

ZBA MEETING – MARCH 22, 2012

(Time Noted – 10:02 PM)

GDP AMODEO PARTNERS, LLC

UNION AVE (RTE 300) & ORR AVE, NBGH
(96-1-6, 7, 8, 9, 11.1, 95-1-37.2, 36) IB ZONE

Applicant is seeking area variances for varying fronts and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and restaurant (existing) space.

Chairperson Cardone: All right, if we could take all other discussions out into the hallway so that we can continue with the agenda. Our next item on the agenda is GDP Amodeo Partners, The Shoppes at Union Square.

Mr. Wolinski: Yes, good evening, Larry Wolinski, here for the applicant this evening. This is a continuation a...as of last time we were only waiting for the a...report of the County Planning Department. The County Planning Department has issued its report a...to summarize all of the variances were approved with the exception of a...single a...variance which was denied by the County a...in connection with the request for lot surface coverage for the a...Cosimo's parcel. And a...what the a...letter actually says in pertinent part is that a...studies have shown that on average for every (10%) ten percent of impervious cover the cost associated with drinking water treatment increases by (20%) twenty percent therefore our office does not recommend that the Board allow an increase of impervious surface above that allowed by the Zoning law. Now, I'd like to respond to that in essentially three a...with three a...points. Point one is that the person a...with all due respect to the person who reviewed this, apparently that person did not comprehend or realize that this Cosimo's parcel is part of an overall shopping center and not an independent a...parcel a...in essence for which we're asking a variance for. The reason we need a variance for surface coverage on that is because as you recall the lot line is remaining on Cosimo's for financing reasons. Not on...you're all familiar with that with past dealings that you've had with shopping centers so if you look at the shopping center as a whole, the lot surface coverage is a...(65.6%) sixty-five point six well, well below the (80%) eighty percent required so it seems that, I don't know if they didn't have a copy of the...the entire site plan when they reviewed it or...or what. But it seems like that point was missed. The second a...a...thing is that, of course, you're all aware that this has been long approved, has its a stormwater permits and complies with all the Town regulations, it complies with all the State regulations particularly for the treatment of stormwater and in addition to that a...past reviews a...you folks, particularly a...Mr. Hughes had requested certain things be done a which were in fact done a...to help improve the a situation out on that site. And then the last point is a...is actually a point made by our engineer. When I showed our engineer the statement here of the general nature of that statement he...he just didn't really know how to respond to it because the statement just kind of says that there's this a...that studies have shown and the statement does not say that in fact, in this case that would happen. So I think you have to take it all with a grain of salt. Now because we have a...disapproval on that particular variance tonight and there are only five of you here I would need a unanimous vote on that. If I

can't get that unanimous vote on that tonight I don't want to fall into the trap that Dave was talking about in connection with the other applications.

Chairperson Cardone: But I should mention I will not be at the next month's meeting. I will out of Town at that time so...

Mr. Wolinski: Okay.

Chairperson Cardone: ...you're also going to be lacking a Member next month.

Mr. Wolinski: Okay, we're lacking two Members tonight so but I don't...let's wait and here if there is any particular issue. But that's the only thing, everything else was approved. All the other information about the variances were put in...placed into the record...

Mr. Donovan: Larry, can I interrupt for a second? Because I just...I couldn't find the County report from last application but didn't they deny it also?

Mr. Wolinski: The last...?

Mr. Donovan: Was it a different reason or the same reason?

Mr. Wolinski: The last application it came in late so the Board didn't consider it. I never saw it.

Mr. Donovan: Well I...

Mr. Hughes: You're right Dave; there was one that came in that was pretty grueling. It...it...

Mr. Donovan: Well I think it said the same thing it says, because I'm reading from the decision and I said that we don't a...we're not going to rely upon it because it was late but we say a...curiously the County does not address their prior letter issued with the 2008 application which found all the variances including the lot surface were for Local Determination and the total increase in surface as compared to the 2008 decision is less than (1%) one percent we can find no basic difference on issue of lot coverage between the 2000 application...the 2008 application and the 2009 application.

Mr. Wolinski: Yeah, that...that's correct, it's the increase is (.5%) point five percent overall and...and...all I can...all I can say a...is that we believe it had to be a different review this time and maybe the...this reviewer didn't look at the prior determination.

Mr. Hughes: I think part of what went on here as well, weren't there some zero...

Ms. Gennarelli: Ron, pull your mic in please. Thanks.

Mr. Hughes: Weren't there some zero clearances and reciprocal parking agreements between...

Mr. Wolinski: Yes.

Mr. Hughes: ...the properties?

Mr. Wolinski: Yes, yes.

Mr. Hughes: And I think that some of that disappeared or evaporated in that change.

Ms. Drake: Can you...they make reference to a...the watershed of the Washington Lake, is the whole project within that watershed or just the Cosimo portion?

Mr. Wolinski: They...I...I don't know, I'm not the engineer on the project, I believe...

Mr. Hughes: The whole project...

Mr. Wolinski: ...it is.

Ms. Drake: The whole project.

Mr. Hughes: It is.

Ms. Drake: So when they say, you know,

Mr. Manley: That creek runs.

Ms. Drake: You have to increase the impervious surface.

Mr. Hughes: Murphy's creek.

Mr. Manley: The ditch.

Mr. Hughes: Murphy's Ditch, they are two different things.

Ms. Drake: Yeah, but I mean if you're...okay.

Mr. Hughes: All of the drainage off the top of 17K by Orr Avenue and the Air Guard entrance goes through a stream and by the old cemetery and then under the Thruway and then it comes out and wiggles its way and turns back towards 17K.

Mr. Wolinski: I...I can't make sense of the comment quite honestly because unless its...it...there's actual...there's actual proof of what it does, you know, it doesn't...

Ms. Drake: Right.

Mr. Wolinski: You can't just say studies show.

Ms. Drake: But in reading the report from McGoey, Hauser and Edsall is also stating that you're treating (110%) a hundred and ten percent of the water quality...

Mr. Wolinski: That's right.

Ms. Drake: ...and volume...so you're going above...

Mr. Wolinski: Above.

Ms. Drake: ...a hundred percent...

Mr. Wolinski: Correct.

Ms. Drake: ...the State regulations...

Mr. Wolinski: Correct.

Ms. Drake: ...and treating a hundred and ten percent...

Mr. Wolinski: That's correct.

Ms. Drake: ...so you could actually, in fact, say that that's mitigation for the dismissal.

Mr. Wolinski: Yes. I mean its going...its going above and beyond I mean...

Ms. Drake: Right.

Mr. Wolinski: The...the Town of Newburgh holds a...applicants a...to very strict standards when it comes to stormwater treatment and discharge and that's what would have happened here so...

Mr. Hughes: Part of the reason for that was they considered a (1200) twelve hundred acre portion of the edge of zero niner two seven (0927) at Stewart to be a contributor to the water that goes down in there, that's why they went to the overage.

Ms. Drake: Well the reason I started asking that question is the way you started out, you referenced the Cosimo site and I thought you were referring that to just item one and if that's already...you're not really changing the imperviousness to the Cosimo site...

Mr. Wolinski: No, not, well not at all, not at all...it's the same; just remember this is a re-instatement of variances that were already granted so we're not changing anything.

Ms. Drake: Right, I realize that.

Mr. Wolinski: And...and so yeah there's nothing changed, I just started out with that to show that because that lot line remained for financing purposes that's the only reason that variance was even necessary.

Mr. Donovan: If I can, your honor? What is zero niner two seven (0927)?

Mr. Hughes: That's the runway on the compass reading, that's the main runway at Stewart.

Mr. Wolinski: Obviously you're not a pilot.

Mr. Donovan: Obviously not, you wouldn't want me flying a plane, I'll tell you that right now.

Mr. Hughes: You wouldn't to get in a plane with me either.

Mr. Donovan: Nope.

Mr. Wolinski: I know I wouldn't want you flying one on St. Patrick's.

Mr. Canfield: That's from Ron's flying days.

Mr. Hughes: What makes you think I stopped?

Mr. Manley: Jerry, he still is flying.

Mr. Wolinski: That's all I have.

Chairperson Cardone: Okay. Do we have any other questions regarding this? And everyone has had a chance to look at the memo from McGoey, Hauser?

Mr. Wolinski: I have not seen a copy of that letter.

Chairperson Cardone: Oh, would you like this copy?

Mr. Wolinski: If you have an extra copy...

Chairperson Cardone: Okay, let me read the rest of the County report into the record. The County Planning finds no inter-municipal or county-wide impacts related to the relief of front yard and side yard setbacks or signage square footage. Therefore, our office recommends that the Board make a decision only after weighing the balance to be realized by the Applicant against potential detriment to the health safety and general welfare of the neighborhood and/or community. And that's Local Determination, is the County Recommendation on that issue and we already heard unless you'd like me to read it again on the other issue.

(No response)

Chairperson Cardone: Do we have any questions, comments from the Board? How about any questions or comments from the public?

Ms. Drake: I'll make a motion to close the Public Hearing.

Chairperson Cardone: Do we have a second?

Mr. Manley: I'll second the motion.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: That motion is carried. Before proceeding I'd like to confer with counsel over legal questions that were raised by tonight's application so I would ask in the interest of time if you would go out into the hallway and we'll call you in shortly.

(Time Noted – 10:12 PM)

ZBA MEETING – MARCH 22, 2012 (Resumption for decision: 10:38 PM)

GDP AMODEO PARTNERS, LLC UNION AVE (RTE 300) & ORR AVE, NBGH
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Applicant is seeking area variances for varying fronts and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and restaurant (existing) space.

Chairperson Cardone: On the application of GDP Amodeo Partners, Shoppes at Union Square seeking area variances for varying fronts and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and restaurant space. This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

Mr. Manley: I...go ahead...

Ms. Drake: Go ahead, Jim.

Mr. Manley: I would be inclined to a...move a motion on this, just with the condition that the applicant...

Mr. Donovan: We'll do the Neg Dec first.

Chairperson Cardone: Neg Dec.

Mr. Manley: Neg Dec?

Chairperson Cardone:

Mr. Manley: Well I'll make a motion to declare a Neg Dec.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Now on this application do we have further discussion? Or do we have a motion?

Mr. Manley: I'll let you go this time, no really, I'll defer to you.

Mr. Hughes: I'll move it.

Ms. Drake: Second.

Mr. Donovan: Now did we want to a...have any condition relative to the stormwater or no?

Mr. Hughes: The only thing we wanted to review was the discussion with Adrian Goddard, the developer, about taking care of that.

Mr. Donovan: Well that's in the old decision I don't know if there's any issues in the new...?

Ms. Gennarelli: But you've got to get up and walk to the microphone, I'm sorry.

Mr. Donovan: Well let's just ask this Larry, are there any issues in this memo from Pat Hines that for whatever reason is dated October 9, 2009 and received by the ZBA March 16, 2012? Was this stuff already done, or...?

Mr. Wolinski: Well probably, I'm not sure...

Ms. Gennarelli: Excuse me, excuse me...

Mr. Donovan: Sorry.

Mr. Wolinski: It's not already been constructed but I don't believe it's an issue if you want to attach that as a condition to your determination.

Chairperson Cardone: Right, I think that's a good idea. All right Jim has...

Mr. Donovan: That was Ron's motion.

Chairperson Cardone: That was Ron?

Mr. Manley: That was just my only thing was that we make sure that the conditions set forth by McGoey, Hauser and Edsall were followed.

Mr. Hughes: Okay and a report on that neighbor. So I'll move it.

Chairperson Cardone: Do we have a second now?

Ms. Drake: Second.

Ms. Gennarelli: Okay.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY

ABSENT:

RUTH EATON
JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE
JOSEPH MATTINA, CODE COMPLIANCE
MARK TAYLOR, ATTORNEY FOR THE TOWN

(Time Noted – 10:41 PM)