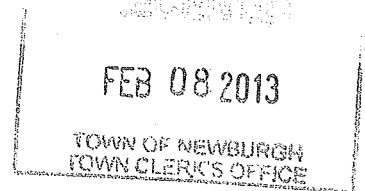


ZBA MEETING – JANUARY 24, 2013

(Time Noted – 7:02 PM)

GAS DEVELOPMENT LEASE, LLC.

1413 ROUTE 300, NBGH
(60-3-40.2) I / B ZONE



Applicant is seeking an area variance for an exit driveway shall have an unrestricted width of not less than 25 ft. to build a gasoline station and a tire service business.
(Previous variances granted 6-28-12)

Chairperson Cardone: Our first applicant is Gas Development Lease.

Ms. Gennarelli: The Public Hearing Notices for all of the new applications being heard this evening were published in The Sentinel on Tuesday, January 15th and in the Mid-Hudson Times on Wednesday, January 16th. This applicant sent out fifteen total registered letters, thirteen were returned. The mailings and publications are in order.

Mr. Cappello: Good evening everyone, my name is John Cappello I am an attorney with Jacobowitz and Gubitz and I'm here on behalf of the applicant. I'm here solo today so I don't have my fancy maps from the...

Ms. Gennarelli: John that comes off, you can just pop it off.

Mr. Cappello: ...fancy maps from the engineer but what we're here for tonight if you may recall a...three months back we were before the ZBA as it relates to a proposed gas station facility and a Somerset Tire Service facility located on Union Avenue a...(inaudible) this is the Newburgh Mall right here. We did receive a variance related to the distance requirement which was between gas station and signage. One of the issues that was raised in the Hearing at that meeting and then was raised again by the planning board a...was the ability to make left turns a...from the site out on to Route 300. The applicant does have an easement along the rear of the property to connect to the Newburgh Mall access road in the rear to get to Meadow Hill Lane. At that time it looked like it would be very difficult because over time this area has become wetlands in the rear portion of the parcel so it's been very difficult to a...obtain a permit but after going to the planning board and as part of the planning board review a...the engineers determined that we would be able to get a permit to construct a one-way (18) eighteen foot wide a...drive across the easement from the rear of the parcel so this is the match...match on the rear of our parcel then across the wetlands area to connect to the Mall a...back road so people could go up to Meadow Hill make the right turn and make a left at the signalized access instead of making a left turn out of the site. The traffic for the site does work and you know, we have had preliminary talks with the D.O.T. a...without this access when we thought it would be a feature a...that the applicant would like to explore. And now it turns out after we design the road and went back to the planning board a...that there is a provision in your Code that says any access drive to a gas dispensing facility must be (25) twenty-five feet in width. For us to construct this (25) twenty-five feet in width we would go above one of the a...one of the thresholds of the wetlands, disturb it which would...which would raise us into another level which would make this impossibly

expensive and probably it's...practically impossible to build because we would then have to do wetlands mitigation outside of a (50) fifty foot a...right of way so this is the widest we could go given the current a...wetlands regulations so while as I said, while the traffic does work without this road it works much better with this road because it allows people one if they want to go to the Mall they just go back up to your...go to the road that will let you go to the Mall and once again the best feature of this is they could leave the site, go back along this road at the access road and then go out, right, in, make a left turn at the signalize light without having to make a left turn and cross traffic on...on 300. So we then would require in order to construct this an area variance from your Board for relief to allow us to build it (18) eighteen foot in width instead of (25) twenty-five feet. The final design of the you know, whole project will still have to go through the planning board review. We have been in front of the planning board a...had concept approval, met with the consultants and have started addressing their technical comments and putting the planning board's traffic consultant to make sure they're satisfied that the traffic within the site and out on to 300 works but really what we've come here tonight is to ask for relief from that (25) twenty-five foot width requirement to allow us to construct it.

Mr. McKelvey: That's six...going to be an ...just an exit right?

Mr. Cappello: It will just be an exit, right.

Chairperson Cardone: I am going to read the report from the Orange County Department of Planning just in case there is anything you need to respond to. Based upon our review of the submitted materials our office has found no evidence that significant inter-municipal or county-wide impacts would result from its approval. The project site is within one of Orange County's identified priority growth areas therefore development that is sensitive to the surrounding resources is encouraged. Additionally the project is an adaptive reuse of an existing brownfield which our office encourages over new construction on a greenfield. County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the community and that's Local Determination.

Mr. Cappello: (inaudible) would be to agree with their recommendation. As it relates to the detriment to the neighborhood this certainly I think explained the benefit of allowing us to a...have a better traffic flow and as far as the you know, detriment to the surrounding area I don't think it will have any detriment this wetland while technically it's a wetland really you know, is between is...is to the rear of what was a trucking facility next to the Newburgh Mall. It's...it's not a very useable wetland it just happens to be the area where drainage for the Mall and everywhere, you know, just collected. Our disturbance to it will be minimal and, you know, I think we're doing it in an attractive way so I think the...instead of the detriment I think it would actually benefit the traffic flow in the entire area and a...allow us to you know, redevelop and make this site an attractive site where as right now it's an abandoned a...you know, former trucking facility.

Chairperson Cardone: Okay, Mr. Canfield do you have any comments on this particular?

Mr. Canfield: Yes, Mr. Cappella...is this on?

Ms. Gennarelli: I'm not hearing it.

(Inaudible) (Floor mics not working correctly)

Mr. Canfield: Mr. Cappella has legitimate concerns. We have discussed at the planning board, I say we...the planning board's consultants, the drainage consultants about the wetlands concerns. As he points out, 185-28 of our Code requires all entrance and access entrances and accesses to...I think we lost it (the mic), oh, we're still here...to and from service stations be (25) twenty-five feet in width. Because of the wetlands concern (18) eighteen feet is what they're proposing.

Mr. McKelvey: You've got to talk directly in that. You can see when you turn your head you lose it.

Mr. Canfield: I'm losing it, okay. From the fire protective point of view the secondary entrance and access would be an asset to this project. As we're all aware of the traffic that is normally on Route 300, in the event of an emergency this roadway would provide a means of secondary access. Normally in this scenario it may not be required by Code however, it would be beneficial to the site. Required width for fire access roads generally is (20) twenty feet a...but we're talking about an unpopulated area where this roadway is there is nothing there, no exposures. More than likely there will not be any parking or stacking of fire apparatus so (18) eighteen feet is acceptable. Essentially that's the only comments that I have on it.

Chairperson Cardone: Okay, thank you. Do we have any questions from the Board?

Mr. Manley: Mr. Cappello would it be a...possible that instead of if you abandon the a...access road on that would be the a...the west side and put an access road on the south side directly in to the Newburgh Mall, would that not be more beneficial and therefore you wouldn't even really need that access point on the west side if you could come down on the south side?

Mr. Cappello: We...we don't have the...the right to connect. That's private land, there is a dedicated easement that was reserved for this parcel back in the beginning so that's where we...the only place we could build over would be within that (50) fifty foot easement.

Mr. Manley: Right, but has the applicant approached the Newburgh Mall?

Mr. Cappello: Yes, I believe they have because it would make...it would be easier...

Mr. Manley: And the Newburgh Mall was not...

Mr. Cappello: ...obviously we wouldn't have to build the road across the a...

Mr. Manley: ...they were not in favor of that?

Mr. Cappello: No.

Mr. McKelvey: I think we discussed that when they were here the last time and...and the...they...they said that they couldn't get that the right of way.

Mr. Cappello: Right it would be obviously less expensive for the applicant to build...you know, build something in there and they wouldn't have to cross the wetlands but it...it's...they don't, you know, have the right to do it.

Ms. Drake: Is the access road wide enough for the trucks to get out that are delivering fuel?

Mr. Cappello: Yes, the...the...because it's one-way it's (18) eighteen foot so it would be wider if you had (25) twenty-five foot two-way access you'd only have (12) twelve, you know...(12) twelve and a half feet...

Ms. Drake: Okay, I was...I was just looking at the turns like you got (15) fifteen foot radius.

Mr. Cappello: And a...in the...yeah, the planning board's traffic engineers has you know, has been reviewing the interior access and truck routes and everything so I know he has a...and he's working with the project engineer to make sure that all works.

Ms. Drake: Okay, going north it's twenty... (24) twenty-four foot wide and you're not restricted by the wetlands there so that easily could meet...meet the (25) twenty-five foot and then where is it changing from (24) twenty-four foot to the (18) eighteen foot? On the turn?

Mr. Cappello: Yes, soon as you leave the...the match line here on the property so this...this access you see here this is (15) fifteen foot on either of the side but the main access into the site is a...meets the Code. This is all (24) twenty-four feet and then just when you get back here because this parcel was developed and the Mall parcel was developed you have this area here that was vacant that's just where the water...

Ms. Drake: Right.

Mr. Cappello: ...catches the drained so it's not till you actually leave this site that it goes down to (16) sixteen feet.

Ms. Drake: Yeah, you just don't show it. You show straight out and then you show this being (16) sixteen and this being (24) twenty-four. I was just trying to figure out where it...

Mr. Cappello: It's (24) twenty-four when you're turning here and then as soon as you hit this match line this would go attached to here and that's where it would go down to (16) sixteen...to (18) eighteen feet...

Chairperson Cardone: To (18) eighteen...okay, (18) eighteen.

Mr. McKelvey: Its (18) eighteen feet isn't it?

Ms. Drake: Yeah.

Mr. McKelvey: Its (18) eighteen feet.

Ms. Drake: Okay. It just doesn't show where the...where it changes from (24) twenty-four to (18) eighteen.

Mr. Cappello: It would be right where the match line is.

Ms. Drake: Okay, and I'm just saying so you don't need a variance for the whole...well the...whether either way, whether the (24) twenty-four on the north part there...going north could be (25) twenty-five foot...?

Mr. Cappello: Oh, a...

Ms. Drake: So that a portion of it is, yeah, that part right in there could be (25) twenty-five foot so that part of it is meeting Code.

Mr. Cappello: Yeah, I'm not sure if that's considered the access road or just the, you know, the interior but I...I'll...I'll...ask that I don't know if anybody frankly ever even caught that but I don't think that would be a problem.

Ms. Drake: It didn't seem like it would be.

Chairperson Cardone: Jerry?

Mr. Canfield: Ms. Drake's a...concerns, the transition takes place in the turn...

Ms. Drake: In the turn, that's what I was asking...

Mr. Canfield: ...if you scale it the turn is (24) twenty-four but as it comes out the turn it's restricted to the (18) eighteen.

Ms. Drake: Okay so it is in the turn then?

Mr. Canfield: It's not showing that position; typically we would see that...

Ms. Drake: Right.

Mr. Canfield: ...but if you scale it out that's where they're losing it

Ms. Drake: Okay, in the turn that's what I thought. Okay, thank you Jerry.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public?

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

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Abstain

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cappello: Thank you very much. I have to leave to go to another meeting, does the Board...

Chairperson Cardone: Okay.

Mr. Cappello: ...allow me to call tomorrow?

Chairperson Cardone: Sure.

Mr. Cappello: Thank you very much.

(Time Noted – 7:15 PM)

ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:55 PM)

GAS DEVELOPMENT LEASE, LLC. 1413 ROUTE 300, NBGH
(60-3-40.2) I / B ZONE

Applicant is seeking an area variance for an exit driveway shall have an unrestricted width of not less than 25 ft. to build a gasoline station and a tire service business.
(Previous variances granted 6-28-12)

Chairperson Cardone: The Board is resuming its regular meeting. On the first application Gas Development, 1413 Route 300, seeking an area variance for an exit driveway. This is an Unlisted Action under SEQRA.

Ms. Drake: I'll make a motion to...

Chairperson Cardone: Negative Dec.

Ms. Drake: ...for a Negative Dec. Thank you.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Abstain

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Okay, is there any discussion on this application?

Ms. Drake: When they were here before for their other variances we had suggested and liked the idea of putting an access road to the back of the property and I'm actually happy to see that they're doing that so I'll make a motion to approve the application.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Abstain

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

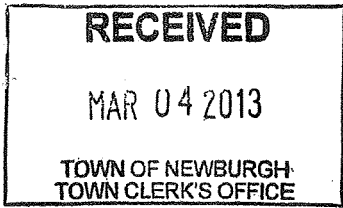
GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:57 PM)

Handwritten signature and date: 2/8/13



Section 60, Block 3, Lot 40.2

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

GAS DEVELOPMENT LEASE, LLC

DECISION

For area variances¹ as follows:

- *An area variance allowing a driveway width of 18 feet where 25 feet is the minimum width required.*

-----X

Introduction

The applicant seeks area variances as follows: An area variance allowing an exit driveway from a motor vehicle service station to be 18 feet wide where the minimum width required by Town Code is 25 feet.

The property is located at 1413 Route 300 in the IB Zoning District and is identified on the Town of Newburgh tax maps as Section 60, Block 3, Lot 40.2.

A public hearing was held on January 24, 2013, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

¹ On June 28, 2012 the applicant received two variances from this Board regarding their application for site plan approval before the Town planning Board – one permitting their proposed gas station to be located within 1000 feet of another existing gas station and one allowing the total signage to exceed the maximum allowed by Town Code. This request relates to the same site plan application.

Law

Section 185-28 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Motor vehicle service stations, car washes and rental agencies" requires, at subdivision (B), that exit driveways from Motor vehicle service stations have a minimum width of 25 feet.

Background

After receiving all the materials presented by the applicant and hearing the testimony of John Cappello, Esq., attorney at the public hearing held before the Zoning Board of Appeals on January 24, 2013, the Board makes the following findings of fact:

1. The applicant is the owner of certain real property, designated on the tax map as 60-3-40.2 and located at 1413 Route 300.
2. The applicant's proposal is set forth on a series of photographs and a site plan prepared by Langan Engineering and Environmental Services last revised October 18, 2012. Those photographs and site plan are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
3. 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 |
|------------------|-----------|----------|----------|----------|------------|
| Driveway Width | 25' | n/a | 18 | 7 | 28% |

4. No members of the public were heard during the public hearing.

5. The applicant was referred to the Zoning Board of Appeals by the Town of Newburgh Planning Board pursuant to correspondence from their counsel dated November 2, 2012.

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. The Board has issued a negative declaration thereby determining that the application will have no adverse impact upon the environment.

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 variance.

(1) Undesirable Change—Detriment to Nearby Properties

The premises in question are located in the IB Zoning District. The use proposed by the applicant is a use that is permitted in the IB Zoning District. Thus, the use, in and of itself, as a permitted use, will not cause any undesirable change to the character of the existing neighborhood nor result in any detriment to any nearby properties.

No contrary evidence or testimony was submitted to the Board at the 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 surrounding properties in that neighborhood will result from the driveway proposed to be constructed by the applicant.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that issuance of the requested variance will not result in any serious, undesirable, detriment to the surrounding neighborhood.

(2) Need for Variance

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible, due to the existence of protected wetlands, for the applicant to construct a driveway that can meet the required minimum width of 25 feet.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variance. Based upon the testimony and evidence received by the Board, it appears that the relief sought by the applicant may only be obtained by the variance sought herein.

(3) Substantial Nature of Variances Requested

The variance requested is substantial. However, 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 as it will not result in any change to the neighborhood nor cause any adverse impact upon the neighborhood.

(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. To the contrary, the Board finds that construction of this exit roadway would be an improvement to the project as it would permit left hand turns across Route 300 at a signalized intersection.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variances 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 applicants purchased this property charged with the knowledge of the existing Zoning Code and while aware of the need to obtain a variance in order to build a driveway on the property of the width proposed.

However, because it is not feasible to maintain a driveway without a variance of some kind, 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 this variance.

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 conditioned specifically upon the following:

1. The variance is hereby 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.
2. This approval is not issued in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Town of Newburgh Planning Board). As such, this grant of variance is conditioned upon approval of the application now pending before the planning board. This approval of the ZBA is intended to do no more than vary the specified strict limitation provisions of the Code identified; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The planning board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely

or conditionally) any application in reference to this project as may come before it. Should the planning board require changes in the size, location or configuration from what is shown on the plans before the ZBA that require greater or different variances, the applicant must return to the ZBA for further review and approval.

3. 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. As noted above, this application is not decided in a vacuum but is rather tied to a specific application for approval pending before the Town of Newburgh Planning Board and this approval is conditioned upon the applicant diligently pursuing his application before that board. Provided that the applicant shall report to this board monthly on the progress of the application pending before the planning board, and provided that such reports demonstrate a diligent pursual of that application, the time period within which the planning board application is processed shall not be included within the initial six-month limitation of Section 185-55 D.

Dated: January 24, 2013



*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 John McKelvey
Member James Manley
Member Michael Maher
Member Roseanne Smith

NAYS: None

ABSTAIN: John Masten

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 *January 24, 2013*



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 MAR - 6 2013



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH