

ZBA MEETING – DECEMBER 27, 2007

(Time Noted – 9:30 PM)

FRED DEPEW – DEPEW OIL

5182 ROUTE 9W, NBGH
(43-5-41.2) B ZONE

Applicant is seeking an area variance for an erected sign. Signs are required to be located at least 15 feet from the street line.

Chairperson Cardone: Our next applicant Fred Depew, Depew Oil.

Mr. Depew: Hi, I've applied for a Permit for a variance for distance from the road on a sign and I understand it went to the Orange County for approval or disapproval and I'm here for an answer.

Chairperson Cardone: Actually there was another issue also but I will read the report from the Orange County Department of Planning –

Based on our review of the material submitted regarding the above referenced site plan in accordance with section 239 paragraphs l (L) and m (M) of the General Municipal Law and do not have any significant intercommunity or countywide considerations to bring to your attention. We recommend Local Determination of the matter.

I think one of the issues, one of the reasons that we held it open was a statement was made at our initial meeting regarding other signs that were on the property. And we were told that those signs would be taken down the next day. I along with several other Members pass the site daily and I have not seen those signs taken down. And I think there was a concern on the part of several Members of the Board that those signs were not taken down. Am I correct in that?

Mr. Manley: Yes.

Mr. Hughes: Yes. I think there was another issue there to with the Building Department where they didn't inspect the sign when they mounted it. And there was quite a discussion about the footage that it was hanging over. We were told it was 20 inches and it turned out to be 7 feet. I don't know if that has ever been resolved.

Mr. Mattina: Right. An inspection was never done, if you approve this, we will have them expose the footings, verify the footings are done and as for the overhang part my calculations were correct. It's from the center of the pole you have a 4-foot overhang and he went from the property line not street line.

Mr. Hughes: So you're talking about NYS DOT's curb cut?

Mr. Mattina: I have to look at the map.

Mr. Donovan: I think he is talking about the property line to the nearest portion of the sign.

Mr. Mattina: Right.

Mr. Hughes: The property lines is a foot and a half back from the DOT right of way and the sign is hanging over 4 feet or 7 feet?

Mr. Mattina: I'll have to look at it to refresh my memory.

Chairperson Cardone: While they are looking at that could you please address the other signs that are on site?

Mr. Depew: I was not at the last meeting. I've had some health problems, some issues. I'm not aware of ...the only thing we had out there was a Help Wanted sign and a propane, there's one of those swinging signs.

Ms. Eaton: There was one of those portable signs.

Mr. Depew: Yes, the portable that's what I am talking about.

Ms. Eaton: Is it still there?

Mr. Hughes: There was some canvass signs too hanging on an oil tank.

Mr. Depew: That's on the next piece of property. I own that property but it's separate.

Chairperson Cardone: I was referring to the portable sign and also the small sign, the Help Wanted sign which actually when you leave the property it does block your view somewhat of the traffic on 9W.

Mr. Depew: I can remove it; again I wasn't aware of it.

Chairperson Cardone: These are the two (showing Mr. Depew a picture); I think you know which two they are.

Mr. Depew: Yes, they are the only two signs out there.

Chairperson Cardone: This one here and there's the Help Wanted.

Mr. Depew: Oh, O.K. this one you're talking about.

Chairperson Cardone: Right, that one.

Mr. Depew: O.K. that's not a problem.

Chairperson Cardone: Those two.

Mr. Depew: Yes.

Mr. Donovan: Back in October, David Depew was here and he said he would remove the sign the next day.

Mr. Depew: O.K. tomorrow is another day. I will be there.

Chairperson Cardone: I could stop in to remind you.

Mr. Depew: It's not necessary.

Mr. Hughes: O.K. we found what we were looking for here.

Mr. Mattina: The center of the pole is 12 foot from the property line; you have a 4 foot protrusion from the center of the sign out that would leave 8 foot remaining, so they need a 7 foot variance.

Mr. Hughes: What's the date on that one?

Mr. Mattina: October 25th, '07.

Mr. Hughes: This is November and there's something in this that says something as well. Was David the one that was at both of these? Was David the one at both of these meetings or weren't you at the first one?

Mr. Depew: I was at the first one and then he was at the second.

Mr. Hughes: O.K. that's the one that has the footings?

Mr. Mattina: Right.

Mr. Hughes: So is that still an issue that that thing is hanging over?

Mr. Mattina: Well, yes, the pole itself is only 12 foot from the property line and it comes back 4 foot towards the road so they still need a 7 foot variance.

Mr. Hughes: So is that the only thing we are here for now is that 7 foot variance?

Mr. Mattina: Yes.

Mr. Hughes: And is the Building Department O.K. with digging up the footing thing and inspecting that (inaudible) with this process?

ZBA MEETING – DECEMBER 27, 2007 (Resumption for decision: 10:09 PM)

FRED DEPEW – DEPEW OIL 5182 ROUTE 9W, NBGH
(43-5-41.2) B ZONE

Applicant is seeking an area variance for an erected sign. Signs are required to be located at least 15 feet from the street line.

Chairperson Cardone: Our next applicant Fred Depew – Depew Oil, 5182 Route 9W, seeking an area variance for an erected sign. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: I think we've discussed this one quite a bit, he has agreed to remove the other signs. I make a motion to approve this variance.

Mr. Donovan: Subject to removal of the other signs?

Ms. Drake: Yes.

Mr. Hughes: And we have to have our Building Department go out there and look at the footings.

Mr. Donovan: And compliance.

Mr. Kunkel: Second that motion.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Robert Kunkel: Yes

James Manley: Yes

Grace Cardone: Yes

ABSENT: John Mc Kelvey

Chairperson Cardone: The motion is carried. (Time Noted – 10:11 PM)

Handwritten signature and date: JG 1/18/08

received
2-20-08
12-27-07

Section 43, Block 5, Lot 41.2

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

DEPEW OIL

DECISION

For area variances as follows:

- *Grant of a variance allowing a free-standing sign to be located 7 feet from street line where 15 feet is required.*

-----X

Introduction

DePew Oil seeks area variances as follows: (1) A variance allowing a free-standing sign to be located 7 feet from the street line where 15 feet is required.

The property is located at 5182 Route 9W in the B Zoning District and is identified on the Town of Newburgh tax maps as Section 43, Block 5, Lot 41.2.

A public hearing was held on October 25, 2007, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

Section 185-14 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Sign Regulations," requires, *inter alia*, that freestanding signs "may not be located closer than 15 feet from any street line.

Background

After receiving all the materials presented by the applicant and the testimony of David Depew, at the public hearing held before the Zoning Board of Appeals on October 25, 2007, the Board makes the following findings of fact:

1. The applicant is the owner of an 1.3± acre lot (tax parcel 43-5-41.2) located at 5182 Route 9W.
2. The lot is improved by a commercial use. The applicant has erected a free-standing sign that will be 7 feet from the street line. This setback does not comply with the Town Code requirement of 15 feet.¹
3. The applicants' proposal is set forth on a set of plans prepared by Lewis Sign Company. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
4. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Free-Standing Sign	15'	15'		7'	54%

5. No Members of the public were heard during the hearing. noted that The Building Inspector denied a building permit application by letter dated September 18, 2007.
6. The applicant has appealed the Building Inspector's determination.

¹ The pole upon which the freestanding sign is attached is some 11 feet from the street line. The sign itself extends another 4 feet toward the street. As a result, the sign, already installed by the applicant under the guise of replacing an existing sign, is only 4 feet from the street line.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes an unlisted action under the State Environmental Quality Review Act. Upon review and due deliberation the Board, acting as Lead Agency, finds that the approval of the applicant's proposal will have no significant adverse environmental impact and, accordingly, hereby issues a negative declaration pursuant to the applicable provisions of SEQRA.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the Hearing that the sign would be in harmony with this existing, commercial, neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

No contrary evidence or testimony was submitted to Public Hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from the construction of the proposed addition.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variance will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Certain unique circumstances mitigate in favor of determining that there is a need for the variance.

The applicants retained the services of a sign company to install the sign in question. It appears, from the testimony at the public hearing that the sign company mistakenly believed that the pole supporting the sign needed to be 15 feet from the property line when in fact the sign itself needs to be a minimum of 15 feet from the *street line*. Since the sign is now erected, the Board finds in this case, and upon these specific facts, that it is unduly harsh and punitive to compel the removal of the sign. As a result, the Board finds, upon the specific facts present, that the only method, feasible for the applicant to pursue, is the requested variance.

(3) Substantial Nature of Variances Requested

The variance requested is substantial. However, the request for this variance must be viewed in the context of (a) the existing non-conformity of the residence on the lot and (b) the extent of the *variation* from that existing condition. Because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the variance requested does not prohibit us from granting the application because there will be no variation from the existing footprint resulting from this grant of a variance.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variance would result in any adverse physical and/or environmental effects. The applicants' representative testified that no such effect would occur.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variance will not adversely impact the physical and environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant is charged with the knowledge of the Town Code.

However, the board believes, under the circumstances presented, that the self-created nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of these


variances.

Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variance as requested upon the following conditions:

1. Removal of the other existing freestanding signs on the premises. Failure to remove these signs shall result in the variance issued by this decision becoming null and void.
2. Compliance with all building department requirements, including, but not limited to, satisfactory footing and electrical inspections. Failure to comply with this condition shall result in the variance issued by this decision becoming null and void.
3. The variance hereby granted is granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
4. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

Dated: December 27, 2007



Grace Cardone, Chair
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member Brenda Drake
Member Ronald Hughes
Member Ruth Eaton
Member James Manley
Member Robert Kunkel

NAYS: None

ABSENT: Member John McKelvey

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on December 27, 2007.



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on FEB 20 2008.



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH