed use variance, asking the Chair to request proof from the applicant of the four considerations listed at the end of the ZBA application, items A-D: applicant is deprived of all economic use or benefit from the property, alleged hardship relating to the property is unique and does not apply to a substantial portion of the district, if granted, the use variance will not alter the character of the neighborhood and the hardship has not been self-created.

He clarified that in regard to Item A: under applicable zoning the applicant must demonstrate and provide proof that the owner is deprived of *all* economic use or benefit from the property in question. Generally the courts have held that there is no use under the local zoning law to which the property can be put for the owner to get a realized reasonable return. It doesn't have to be the highest and best return, it just has to be a reasonable return. So generally it requires looking at use tables to see what uses this building can be put to in the B-2 zone, i.e. professional offices, doctor, lawyer, dentist, etc. Someone has to demonstrate that none of those uses are available to the owner in that business zone. It is a difficult burden generally for an applicant to meet for a use variance, because you're asking to change the use. In this case you've got a commercial zoning district with a lot of commercial uses around it, on the side of it and across the street from it, etc., and somebody would have to demonstrate that there's no use with which to be put and if there's a hardship it's not that it's difficult to rent commercially or the flip side easier to rent in a college town like New Paltz perhaps for student housing, but the hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. So then you have to consider the surrounding B-2 uses as well.

The requested use variance will not alter the essential character of the neighborhood. If the Board finds the character of the neighborhood is commercial, then mixing residential uses with commercial becomes a difficult task for any applicant for use variance. And that the hardship has not been self-created. Hearing from what we have on the record, there was a commercial use in this building, but then the owner made it into a residential use and there were no permits for that – that was an unlawful conversion, so now the request is, having done that, they want to

return it to residential use or partial residential use which may have been lawful at the time if it was a residential use that started and continued when zoning was adopted.

So there's difficult proof in this, and again, I want the applicant to know those are the things that really have to be shown. How do you show the deprivation of uses? Generally, courts have held that is with what's called dollars and cents proof. Opinion evidence. An attempt to sell the property, but that the deal didn't work may not be enough as dollars and cents proof. Because the flip side is it could be converted and used as commercial. Renovations would be required no matter what it's zoned. Whether it's going to be commercial or residential there's a certain amount of work that would have to be done, I imagine.

The applicant stated the owners were not successful selling the property nor renting the property because the layout was not conducive to renters.

The Building Inspector said originally it was probably a single-family dwelling. Then it was converted into two or three apartments. Then it was converted into two offices on the first floor and upstairs, an apartment. They were compliant with code. They went from residential to commercial in the B-2 district, and in the 1990s it was commercial. At some point he may have converted the office space, not taking the kitchens out, left there for a break room, or whatever. And the use was compliant. Once you go from non-conforming to conforming, you can't go back to non-conforming. And that's what they did upstairs. Not downstairs, upstairs where the barber shop was. He changed it to a non-conforming use – that's what he did.

Mr. Moriello stated it could have continued to be a residential dwelling in the B-2 district as non-conforming, but once they became conforming by switching to commercial use, they lost the ability to go back to non-conforming.

Chair Loza requested the applicant to provide the Board with substantial proof of their attempts to rent the property as commercial space.

The applicant agreed to have his submissions to the secretary by March 28, in order to be able to include it with the ZBA's referral documentation to the Ulster County Planning Board.

Ms. Donnelly commented that a variance runs with the land and personal considerations should be left to the side and you should make your application based on the issues with the land that would apply to any owner.

Chair Loza and Attorney Moriello told the applicant again how important the submission of proof for Items A-D on the application is. It is the applicant's understanding that there was a buyer for property who had an interest in developing the property as residential mixed use, but he can't verify that as he was not involved at that time. He believes that sentiment has been a common theme from other potential buyers.

The applicant asked the Board "when the property changed over from residential to commercial does that just change over and it's no longer permitted?" Ms. Donnelly responded that there's such a thing as pre-existing non-conforming use. The Building Inspector further clarified by stating that the property was residential, then the commercial zoning went into effect (B-2)

whereby single-family residential housing is not permitted, but if one was there it could remain – forever. But once the owner changed that use – from a non-conforming use to a conforming use, which he did – he can’t go back. Mr. Moriello stated “but that’s the burden for you now, once the property became commercial conforming use, asking for a non-conforming use – asking to change an allowable use to a not-allowable use.”

Mr. Gotto made a motion to have the public hearing remain open with Ms. Donnelly seconding and all voting in favor.

AREA VARIANCE REQUEST: Two Signs

ZB23-066

Location: 409 Main Street Applicant: CPD Group, Owner: GTY Leasing

Zoning District: GB SB: 86.12-5-5

Ms. Donnelly made a motion to open the public hearing for the applicant, with Mr. Gotto seconding and all voting in favor.

No public comments/submissions were received by the Zoning Board secretary, and there was no one in attendance from the public who wished to speak regarding this application.

The applicant restated the purposes of his area variance application for two additional “Mobil” signs to be added to the canopy corners over the gas pumps on the property. These are in addition to the two signs allowed under the Code which include a monument sign and store sign on the building’s facade.

The Building Inspector stated that she had evaluated whether or not the “Synergy” logos that are displayed on the gas pumps were considered by the Code as signs, and has determined that since they are not there to “bring the public in” they are not to be considered signs.

Responding to a question from the Chair, the applicant indicated that the dentil mouldings were to be removed. Mr. Kievit from CPD Group stated he had met that morning with the TONP Planning Board’s architect, Kurt Sutherland, to review some of the proposed site plan designs. It is the applicant’s intent to replace the dentil mouldings and place a blue solid line around the perimeter of the canopy.

The applicant submitted to the Board directly four copies of the proposed canopy sign which measures 100 X 36 inches. Each one will be placed on the corners of the canopy facing the road frontage.

The Chair asked the applicant if he could share some of the comments from his meeting with the Planning Board architect and he responded that the focus of this meeting was the proportions of the front of the building. In the design discussion, the applicant’s argument was that dentil mouldings are not necessarily appropriate for a building of this type, it is usually reserved for churches, state buildings, that kind of thing – and he wondered if a convenience store should be elevated to those types of buildings. The applicant is looking at other buildings in Town that have a cleaner trim look and appearance. He is looking at beefing up the front with certain columns

and creating stopping points for the siding that they are proposing for the building. They will be reducing the siding on the flanking sides of the building and focusing on the pediment detail on the front. They are going to propose removing the dentil mouldings to have a cleaner panel similar to the way the Lemon Squeeze (restaurant on Main Street) looks.

Ms. Fuller questioned the applicant about putting the Mobil sign on the face of the building, replacing the Chestnut Market, and then they wouldn't need a variance. The applicant said Chestnut Market is their domain and their sign goes on that building. They view the canopy and fueling part of the property as Mobil Corporation and that's their domain and branding.

Ms. Donnelly agreed with Chair Loza that the canopy structure tells the public that it's a gas station, so the question is are we going to grant two signs more than zoning permits, is there some reason that people can't tell that this is a Mobil station? Because if they can tell, she would be inclined to vote against the signs. And there's a lot of visual clutter with the pediment, a green sign with a squirrel and red signs, blue stripes, red pandas, people's eyes are going to be attracted to it as they come off the thruway and I can't imagine they'd think of anything other than it is a gas station. Visual clutter is a safety consideration given the truck and car volumes exiting the Thruway.

The applicant stated that the canopy signs will be illuminated, the Mobil sign internally illuminated, which the Building Inspector stated is allowed.

The applicant restated the importance of Mobil's brand recognition and recommendations they expect CPD to adhere to. Ms. Donnelly stated that while a company may say they require certain types/sizes of signs, she knows based on experience that companies were perfectly accepting of plan/design changes made to requirements due to local planning/zoning law.

The Chair advised the applicant to make a new submission showing the brightness of the internally illuminated sign. The submission should be included in the Ulster County Planning Board.

Mr. Gotto wanted to make one technical comment related to the criteria of this area variance concerning if it is a substantial change – so on the face of it you're asking for a 100% difference, it's a change of 100% to go from 2 to 4 signs. That's got to be in my view, substantial. So that needs to be worked in, for answers to those questions.

Ms. Donnelly made a motion to have the public hearing remain open with Ms. Fuller seconding and all voting in favor.

AREA VARIANCE REQUEST: Loading Docks on Front Side of Building

ZB23-016

Location: 27 N. Putt Corners Road Applicant: Bimbo Bakeries USA, Inc.

Zoning District: I-1 SBL: 86.8-5-13

AREA VARIANCE REQUEST: Loading Docks on North Side of Building

ZB23-017

Location: 27 N. Putt Corners Road Applicant: Bimbo Bakeries USA, Inc.
Zoning District: I-1 SBL: 86.8-5-13

AREA VARIANCE REQUEST: Parking within Yard Setbacks

ZB23-077

Location: 27 N. Putt Corners Road Applicant: Bimbo Bakeries USA, Inc.
Zoning District: I-1 SBL: 86.8-5-13

AREA VARIANCE REQUEST: Dumpster Location within Setbacks

ZB23-078

Location: 27 N. Putt Corners Road Applicant: Bimbo Bakeries USA, Inc.
Zoning District: I-1 SBL: 86.8-5-13

Mr. Gotto made a motion to open the public hearing for the applicant, with Ms. Donnelly seconding and all voting in favor.

No public comments/submissions were received by the Zoning Board secretary, and there was no one in attendance from the public who wished to speak regarding this application.

BBU, Inc.'s consultants, John Montagne, of Greenman-Pederman, Ryan DeSalvatore appeared before the Board and restated the existing conditions, as well as the reasons and facts behind the four requested area variances.

The Chair confirmed that there will be no planned traffic pattern from the applicant's property through to H.W. DuBois Drive, given the existing bike lane.

Ms. Delarede confirmed with the applicant that the route trucks facing N. Putt Corners Road will only be there from 11:00 pm to 6:00 am, usually loading after midnight.

The applicant has not addressed the lighting plan as yet, but will do so when the Town's Planning Board refers their site plan application to the County.

The Building Inspector confirmed for the Board that the main part of the building was constructed in 1959, with additions put on subsequently in 1968, and 1973.

Ms. Fuller made a motion to have the public hearing remain open with Mr. Esposito seconding and all voting in favor.

The Chair and Board then took a moment to express their gratitude and appreciation to Stacy Delarede for her years of dedicated service as Building Inspector for the Town.

There were no other items on the agenda. Ms. Donnelly made a motion to close the meeting and Mr. Esposito seconded it, with all voting in favor of the motion.

Prepared by Kristine Tabasko, Zoning Board of Appeals Secretary

This meeting is viewable online at: <https://www.youtube.com/watch?v=1URhSPUVGSI&t=2127s>