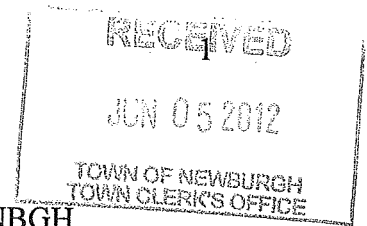


ZBA MEETING – MAY 24, 2012

(Time Noted – 7:03 PM)

GAS DEVELOPMENT LEASE LLC

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



Applicant is seeking area variances for a gasoline station to be constructed within 1000-feet of another existing gasoline station and the 200-foot required separation to a place of public assembly and the maximum amount of allowed signage to build a gasoline station, tire service business and a bank.

Mr. McKelvey: The first applicant is Gas Development Lease LLC.

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

Mr. McKelvey: This is an area variance for a gasoline station to be constructed within a 1000 feet of another existing gasoline station and the 200-foot required separation to place of public assembly and the maximum amount of allowed signage to build a gasoline station, tire service business and a bank.

Mr. Donovan: And before you start for...for this applicant and everyone in the room tonight. We just...there's four Members of the Board present. The Zoning Board of Appeals is a seven Member Board and what that means is that you will...you need four Members to vote yes to have your application approved which means tonight you would need to have every Member up here to vote in the affirmative or in favor of your application. So in the interest of fairness when this occurs, as it does from time to time, we offer each applicant the opportunity to defer a vote this evening to a time when there is a full complement or five or six Members of the Board present before the vote takes place. So I just wanted everyone to be aware that you need all four Members to vote in favor of application for it to pass tonight, a three to one vote would be a denial of your application. So everyone could have the opportunity should you wish to ask the Board to defer making a decision tonight and make it at the next meeting when they have a full Board.

Mr. Wolinsky: Good evening, Mr. Acting Chairman and Members of the Board that are present this evening, my name is Larry Wolinsky a...I am from the law firm of Jacobowitz and Gubit. I'm actually covering this application for one of my partners John Cappello who prepared it and submitted it. With me this evening are a... Lisa Davis of Lisa Davis Associates who is our project planner sitting in the back and a...Timothy Onderko from Langen Engineering and Environmental Services who is the a project engineer. And they're both available to answer a...whatever questions you may have. Just like to start out by giving some background on the property, the proposed use of the property and the I'll get into a...the a...variances. So this property is located at 1413 Route 300, its adjacent to the northern boundary of the Newburgh Mall. It consists of

3.07 acres a...it's in the IB Zoning District. It's currently occupied by two vacant buildings, 9500 sq. ft. building and a 1000 sq. ft. building. The prior use as I'm sure you're all aware was a trucking terminal and warehouse facility which primarily operated out of the larger building and then a smaller building which was utilized as a maintenance garage. The site is presently covered by those existing buildings a concrete a truck pad, asphalt paving and...and gravel parking areas and in fact only, currently only 5% of the site has any kind of...of vegetation on it. It's proposed that this site a...a...will first have its existing building demolished with the removal of all existing asphalt and concrete and gravel and then a...adaptively reused for the construction of three new buildings. A...one would be a (10) ten position fueling facility operated by a Stop and Shop. A...that includes a (116) hundred and sixteen foot a...a...square foot attending kiosk, a...a Somerset Tire Service which we all know is STS in a building of (5600) fifty-six hundred square feet and a bank building a...yet to be determined of approximately (6050) six thousand nine hundred and fifty square feet. A...there are two existing curb cuts a...to the property, they're proposed to be closed and a new curb cut would be installed which would be a...aligned a...with the a...a...shopping center across the street that includes the Dunkin Donuts and the a...Auto Zone. In terms of the variance requests as a...as the a...Acting Chairman a...has said a...the primary variance request is from Section 185-28-G which requires a separation of a 1000-feet between facilities that dispense fuel. A...this proposed facility a...a...is approximately (465) four hundred and sixty-five feet from a...the Mobil Station a...which you're all familiar with and a...that's the reason we need an area variance with regard to that a...typically a...a...as...is the case in these situations we also need a...a sign variance a...a...under the existing restrictive Code provision we would only be a permitted a (144) hundred and forty-four square feet of signage. A...between building and pylon signage a...we would require approximately (520) five hundred and a...twenty feet. In terms of justification for issuance of the variances we've submitted a complete package which I...I'm sure you received in advance. It's a...all laid out there. I just wanted to go over a...a...a...and highlight a couple of points and then I'll open it up for your questions and the public. A...obviously a...this is the commercial use of this is...is consistent with the neighborhood a...I don't think we need to dwell a...too much time on...on that. It's a proposed use that is in fact a...a...arguably and in fact, less intense from the prior use which was the trucking terminal and a...as a...we'll...we can discuss in a second less intense from a traffic generation a...standpoint particularly with regard to other permitted uses that are a...a...would be permitted under zoning on this site and other uses that exist in this a...particular a...a...corridor. I'm...you've...you've granted these thousand foot variances in these situations a...a...before where an applicant has been able to demonstrate to your satisfaction that a...the proposed use would not create a...a...a significant issue with respect to a...traffic impact in the corridor. We have in fact prepared a...a...all the analysis a...for traffic impact and I can tell you that it...it's...it does show that there will be no significant adverse impact on the corridor. We can present that tonight, we have boards if you're interested in us presenting that a...or we can a...a...provide you in a...a deferral situation and I think we are going to opt to defer tonight a...a...a...an actual traffic report for your...for your review. I believe that's all I want to say. Again with the signage a...with regard to the signage I would just say that the amount of signage is a...consistent with what has been permitted in other similar

types of a...situations. It's not excessive and...and we'll show you a...the boards a...that depict that. So what I'm going to do is a...turn it...

Mr. Donovan: Can...can I interrupt for...

Mr. Wolinsky: Yes, yes sir.

Mr. Donovan: ...just one second before you step away? Did we resolve...? I'm reading a...Mike Donnelly's letter of referral to us, the 195-28-F?

Mr. Wolinsky: Is that the 200-foot...?

Mr. Donovan: It's the 200-foot.

Mr. Wolinsky: Yes we did. I'm going to ask Tim to a...address that.

Mr. Donovan: The Chairman mentioned it in the a...

Mr. Wolinsky: Yes.

Mr. Donovan: ...in his announcement...

Mr. Wolinsky: Yes, yes, yes.

Mr. Donovan: (Inaudible)

Mr. Hughes: Is that the public assembly reference?

Mr. Wolinsky: The public assembly a... Tim you're prepared to address that, correct? Yeah, so I'll have Tim address that and he'll show you how that's been resolved. It's been determined we don't, you know, we...we're not in need of a variance for that.

Mr. McKelvey: Before we go any further I'd just like to mention that all Members of the Board have been to all these sites for inspection.

Mr. Wolinsky: Okay, thank you sir. Tim...

Ms. Gennarelli: You can tilt that up towards you that needs to be close. Thanks.

Mr. Onderko: Okay, Tim Onderko...

Ms. Gennarelli: Tim you're going to have to get closer.

Mr. Onderko: Sure, Tim Onderko, professional engineer with Langen Engineering and Environmental Services. Just following up on...on Larry's point, we'll start with the...the place of public assembly. So after some research to identify the definition in...in

a...the only place that actually defined it was New York City, the State of New York didn't define it. A...but it...it...it's used in a number of places in the New York State Code. But the...the definition that we found was a place of assembly is where (75) seventy-five or more members of the public may gather indoors or (200) two hundred or more members of the public may gather outdoors for religious, recreational, educational, political or social purposes, to consume food or drink, await transportation, or other similar group activities. A...the...the only thing in that description that we think may come close to us would be the...to consume food or drink of (75) seventy-five people or more...a...the two uses that are closest to us would be the Dunkin Donuts across the street and the Wendy's which is two properties up north on Route 300. Both of those are in excess of a...(200) two hundred feet, I believe the Dunkin Donuts is...the Dunkin Donuts is (310) three hundred and ten feet away from us, the Wendy's would be (400) feet away from us and to add to the list there is a McDonald's in the front parking field of the mall and that would be over (400) four hundred feet. So a...based on our research and the distance to those eating establishments a...we...we think we're clear on the a...the potential conflict with the place of public assembly.

Mr. Hughes: Have you been on site, sir?

Mr. Onderko: I have.

Mr. Hughes: Okay, so you're saying that the oil change place...

Ms. Gennarelli: Ron, can you pull your microphone in? Is it on? Pull it in closer, thanks.

Mr. Hughes: You're saying that the oil change place is (200) two hundred feet wide?

Mr. Onderko: I...I believe on the...its actually from the pumps to the use so I believe the...the Valvoline lot, the tax map is (178) a hundred and seventy eight feet or so, that plus the distance of the building plus the...the spread across our site to the southern side would be on the order of (400) four hundred feet.

Mr. Hughes: And so you're trying to persuade us to understand that the oil change place is a public assembly?

Mr. Onderko: Yes, per...per the definition that I found regarding a...educational, recreational or...or to consume food and drink. I don't think the oil change falls into that category.

Mr. Hughes: I thought that we had addressed this and that the situation came up with the Orr Avenue. The same thing went on; there was a gas station across the street, public assembly with the one on the corner of 17K and 300 as well.

Mr. McKelvey: Which one are you referring to Ron?

Mr. Hughes: A...there were several of these that went on because of the 1000 foot restriction and the public assembly. One was at the corner of 300 and 17K; another one was at 300 and Orr Avenue on the east side of the Thruway.

Mr. McKelvey: That second gas station never got built across the street.

Mr. Donovan: Well just for clarification what they're here for...they're here for the (1000) thousand feet because there's another facility that dispenses gasoline pursuant to 185-28-G. My question with regard to 185-28-F was generated because when I read the transcript from the Planning Board a...session Mr. Canfield indicated that you may in quotes "may" need a variance and that you should evaluate that. And Mr. Donnelly's letter says the same thing. In your application you...you don't seek that so I just want it for clarification purposes since it's in...was in the Notice that...your evaluation is that you don't need it and you haven't applied for it?

Mr. Wolinsky: That is correct.

Mr. Donovan: So from our point of view we'll look at the variances they applied for.

Mr. Hughes: Okay.

Mr. Donovan: I mean, if they get back to the...

Mr. Hughes: It showed in my package that it...that it was one of the things that were required.

Mr. Donovan: Right, and if you read the transcript of the Planning Board which I'm sure you did but...but Mr. Canfield indicates that you may need it, you may not, evaluate it, if you do apply for it.

Mr. Onderko: And a...and during that hearing the question was how far away is Dunkin Donuts. Across the street, we weren't sure right away widths and all that kind of stuff. We had an aerial plan but actually wanted to scale real dimensions to make that go away, so we did that.

Mr. Hughes: On the...I have a further question on those distances if you could verify for me? Is that (143) one forty-three?

Mr. Onderko: Yes.

Mr. Hughes: And then that's the distance between your property and the place of public assembly?

Mr. Onderko: I...it...its not a property line to property line measurement, its from a...a use measurement.

Mr. Hughes: No, I understand that but I'm saying that property is (143) a hundred and forty-three.

Mr. Onderko: Yes.

Mr. Hughes: So you're looking to get another (67) sixty-seven out of that...to the pumps?

Mr. Onderko: Right, I think we have on the order of...our...our frontage is around (288) a two hundred and eighty-eight feet, we're on the southern side, we've got a probably another (150) hundred and fifty feet across the property so I think we're...we're well out side the...even getting close to the (200) two hundred distance.

Mr. Hughes: Thank you for answering those questions.

Mr. Onderko: You're welcome.

Mr. Wolinsky: Do you want to talk about traffic?

Mr. Onderko: Love to. Was...was there any other questions about the existing conditions out there? I'm assuming if you walked the site you may know of that.

Mr. Hughes: Is this a brown field site of any sort?

Mr. Onderko: I don't know if it meets the classification of a brown field.

Mr. Hughes: Was there a Phase One done on the land?

Mr. Onderko: We have...we have not gone that far in the investigation yet.

Mr. Hughes: I see.

Mr. Onderko: I'll...I'll dive into a little bit of the a...discussion on traffic here. I have a number things so a...we have to date completed traffic counts at Route 300 and Meadow Hill and Meadow Ave, at Arbor Post side driveway, Route 300 and the existing Dunkin Donuts driveway, the north driveway to the mall which is currently signalized and the south driveway of the mall which is not signalized but may someday in the future be signalized a...as part of the Marketplace development. So a...we...we looked at the regulations regarding the separation of a1000-feet between gas station uses and from...from my standpoint gas stations aren't traffic generators in the sense of a traditional retail. You don't leave your house to go to the gas station to come home. Its...its something that you usually get when you're on the roadway network and the Institute of Traffic engineer says that number of a car passing a gas station, the number of people that actually (inaudible) off the road and use that gas station that are already on the roadway network could be on the order of seventy to eighty percent. Very high number, cars are already on the roadway network, you're not creating new traffic by...by bringing a gas station in. So the...the separation distance based on the...the guise of

traffic a...at least from my standpoint of this...is slightly odd but we recognize that your...your previous decisions and discussions on the matter of separation a...significant attention has been paid to traffic and we thought it was a...appropriate to...to start our study before we go back to Planning, before we a...are peer reviewed by the...the Town traffic consultant so a...we did, we kind of started at the beginning and...and realized that there's a significant amount of information out there from the Marketplace study. A...they had done traffic counts a...in September of 2005 and so we...we had a base map to start on with existing volumes. They've plastered this whole corridor, I think they studied fifteen intersections a...so we had that as a base, we then went out and did our own annual traffic counts of the...the movements of the various intersection and a...saw a...quite a trend, September of 2005, our first counts were completed in November of 2011 and then again in February of 2012. A...at the time the Marketplace did their study, the volume of traffic on Union Ave was significantly higher than it is today. The...their study identified that on a Friday northbound you see around (1500) fifteen hundred cars traveling up Union Avenue. Our study from November and February found that that number is closer to (1200) twelve hundred so that's on the order of a (25) twenty-five percent reduction in northbound traffic on a Friday PM peak. Southbound numbers were in their study around (950) nine hundred and fifty, we found it around (920) nine hundred and twenty, so fairly close on a southbound movement that didn't seem to change much. The northbound movement was significantly different. The Saturday numbers were more of the same. Their Saturday saw around (1350) thirteen hundred and fifty, thirteen hundred and fifty cars head northbound and about (1215) twelve hundred and fifteen head southbound. We were down below (1200) twelve hundred and below basically (1000) a thousand so another (15 to 20%) fifteen to twenty percent reduction in seven years since that first study was done. A...I'm not that familiar with traffic in the area but I understand it may have something to do with the...the...the construction of the interchange between 84 and 87 and I think those...those changes are reflective of that so a...when the Marketplace study was done even without our analysis a...they showed that even with the additional volume and the couple of hundred cars they anticipated entering their site, on Route 300, they didn't have a detrimental impact. So that was a good place for us. We did an existing count to see how those numbers fell. We have, you know, more current numbers that we were able to look at. We a...then plugged in the Marketplace assuming full build out, assuming they constructed their signal and adding the...the new cars from...from our driveway and again we...we have Route 300 operating as a...a level B or a level C. Very good flow through here compared to some of the C's and D's that they saw, or expected a...back in 2005, 2007. A...again we didn't have a...a full study, you know, prepared with a book to let you see each percentage but big picture was a...Route 300 operates well. A...our uses are a little bit different than your standard retail a...the...the tire shop is a very low generator of traffic, its not a...its not a Jiffy Lube, its not an in and out in fifteen minutes a, you know, it might be ten to fifteen cars in a peak hour actually there to get their tires changed. And even that number may be high for...for what they can actually turn over in...in usage. The proposed bank credit union again is...it's a traffic generator; it's not a retail generator. You're traditionally limited in the traffic you generate by the number of drive-thru lanes you have a...the current plan proposes two. So you're...you're numbers are reduced to about thirty to...to forty cars in the peak hour that can actually be processed through the drive-

up so a...its not a...a five lane ATM and two lanes of teller. So that...that keeps that generation low a...and really the...the biggest a...in and out bound traffic for the site would be from the fueling facility. A...I'm not sure if you're familiar with...with Stop and Shop's program but their fueling facility is...is a little bit different than the traditional model. There's no convenience store, there's no oil changes, there's no service, there's no car wash. Its unleaded gasoline only, it has five pumps that are double sided so you're allowed...so you...we can process ten cars at one time. The...there's (115) a hundred and fifteen square foot attendant kiosk, the back half is an eighty accessible bathroom, the front half is a cashiers booth with...with his electronic equipment and a cash drawer. He doesn't sell milk out of it, yeah, there...there's no room to...to store convenience items or sell convenience items. They do sell washer fluid at the end of the pump islands but this is not a place where you pull in, you park, you run inside, you buy a coffee, grab a gallon of milk; you head back to your car. A...we found that a typical transaction is over in five to six minutes, sometimes quicker than that so it's a...an operation very different than some of the other gas stations in the corridor and that people are just there to get gas and move on so there's...there's not lingering, there's not a significant queuing because we have the pumps to handle it. So...a...those uses compared to what's out there existing on the roadway network are...are not big traffic generators. When we were in front of the Planning Board a...the...the one concern they have about traffic was I go to Dunkin Donuts today and the left hand turn out of there is the one thing that's tough. You're crossing two lanes, there's a...a...a center turn lane and you're trying to...to get into the...the southbound lanes so basically crossing three lanes of traffic to head southbound and a...the request was when we come back we want you to have looked at that and...and provide some insight on how you think you can make that easier, better whether it be a signal, whether it be a, you know, some other change to the intersection. So as part of our counts we looked at it and the perception may be that it's...it's difficult to get out of the Dunkin Donuts drive but the cues aren't more than one or two cars waiting at any time to get there. You've got fantastic sight distance in both directions and you're in pretty close proximity about four hundred feet to the signal that serves the Mall's northern driveway which is a great place to create a gap in northbound traffic in order for you to make that left hand turn. So we, we understood that, we took that into consideration and one of the unique aspects of the property and I'm...I'm not sure if you noticed it on the site plan but a...the property actually holds a fifty foot easement off the...the rear of the lot that connects to the Mall access road that heads up to...to Meadow Hill. So a...what we're currently investigating is providing an interconnection to the Mall access road so that we can still provide the...provide the...the left and the right hand turn at our driveway and the left hand turn would probably function fine ninety percent of the time. You know peak hour might be the...the point when you...you have some concern about making that left hand movement across two lanes but we think we can accommodate that with an interconnection to the Mall access road which gets you northbound to the Meadow Hill signal and on to the network without that perceived concern of crossing the lanes of traffic. So, a...we think we have a...a good handle on traffic, we have a good understanding of the traffic volumes out there. We understand that we're not a big generator compared to a...a, you know a typical retail use and the...the one thing that may be of concern and all of the other uses along the road have a...a, you know a...an unprotected left hand movement across two lanes of traffic

but we have the...the benefit of a...an existing easement that can connect us to the Mall access road. So we're a...we're pursuing that and a...that's where we stand on traffic so...

Mr. McKelvey: Is there a possibility you could make a...a dart into the parking lot area road of the Mall?

Mr. Onderko: To...to the Mall? Yeah, it was...it was something we've looked at. The fact that the Mall had...property owner had granted that easement already, it's already in place there preference is to not try and relocate it to the...to the Mall parking lot because now with the relocation of an easement we're now going through the process of talking to tenants who may have protective parking areas and a...common areas so the...the hope is to try and use that existing easement that...that's in place. We run into a...a place where that's not possible we're going to...we'll open up the conversation again about relocating to the...to the Mall a...circulating drive. It...it's...it's really closer to be more convenient certainly but the...

Mr. McKelvey: Plus if you went out you'd have the light there.

Mr. Onderko: Right, but at this point the conversation wasn't moving just because they've already...they...they've granted one and the process of relocating it would be significant. Not impossible but a...significant.

Ms. Drake: Do you have room to do a road through there with the wetlands?

Mr. Onderko: We...we would have some wetland filling a...in order to make that connection but the...the significance of the wetlands are actually a...further south closer to and basically right up against the edge of the Mall ring road there. So it's a...it's slightly higher through here. We will be working with the Army Corp on...on that process but our hope is a...that the filling would be minor. It's essentially a...an existing drain...they're drainage swales a...that we'd be looking to cross over as opposed to a...a, you know a swath filling through a...a middle of a wetlands area. But something we're...we're going to be working with them on and a...

Mr. Hughes: That whole Mall is a wetland.

Mr. Onderko: I...I understand, yes.

Mr. Hughes: That whole thing was filled in.

Mr. McKelvey: Any other questions from the Board? Does anybody in the audience have any questions?

No response.

Ms. Drake: Can you address the signs or are you...are you...I don't know if you were just asking about the wetland thing but I'd like to see about the signs.

Mr. Onderko: So I...I...I'll start from the beginning with the a...the signs. So I do know the regulations permit one half square foot of sign for every one linear foot of road frontage. We are a lot with about (288) two hundred and eighty-eight feet of frontage along Route 300 a...and actually a depth of between (550) five hundred and fifty and (600) six hundred feet if you count the little angle point there so we're...we're allowed (144) a hundred and forty-four square foot of signage for three tenants plus each side of a pylon sign a...a number that is really low for multiple building and a pylon on a road of five lanes with...with speeds of (45) forty-five miles an hour. So a...what we talked about was one looking at some of the precedent for other signs in the...in the...in Town and a...one of the studies that a...my office had prepared and an application that was filed was for the Home Depot plaza and instead of using the road frontage they looked at a percentage of the square footage. That's beneficial when you're talking about a hundred and fifty thousand square foot Home Depot to spread over the center but with (7000) seven thousand square foot bank and a...a (5000) five thousand square foot tire shop, the two percent doesn't do very much to...to help our...our argument here. So we looked at the...the definition and relative to frontage and we have (288) two hundred and eighty-eight feet of frontage along Route 300 but we also have a significant portion of frontage along the ring road of...of the Mall drive which could be considered public access as well as a...the Mall drive that goes up to Meadow Ave at about (250) two hundred and fifty feet. So...

Mr. Maher: Because it wouldn't be...

Mr. Onderko: ...so we're not...we're not trying to take credit for that. That was just kind of a genesis of...of our thinking for a justification for a number. So we...we said okay well if we were able to take credit for that what would the number work out to be a...and if we were to add up all those a...frontages I think we'd come to (1068) a thousand and sixty-eight feet of frontage which is a...a substantial number. At half of foot that would allow about (534) five hundred and thirty-four square feet of signage. For three tenants plus a double sided pylon sign that sounded like a good number that we could adequately provide a sign package for the three buildings as well as get us a pylon that could have the tenants on it. So from there my goal was to...to come below that, look at the...a typical sign package for the tire shop, understand the prototypical signage for a fueling facility and look at what a typical bank would be. One of the examples that I used was the a...Mid Hudson Valley Credit Union that's in the Home Depot plaza. So a...looking at those plus a...looking at the sizes of the pylon signs along Route 300, their height, the individual panels a...really a...a...example that would probably be very close to us is directly across the street where they have four panels, I believe, the...the tire shop, the Auto Zone, the paint shop and Dunkin Donuts. So I thought that we were in line with that so by using the what we would consider maybe the true frontage or what we would try to argue for frontage we were able to...to back off that number and come down to (520) five hundred and twenty square feet. Less than what we would argue if we could argue for all the frontages but a number that we think is reasonable for three buildings plus the double

sided pylon sign. And I, in your packet you have an example a...the signage is a...we don't think ostentatious for the...the retail uses a...especially because the STS Tire and the bank will be set back fairly far from Route 300, the fueling facility will be up close which has the...the smallest sign and then a pylon sign that was of similar size and scale to what's also on the border.

Mr. McKelvey: Your signage, you're figuring the signage on the buildings too?

Mr. Onderko: Yes, that...that total number was what you see on STS a...a block for a tenant when until we know what the real signage is for the bank, the...the two sides of the canopy and then both sides of the pylon sign. So it's all...all there a...and that was how we came up with that number which we...which I tried to get below what we could theoretically argue for frontage.

Ms. Drake: Could you explain like the STS sign which wall that would be on this plan that's up on the board there?

Mr. Onderko: Absolutely.

Ms. Drake: In other words what road? Where do you see the signs?

Mr. Onderko: Yes, so a...we anticipate that the STS signage to be along to be their front doors along the internal circulating drive so STS signs would be here above their garage bays. The bank sign without a, you know, a true tenant with a pro-typical sign package I would anticipate being over their front door that faces Route 300 and the two signs for Stop and Shop would be along the long end so a...the north and south side of the canopy. And the pylon sign we're proposing a...just north of the...the driveway basically in line with the existing corner of the a...or basically the north east corner of the existing building.

Ms. Drake: Thank you.

Mr. Onderko: You're welcome.

Ms. Drake: So basically from the road from Union Avenue you're not going to even see the STS sign?

Mr. Onderko: You're right, you would only...you would only see the STS building sign after you probably had passed Valvoline were around the bank building and could look into the front of the STS, that's the reason for the...the pylon. I mean we're...this is five hundred...that's almost two to three hundred feet set off Route 300 so a good distance back from the road. The Stop and Shop sign on either side of the canopy would be more visible a...and the bank signage you would be kind of limited to a narrow window along 300 till you're actually able to see that, the front face of the building.

Ms. Drake: The freestanding pylon sign that's (240) two hundred and forty square foot.

Mr. Wolinsky: Yes.

Mr. Onderko: Yes, a (120) hundred and twenty on each side.

Ms. Drake: So that sign alone exceeds the allowable.

Mr. Onderko: Correct. The...the half...half a foot per linear really works for strip malls not for (600) six hundred foot deep lots, unfortunately that's what we have here.

Mr. Hughes: So I'd like to refresh your memory a little bit here you have me a bit confused. When you were talking about the number of keys and how not difficult it is to come out of Dunkin Donuts it was three lanes wide, when it was looking at the distance of the sign it was five. So it seemed...

Mr. Onderko: Say again you lost me.

Mr. Hughes: ...like you exaggerated a little bit, how far back that sign was across five lanes of highway when it's the same description that you gave earlier in your conversation that it wasn't that hard to get out of there because there's three lanes of traffic. Which is it?

Mr. Onderko: Well, you would...you would cross three lanes of traffic to get into the...so if you're in Dunkin Donuts driveway you would have to cross three lanes to enter the south bound lanes. There's five lanes of traffic out there.

Mr. Hughes: I see where you're getting at now, okay.

Mr. Onderko: It was...it was just the actual movement not the number of lanes.

Mr. Hughes: What you said wasn't consistent.

Mr. Onderko: Sorry, sorry.

Mr. Hughes: I'm with you now. Thank you.

Mr. Onderko: You're welcome.

Mr. McKelvey: By the way we have the report from the County and its Local Determination.

Mr. Maher: You're confident that the a...(60) sixty square feet will be sufficient for the tenant in the bank.

Ms. Gennarelli: Mike can you pull your mic...?

Mr. Maher: Sorry.

Ms. Gennarelli: Thank you.

Mr. Onderko: At...at this point that's...that's what we'll have to work with. So yeah, we're...they'll make it work. I've looked the Mid Hudson Valley Credit Union I think they had a total of around (112) a hundred and twelve square feet and that was the sign over the drive-thru. They had...they had a number of signs but here would be, we'd be limited to one or a division of that...that area to make it work.

Ms. Drake: Well they get that one on the building plus they get one on the pylon signs.

Mr. Onderko: Exactly, right they'd have more than one sign on site.

Mr. Hughes: So you're here before us tonight and we have to have a real number not what you'd like to do with the collar around the Mall and all that stuff. You're allowed (144) a hundred and forty-four by the right of the (288) two eighty-eight...

Mr. Onderko: Yes.

Mr. Hughes: ...at most the way I see it realistically you could add that (50) fifty foot right of way on the back and put another (50) fifty feet on it there but because we're a review Board and we're restricted to rule on what you bring to us in deficiencies I don't want to get out into a dream there I want to get into some real numbers and tell them as the are so if we choose to approve it.

Mr. Onderko: Yes, yes, and in our...in our application package we ask for (520) five hundred and twenty square feet.

Mr. Hughes: And total including all of those buildings and all of the pylons...

Mr. Onderko: Correct.

Mr. Hughes: ...so that if you deduct (144) one forty-four from that that's what you're over?

Mr. Onderko: Correct.

Mr. Hughes: Okay, as long as everybody has got a clear signal. When you said earlier in your conversation the buildings and the pylon I didn't know if you were going to include something later on.

Mr. Onderko: No. (Inaudible)

Mr. Hughes: Okay, thank you for answering that.

Mr. McKelvey: Well you can only use the 300 corridor for the...

Mr. Onderko: Sure, right. That we...it was a...a discussion point about the others but we understand that per the reg we're...we're locked in.

Mr. Donovan: Yeah, I think...I think the point you're trying to make is if the Newburgh Mall drive was a public street...

Mr. McKelvey: Yes, yes.

Mr. Donovan: ...then you would get (530) five hundred and thirty...

Mr. Onderko: To the north.

Mr. Donovan: ...square foot of signage. So the idea is to keep underneath that.

Mr. Onderko: Correct.

Mr. McKelvey: Any more questions from the Board? Any questions from the public?

Mr. Hughes: I have a question for our attorney if I could?

Mr. McKelvey: Okay.

Mr. Hughes: I know that there's a lot...

Mr. Donovan: Am I going to have to move back to my real seat?

Mr. Hughes: No, no you're all right there. The a...the three individual buildings on a lot where they are not connected with a common wall do we have to make any special thing about that?

Mr. Donovan: With regard to which variance request?

Mr. Hughes: Well I think that they've got the setbacks and everything else, you can see the building envelop.

Mr. Donovan: Yes.

Mr. Hughes: But I know that in the past we've a...pushed that option away, putting multiple buildings on one lot.

Mr. Donovan: Well I...I think we've had issues in the past where maybe for financial reasons the applicants have come back in and said, you know, user A was going to be a long term lease but for financing purposes to get a mortgage they need to own the lot so

they've come back to us for a subdivision and the result is we've had to grant a side yard or a front yard or a rear yard setback.

Mr. Hughes: We've even had zero lot lines in the middle of a wall of a building.

Mr. Donovan: Correct. But that's...that's not...

Mr. Wolinsky: We don't have that situation here.

Mr. Hughes: You don't foresee that?

Mr. Wolinsky: No, not at present no. We don't have that situation.

Mr. Hughes: Okay. I have nothing else. Thank you.

Ms. Drake: You had requested the Public Hearing be held open, correct?

Mr. Wolinsky: I think that's probably a an appropriate thing to do particular since there are three Board Members, oh well two Board Members missing a...a...this evening. And a...a...and we would rather not risk, because the Law is so stringent that if one would vote against it's an automatic denial, we'd rather not risk that. But I would like to a...ask the Board before we a...leave tonight is there anything else, any other additional information we can get for you a...as we will be waiting until next month. So are there any other issues, things we can respond to?

Mr. Hughes: There's only one thing that's in the back of my mind, did it go any further about a signal device in commonality with that intersection? When you said its (400) four hundred feet?

Mr. Onderko: Yeah that's...

Mr. Hughes: Does the possibility exist there?

Mr. Onderko: A...a possibility exists for a signal. We've had the conversations with NYS DOT and they don't...they don't give you a real answer. They say, well if you can...we don't...we don't have a hard and fast number on how far away signals they can be from each other. Rule of thumb we typically use is (500) five hundred feet. We'd be under that so a...you know, we would have a I think a tough time convincing them that one, we're not...neither of the uses across the street here are...are heavy traffic generators. The left hand turn movement would really be the only thing that would maybe make them consider a...allowing a signal here but based on the separation distance and the fact that neither of these users create a tremendous volume coming from either side of Route 300 a...I think we would go through a long process and probably end up with 'no' for getting a signal and that's why we're...we want to address and...and have a good handle on the left hand turn movement and that's why we're pursuing the...the...the connection out the back. So a signal is a strong 'maybe', maybe a weak 'maybe' depending on who you get

at DOT but a...I think we'd have a very difficult time convincing them that it's a necessity for this intersection.

Mr. Hughes: Well one of the things I've observed out there are other operators having no other left turn coming out onto 300 and I don't know if they put it there or the DOT or the Town, you know, its kind of hard for us to determine all that. But there were a couple of driveways that had that no left turn. When we go out to these things we want to see what's going on and how it may affect the neighbors.

Mr. Onderko: Yeah, understood and a, you know, based on...on the study and the...and the volumes that are significantly different from what the Marketplace found seven years ago we don't think that there's...if there was a (100) hundred feet of queuing on both of these driveways because there was no gaps to get out, I would say yeah, we...we have a...a serious concern about left hand turn movement. But I sat out there for an hour today before I came here. Dunkin Donuts was busy but there wasn't queues in the driveway that, you know, take it to a point where something needs to be done here. We will be going to...to NYS DOT for a...you know, a highway-driveway connection. We're closing off two curb cuts so that's favorable for them but, you know, when we submit our analysis and they say you know what you can't one, do a gap analysis to prove to me that the left hand turn movement happens with no problem or they restrict us to a...a right turn out. If it...it came to that we would...we'd have to find a way to...to work around it but that's...

Mr. Donovan: If I could suggest only because there's...there's two Members who are not here and didn't hear the presentation relative to traffic, if you could put that into some sort of document or narrative?

Mr. Wolinsky: Yeah, we're...we're planning to a...a put the presentation into a written report that you guys will get well in advance and the other Board Members can read.

Mr. Donovan: I think that would be helpful.

Mr. Wolinsky: Okay, we'll do that.

Mr. McKelvey: Because I think the help would be and the public would probably use a rear exit a lot because they can...they can also make a left hand turn and go out in the front of the Mall.

Mr. Onderko: Or...or get to the Mall (inaudible).

Mr. Hughes: This is all recorded as well.

Mr. Wolinsky: Well if there is nothing else a...a...we're happy to defer to next month. That allows us to leave as well now.

Mr. Donovan: Well you are welcome to stay.

Mr. McKelvey: You don't need a motion.

Mr. Donovan: Yeah, you don't need a motion to continue the Public Hearing to June...

Ms. Gennarelli: 28th, June 28th.

Mr. Hughes: So are you saying you want to keep the Public Hearing open and till the next meeting?

Mr. Wolinsky: Yes.

Mr. Donovan: Correct, yes.

Mr. McKelvey: Can I have a motion?

Ms. Drake: Oh, I make a motion to hold the Public Hearing open to June 28.

Mr. McKelvey: Second?

Mr. Maher: Second.

Mr. Wolinsky: We'll see you at the end of June, thank you.

Ms. Gennarelli: Roll call.

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

John McKelvey: Yes

Mr. Wolinsky: Thank you and condolences on the loss of your Member.

All – Thank you.

PRESENT ARE:

JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER

ABSENT:

GRACE CARDONE
JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 7:48 PM)

JD 6/5/12

ZBA MEETING – JUNE 28, 2012

(Time Noted – 8:04 PM)

GAS DEVELOPMENT LEASE LLC

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

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JUL 10 2012

TOWN OF NEWBURGH
TOWN CLERK'S OFFICE

Applicant is seeking area variances for a gasoline station to be constructed within 1000-feet of another existing gasoline station and the 200-foot required separation to a place of public assembly and the maximum amount of allowed signage to build a gasoline station, tire service business and a bank.

Chairperson Cardone: Our next applicant Gas Development Lease LLC. this is held open from the May 24th meeting.

Mr. Onderko: Good evening, for the record Tim Onderko, professional engineer with Langan Engineering & Environmental Services. A... we were here last month to talk about the redevelopment of 1413 Union Avenue and left the Hearing open because we wanted to take all the things that we talked about with regard to traffic and the analysis that we had done, put it on paper and let you have a copy of that. So two weeks ago or so we submitted the...the written summary of the traffic findings as well as the back to kind of close up the topic of traffic that we discussed last time. We have no changes to the plan, no new developments, no modifications to signage a...and we're hoping to just close out any traffic questions you may have.

Chairperson Cardone: Okay, do we have anything from the Board?

Mr. Hughes: There was one note that was struck and there was a question rather than a statement about eligibility for that two hundred foot offset you are supposed to be away from a place of public assembly and the answer I got really didn't add up to those numbers. The lot next door is the oil change place and then there's Wendy's further north on that same highway from there.

Mr. Onderko: Valvoline, Wendy's, yes.

Mr. Hughes: After I received, I forgot who it was said that the gas pumps were more than two hundred feet away but it is my understanding its parcel to parcel not where the actual...

Ms. Gennarelli: Ron, Ron, could you just pull that mic in further?

Mr. Hughes: I'm sorry.

Mr. Hughes: For some reason I think it was Mr. Wolinsky I was speaking with with that.

Mr. Cappello: Larry was here last month.

Mr. Hughes: Okay, you through me sitting there because it didn't add up.

Mr. Cappello: And he's a lot better looking than me too.

Mr. Hughes: And lost a lot of weight too how did he do that?

Mr. Donovan: Do you want to get to the microphone John for that so you can get it in the record?

Mr. Hughes: And then there was a discussion about a fifty foot right of way in the back which became a moot point when we realized the complications to it.

Mr. Onderko: The fifty foot right of way is still in play. It is still something we are pursuing. A...there are Army Corp regulated wetlands that we would have to cross.

Mr. Hughes: That whole thing is a swamp.

Mr. Onderko: Yes, so we're...we're working with the soil scientists who did the delineation and the Army Corp to see if that is something we can secure and I believe we also talked about last if that doesn't work do we have another place for the easement and at this point trying to...to make that work because of the complications associated with all the tenancies and leases of the mall. The fact that we have one today is what we want to pursue and continue to pursue a... the facts of the two hundred foot question.

Mr. Hughes: The Valvoline lot is only a hundred and forty-five feet wide.

Mr. Onderko: Yes.

Mr. Hughes: So as a place of public assembly is it more than two hundred feet from your project so my question was more than direction and I don't know. Counsel, can you tell me what the...?

Mr. Donovan: Well I think what we talked about last time a...and the referral from the Planning Board was two hundred feet from a public assembly if required. And the applicant when they were asked last month, do you need that variance, their answer was no. So I instructed this Board to rule on the application in front of you. I understand you want to make sure you are ruling on a complete application but I think that they've evaluated that and they've determined that, at least in their view, they don't need it. So we have an application seeking only two variances, the thousand foot restriction relative to gas stations and the sign variance. That's...that's what they've applied. How they reached the determination I don't recall. I recall their answer that they believe didn't need the variance and that's why they didn't ask for it.

Mr. Hughes: Okay.

Mr. Onderko: I believe our interpretation was that it was not lot line to lot line. It was actually from the pumps them self to the place of public assembly.

Mr. Hughes: I recall that's what you told us.

Mr. Onderko: Yes, that...that was our...

Mr. Hughes: I don't know if that's what the law says.

Mr. Onderko: ...interpretation.

(Mr. Cappello Inaudible)

Ms. Drake: You need the microphone.

Ms. Gennarelli: Excuse me.

Mr. Cappello: ...on the five hundred foot it is lot to lot that's why we're here but I believe the place of public assembly and I'll look it up right now I believe that was from...

Mr. Donovan: Yes, if I...I have it. So if you look at 185-28-F and that reads as follows: No building permit shall be issued for any such establishment within a distance of two hundred feet of any school of general education, church, hospital or other place of public assembly designed for occupancy of more than fifty persons, said distance to be measured in a straight between the nearest point of the fuel pump island or storage tank and the public assembly structure, regardless of the district where either facility is located. And I should point that this talks about motor vehicle service stations, car washes and rental agencies.

Mr. Hughes: Okay. I think we had some other things that needed to be cleared up as well besides those.

Mr. Onderko: Okay, I don't know if they were...was it...was it related to traffic or I...I think we had...we had talked about the...the signage percentage and kind of how we came to our number and...and that was, we know that via the Code we cannot argue that we have three frontages. We're...we're only allowed to take the frontage along Route 300 but in reality our lot does have more than one frontage just due to the mall ring road. So we used those lengths to establish a baseline number that we thought in theory if...if we were surrounded by three streets what would the number be? And we backed off of that. I think if we were able to argue all three sides we'd be allowed five hundred feet and thirty four square feet of signage and we're proposing five hundred and twenty and that includes both sides of the pylon sign. So a...so that was how we came to that number and I believe that works out to a percentage a...that you were just talking with the previous application of around three-hundred and fifty percent is the number we came a...the one forty-four permitted and the five twenty that we are requesting.

Mr. Cappello: (Inaudible) ...and that we added that if because we are similar to a corner lot if we counted the drive that splits this property from the Mall if that counted as frontage we meet the a...requirements.

Mr. Hughes: Are you referring to the south side, John?

Mr. Cappello: Yes.

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

Ms. Drake: I actually have a question on the signage, based on the interpretation that we had from Code Compliance for the previous application of the whole awning considered the sign. I don't have a calculation from Code Compliance on what they would say the signs are for this facility but based on what is shown for the Stop and Shop and the information provided, the applicant said it was eighty-five square foot signage for the Stop and Shop which would be just the symbol and a lot words so that's not consistent with the previous application that we're looking at. So would this sign variance need to include the whole strip all the way around?

Mr. Hughes: Are you referring to the ribbon on the...?

Mr. McKelvey: The ribbon, yeah.

Mr. Mattina: Right, normally with the definition of signage, artwork, representation, it goes on and on so I...usually with gas stations, Valero and places like that we've counted the color and the emblems and the letters...

Ms. Drake: So that would be all four sides would need to be included, not just he eighty-five square foot that...for the Stop and Shop?

Mr. Mattina: If it has four sides I... This is the first time I'm seeing this so I'm just giving you general answers here.

Ms. Drake: Yeah.

Mr. Maher: Well if that's the case, then you're looking a hundred and thirty feet give or take times, you know, three and a half feet. So in essence you're looking at, you know, four hundred and fifty.

Mr. Hughes: Four-fifty.

Mr. Maher: According to that calculation per side.

Ms. Drake: Yeah, it goes all the way around.

Mr. McKelvey: All the way around.

Mr. Onderko: Yeah, it would be...it would be the two sides and if...I...I think that number would be astronomical if we included the entire fascia so I would live with we'll lose the strip if that was the...a...a...interpretation.

Mr. Maher: Well...and I understand that but I don't necessarily know that to be the case but to be consistent in what we do going forward it needs to be, you know, addressed.

Mr. Hughes: What if you were to move the Stop and Shop sign out and just have the strip for the first twenty feet or whatever on either one of those sides, north and south? The building on both sides are going to block it from being down in the middle anyway, you're not going to see that from the road.

Mr. Maher: Do you have a page here Joe?

Mr. Mattina: In a definition for a sign we get into sign area. If they would lose that strip then technically use number one which said, you know, painted frame area...

Mr. Maher: Which...which page are you on? Sorry.

Mr. Mattina: Oh, sorry...

Mr. Donovan: 185-16.

Mr. Mattina: Right under sign area.

Mr. Donovan: In the definitions.

Mr. Mattina: Sign tells us what we're looking for, sign area; if they lose that strip I think we would be okay sign area wise.

Mr. Hughes: So suppose you put the Stop and Shop out on the nose of that thing out by 300 and eliminate the stripes then you don't have to calculate the thing.

Mr. Mattina: I would just count the Stop and Shop and artwork.

Mr. Hughes: Okay so then you might end up with another forty-eight feet with both of those on either side.

Mr. Mattina: Yeah.

Mr. Hughes: So we don't get into the astronomical numbers.

Mr. Onderko: Say that again, you would...so on the long sides you would take Stop and Shop off the long sides and put it on the short side on Route 300?

Mr. Hughes: No, put it...put it on the long sides north and south.

Mr. Onderko: That's where this is.

Mr. Hughes: Yeah?

Mr. Onderko: Yeah.

Mr. Hughes: (making a noise)

Mr. Onderko: Oh, sliding, you're saying sliding closer.

Mr. Hughes: (Inaudible)

Mr. Onderko: Un...Un-center it... (Inaudible)

Mr. Donovan: If you eliminated...I'm sorry, Mike?

Mr. Maher: I'm just not comfortable having all businesses lose their...some of the logo because of an interpretation needed to clarify it in the Code. I think we need to address it, you know, consistently of course, but by the same token if in fact there is eighty-five foot of signage there and in some manner this allows us to configure it as four hundred square feet we need to...we need to fix that.

Mr. Cappello: (Inaudible) ...it's...I think it could cause you a problem. What if I was an independent operator who had no affiliation with Stop and Shop or anything and my name was John's Gas Station and I decided I wanted to paint my one and only canopy purple which was in your reg's with a...with a gold stripe because I like the Los Angeles Lakers and that was the color I wanted to paint my canopy and it was my first one, then I could do it...

Mr. Maher: In...

Mr. Cappello: ...but because Stop and Shop has that stri...a brown stripe, I mean I could see if it's a logo but a brown...

Mr. Maher: In essence...

Mr. Cappello: ...stripe to say that's the color we'd like to paint our canopies...

Mr. Maher: Right, in...in essence the way the law is written right now if that was your first gas station, yes, you could do it with no problem at all. If you build a second one you're associated with that color you can't do it. That's why I say it...it doesn't make sense whatsoever. Not in this application nor the previous one.

Mr. Mattina: That's why I'm here all the time.

Chairperson Cardone: That's right.

Mr. Maher: And I understand you're just following what's written but...

Mr. Mattina: Right.

Mr. Maher: ...it's just...it's frustrating to...to see this, you know, repetitive, you know, issue come up and have to...

Mr. Hughes: Are you...are you suggesting its legislative? That it needs to be refined?

Mr. Maher: One hundred percent.

Mr. Hughes: Okay then well let's do that. I and I agree with you because there's a lot of this stuff, they take four or five books and slam them together and hope that it covers everything. There's a lot of stuff in here that's...

Mr. Mattina: While you're at it the floor area...

Mr. Maher: So, so...

Chairperson Cardone: There are a couple of other issues too.

Ms. Drake: But when drive around and you look at the different restaurants they either have the words or a striped awning.

Mr. Hughes: Or their colors.

Ms. Drake: Or their colors but they don't have both so therefore it...so far things have been consistent.

Mr. Maher: I mean, in essence, the STS if in fact red and white is their color, technically speaking that entire around the...the color of red around the perimeter is...is technically a sign it does...

Mr. Mattina: If I was to...if I was to review this I would send it for red, the STS, I would send it for the stripe, I would send it for you know two thousand percent over...

Mr. Maher: Right but the only problem I have then is, then it appears it's a gross over a...over...overage on the percentages when in fact it...it really isn't and that's the issue ultimately.

Mr. McKelvey: And actually...actually the colors make it look better.

Mr. Onderko: Under the definition of sign what would the...the purple pinstripe fall under to classify it as a sign?

Mr. Mattina: (Inaudible)

Ms. Gennarelli: Can you just give Joe that microphone please?

Mr. Onderko: I'm sorry.

Ms. Gennarelli: Thank you.

Mr. Mattina: Yeah, basically the sign definition is words, letters, models, representations, devices in which any, in the nature of any advertisement, attraction or directive so that's pretty broad.

Mr. Hughes: Well, for example you're driving down the road and you see orange and pink and white, Dunkin Donuts, before you get to read the letters. Has this had that same kind of impression nationwide? I don't think so. So, you know, I agree with Mr. Mahers it's a legislative issue that needs to be addressed.

Mr. Onderko: So...so...so but in...so with that interpretation I could take off the fruit basket and the Stop and Shop and just the canopy, paint the canopy it's considered a sign which I don't think was the...the intent of the...

Ms. Drake: No because then it's just a stripe...then it's just a striped awning it doesn't have the lettering and the logo so therefore I'm interpreting that that isn't a sign.

Mr. Mattina: Right, usually, usually the lettering, the emblem, the...the logo sets off the color coordination and the striping...

Mr. Hughes: It's in the cluster.

Mr. Mattina: Correct, it's in the theme of the letters, the artwork, the logos.

Ms. Drake: So if the stripe was black and not the same color as the lettering...I'm just using examples. I don't know.

Mr. Mattina: If it's all incorporated in the same thing I would still count it.

Ms. Gennarelli: Joe, take that mic please.

Mr. Mattina: If there was no logo, no Stop and Shop, it was just a grey and purple canopy that doesn't represent anything to me. Once you start lettering, you start adding artwork and logo and designs everything counts.

Ms. Drake: So just because under the STS there's red paint, a red tile, a red block under that that's becoming part of the logo.

Mr. Mattina: Correct. If the red was the same facade color as the rest of the building and the letters were white or red then no but the red is used to highlight the letters.

Ms. Drake: And if you want to use the other microphone you then have two over there.

Ms. Gennarelli: We do have a second one.

Mr. Mattina: Right, the red banner is used to highlight the white STS letters so its part of that advertisement display.

Ms. Drake: So therefore the variance request we received for this is significantly larger in signage then?

Mr. Cappello: Is that consistent with what the Board? I mean you have Lowe's and Home Depot and I don't recall ever having to get a variance for the blue a...Lowe's and I have received variance for Lowe's signs and for the...whatever the color is with Home Depot. We received a sign for that and for Kohl's and for Pet Smart and for, you know, for quite other chains that have...

Mr. Donovan: But were they all facade signs, John?

Mr. Cappello: Yeah, yeah, they were for all of those shopping centers and I think with the way we calculated them was that the color of the...the...if the awning had a logo on it but if it was just the corporate color...blue for Lowe's, and you know, orange I think for Home Depot and I think blue and red for Pet Smart it was really just the lettering it wasn't the background color...

Mr. Donovan: And have those variances...

Mr. Cappella: ...and like there is a red in STS

Mr. Donovan: Have those variances come from this Board?

Mr. Cappella: Yes, yes.

Mr. Donovan: I mean in my experience here is what we've done is if you say you need in this...this circumstance three-hundred and fifty percent, if you need five hundred and twenty square feet we have approved that. I...I don't know that we've necessarily gone through and calculated and had the conversation, you know, red background and STS and we're going to add that in. We...we've granted what's been asked for and then you've gone on your way to the Code Compliance Department and got your Permit.

Mr. Cappello: Yeah, but I think if you look at all of them if you're going down that road, you've got Barnes and Nobles, I don't think they had to go for a variance because their background color of their you know shingles is a certain color and Starbuck's and...

(Inaudible)

Mr. Maher: But if you take into account the Enterprise end of it, again because of the fact that Enterprise had a couple of Enterprises on the building we could do the entire awning which again, I don't think is the correct thing to do unfortunately but you know, I...I...I mean on page 185-16-10.1 it...it...the total sign area shall be considered to be the area of the smallest basic geometric shape rectangular, circle or triangle which encompasses or symbols of the sign. So I...I...I'm not sure if we're splitting this or...or, I understand we err on the side of caution, I...I understand that part of, I just don't know that we're, in essence, doing the right thing.

Mr. Hughes: One of...one of the things that's happened here historically with Lowe's and maybe that's why its not so specifically clear here, not just Lowe's but a lot of these big...Target and so on, the sign is on an other lot, the building is on another lot, there's reciprocities and parking and all kinds of stuff going on so what we try to recommend to the Planning Board is when they're putting one of these corners together to outline the pylons to have so many tenants and so much space so they don't end up back here every six months. So maybe that's why some of these things we haven't ruled on and...

Chairperson Cardone: Well I think there is another issue, when its sent to us from the Planning Board I don't think Joe then, you take a look at it at that point so...

Mr. Mattina: No I don't review anything from the Planning Board.

Chairperson Cardone: So...right...so when it comes to us we're...we're dealing with what the Planning Board sent to us and Joe hasn't necessarily seen that and figured out by his calculations...

Mr. Hughes: Yeah, it's (inaudible)

Chairperson Cardone: And I think that's what...I think that's what the issue is.

Mr. Hughes: Yeah.

Mr. McKelvey: Yeah.

Mr. Cappello: I mean I can understand somewhat the canopy but I mean I'm just say...the red awning, I mean there has to be some color and I think if we went to architectural review at the Planning Board and we made that awning the same color as the building you know, beige with beige block they would tell us to break, you know, break up the color so, you know, so I don't...I can't it...it...it's really stretching it to say that you know, this is signage. It's a red, you know, architectural feature...

Mr. Hughes: Well just for an example John, what if somebody took the STS letters and just put a white stripe around there and made the limit of the sign to that and the red building, what could they say then? You know, we're looking...we're looking for ways to improve the position of the applicant here.

Mr. Donovan: Well can we go back to the definition for a second? And I'm saying the definition of sign area, it includes all faces of a sign measured as follows: you have two choices, choice number one, which such a sign is on a plate or framed or outlined all of the area of such plate or the area enclosed by such frame or outline shall be included. So do we, on the STS example, do we take that red to be a frame or an outline? Because number two is when such sign consists only of letters, designs or figures engraved, painted or projected or any manner affixed to a wall the total area of such sign shall considered to be that area of the smallest basic geometric shape, rectangle, circle or triangle which encompasses all of the letters or symbols of the sign.

Mr. Maher: So in essence then what was provided to us by the applicant this depicts number two?

Mr. Cappella: Correct.

Mr. Maher: The way in which he has calculated the square footage.

Mr. Donovan: I...I would think so Mike, based upon that definition unless anyone else seems...would think that that red background constitutes a plate or a frame or an outline.

Mr. Hughes: That's the color of the building in that part of the building.

Mr. Onderko: And...and along that same line with the box, for instance on the...the pylon sign I...I could make an argument that the sign area is a box around the word tenant but because I don't know how much space they are going fill up I've taken the full box...I've taken definition A for a sign area. So I...I used B for the box, because we don't have a box around the building signs and used the box definition where we do have a box with a panel for the pylon.

Mr. McKelvey: Because where that red is that could be any color with letters on it to make the letters stand out.

Mr. Hughes: Or you could paint a white stripe around it and reduce it down to that, I mean it's...or we could go to the far end of the extreme and go to Hess in Fishkill where the corporate logo didn't mean anything and they made them do the whole thing in stone. So what do you do then? If you ask fifteen Board Members you get thirty-two answers. When you walk through the door here something is illegal and we're here to try to purge it. That's what makes it such a difficult fit. I have nothing else.

Chairperson Cardone: Okay, does anyone else have any...?

Mr. Cappella: And I just, historically, I'm just...if you take that Lowe's the blue that they have on Lowe's and you call all that blue which is behind every L-O-W-E-S the variances that they would have needed to put their sign on the Lowe's would have been into the ten thousands of a...

Mr. Maher: Right.

Mr. Cappella: ...percent probably cause the...

Mr. Maher: But if Joe didn't review it wouldn't have been noted in the same calcs that he would use here be used there, that's the only...

Mr. McKelvey: That was...that was all done by the Planning Board.

Mr. Hughes: Yeah, and if the Planning Board had it in their future site that they were going to determine that before and the tenant or the applicant said yes we'll live with that you might not end up over here for ten years until something else goes on. A lot of crazy stuff goes on with that signage.

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

Mr. Hughes: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Onderko: Thank you.

Mr. Cappella: Thank you.

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions that have been raised by tonight's applications... oh Joe has some figures for us.

Mr. Mattina: Yes, I have the Applebee's figures, in 1997 they requested a two hundred and nine-seven square foot sign variance and a thirty-six square foot sign in 1994 (March 2005) so altogether they have received two hundred and thirty-two point seven-five square foot in variances.

Ms. Drake: What was the one in '97 Joe?

Mr. Mattina: In '97 they asked for two hundred and ninety-seven square feet and they were allowed a hundred so that would be a hundred and ninety seven.

Mr. Hughes: And they added thirty-six?

Mr. Mattina: They added thirty-six more, March of '05 for a total of two hundred and thirty two point seven-five square foot of variances they've received already.

Mr. Hughes: Okay, so they had three hundred and thirty-three before this proceeding?

Mr. Mattina: Correct.

Mr. Donovan: I'm sorry; three hundred and thirty-three was what they were?

Mr. Hughes: Yeah.

Mr. Mattina: Three hundred and thirty-three, yes.

Mr. Hughes: Two ninety-seven and thirty-six unless I added that wrong.

Mr. Mattina: If you subtract from my calculations, my calculation, now they would need six thirty-nine minus the three thirty-three. So we went for eight seventy-one to six thirty-nine.

Mr. Hughes: That's Chinese arithmetic.

(Inaudible)

Chairperson Cardone: I think that we can when we a...when we're discussing these we can bring all of this in and right now the Public Hearing is closed but I can still get that information from you later.

Mr. Mattina: Okay.

Chairperson Cardone: And right at this time, I'd like to short adjournment to confer with Counsel and I'd ask if could wait out into the hallway and we'll call you in shortly.

(Time Noted – 8:39 PM)

ZBA MEETING – JUNE 28, 2012 (Resumption for decision: 9:01 PM)

GAS DEVELOPMENT LEASE LLC

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

Applicant is seeking area variances for a gasoline station to be constructed within 1000-feet of another existing gasoline station and the 200-foot required separation to a place of public assembly and the maximum amount of allowed signage to build a gasoline station, tire service business and a bank.

Chairperson Cardone: On the first application Gas Development Lease LLC, 1413 Route 300, seeking area variances for a gasoline station to be constructed within 1000-feet of another existing gasoline station and the 200-foot required separation to a place of public assembly and the maximum amount of allowed signage to build a gasoline station, tire service business and a bank. This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

Ms. Drake: So moved.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Hughes: I think we've cleared up who is on first and all of that. There were a lot of things surrounding the applicant's sign proposals but I think we've got it whittled down now.

Chairperson Cardone: The two hundred foot required separation, was it not agreed that they did not need that variance? That was my understanding.

Mr. Hughes: It was measured from the pumps. The law says it was measured from the pumps and they have an adequate distance.

Chairperson Cardone: Right.

Mr. Donovan: Do we have clarity on the total square footage of signage variance?

Chairperson Cardone: No we don't.

Ms. Drake: (Inaudible)

Mr. Hughes: According to who?

Ms. Drake: They calculated it. It appears in their application. We didn't get a sheet.

Mr. Donovan: So then...then so...at the five twenty square feet that would not include the Stop and Stop stripe, would not include the SDS red a...

Mr. Maher: Backdrop.

Mr. Donovan: ...awning, backdrop. Thanks Mike, I knew there was a technical term for that.

Mr. Onderko: Correct. It would only be for the boxes around the logo, the actual lettering and the logo that would stand proud of the building face and canopy.

Mr. Donovan: And the Board is as in the prior application deeming this to fall within the definition of sign area, subparagraph two and that we're only counting the geometric shapes.

Chairperson Cardone: Right.

Mr. Hughes: A square, triangle or circle that could be put around that particular...

Chairperson Cardone: Right.

Mr. Donovan: And those total five hundred and twenty square feet.

Mr. Onderko: Correct.

Mr. Donovan: Okay.

Chairperson Cardone: Any further discussion on this application?

Mr. Hughes: I'll move it forward.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:03 PM)

JS
7/10/12

JUL 5 1 2012

TOWN OF NEWBURGH
TOWN CLERK'S OFFICE

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 variances as follows:

- *Grant of a variance allowing a gas station to be located within 1,000 feet of an existing gas station;*
- *Grant of a variance allowing the total signage on the premises to be 520 square feet where 144 square feet is the maximum square footage allowed under the Code.*

-----X

Introduction

Gas Development Lease, LLC seek area variances¹ as follows: (1) a variance allowing a gas station to be located within 1,000 feet of another existing gas station; and (2) an area variance allowing the total square footage of the proposed signage to be 520 square feet where the maximum square footage allowed under the Code is 144 square feet.

The property is located at 1413 Route 300 in the IB Zoning District and is

¹ This matter comes before the zoning board upon a referral from the planning board. In their referral, the planning board indicated that *three* variances *may* be required. The applicant determined that the third variance – a prohibition against the construction of a gasoline dispensing or storage facility within 200 feet of a place of public assembly (Town Code section 185-28(F)) – was not required and thus seeks only the two variances addressed herein.

identified on the Town of Newburgh tax maps as Section 60, Block 3, Lot 40.2.

A public hearing was held on May 24, 2012, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code. The public hearing was continued until June 28, 2012 at which time it was closed.

Law

Section 185-28(G) of the Code of Ordinances of the Town of Newburgh [Zoning], provides as follows:

Before the planning board shall approve the plans for a car wash or motor vehicle service station, the board shall consider the potential interference with or danger to traffic on all abutting streets. The cumulative effect of all curb cuts or any such new use shall also be considered, and in no instance shall a new motor vehicle service station or any other establishment dispensing gasoline be permitted to be established within 1,000 feet in any direction from a lot on which there is an existing motor vehicle service station or other establishment dispensing gasoline. This prohibition shall not apply to gasoline or diesel fuel service facilities located in a travel center approved by the planning board.

Section 185(14)(B)(1)(c) limits the total square footage for all signs on a particular property to no more than one half of the street frontage of that property. In this case the above stated formula limits the total square footage for all signage to 144 square feet.

Background

After receiving all the materials presented by the applicant and upon hearing the testimony of Larry Wolinsky, Esq., Timothy Onderko, P.E. and John

Cappello, Esq. at the public hearings held before the Zoning Board of Appeals on May 24, 2012 and June 28, 2012, the Board makes the following findings of fact:

1. The applicant is the owner of a 3.03+/- acre lot (tax parcel 60-3-40.2) located at 1413 Route 300.
2. The lot is currently vacant. The applicant now proposes to erect three buildings on the lot which will include a gasoline station, a tire service center and a credit union.
3. The applicant's proposal is set forth in an application that includes a conceptual site plan prepared by Langan Engineering and Environmental Services dated February 1, 2012 and a signage plan prepared by Langan Engineering and Environmental Services dated April 4, 2012.
4. Additionally, the applicant's have submitted a Traffic Assessment prepared by Langan Engineering and Environmental Services which concludes that "it is our opinion that the site driveway will operate at an acceptable LOS [Level of Service]" and that the proposed project "could occur with no significant impact to the Union Avenue corridor."
5. This application provided the Board with the opportunity to review the definition of "Sign Area" as set forth in section 185-3 of the Town Code. Because the signage proposed by the applicant was located on a backdrop or awning that was identified with a color or theme that is associated with the proposed user of the building in question, the Code Compliance Department offered the opinion at the public hearing that the entire backdrop/awning would fall within the definition of

“Sign Area.” Code compliance therefore indicated at the hearing that the total area of the backdrop or awning should be included in the signage calculation². The Board notes, however, that the Code provides two separate, distinct and mutually exclusive ways to calculate sign area. Under the first analysis provided, when a sign is on a plate, is framed or is outlined, the entire area of such frame, plate or outline is included. Under the second analysis, when a sign consists of only letters, designs or figures, only the area of the letters, designs or figures is included in the calculation pursuant to the methodology provided in this portion of the Code. Upon due consideration of this matter, the Board finds that signage placed upon an awning or a backdrop, which signage is not enclosed on a plate, frame or outline, and regardless of the color or theme of the awning or backdrop, should be calculated based upon the methodology set forth in paragraph (2) of the definition of “sign area” as contained in the Code. This calculation – limited to the letters, designs and figures pursuant to the methodology provided in the Code – is therefore utilized by the Board herein to evaluate the variance requested relative to signage.

6. No members of the public spoke either in favor or against this application.

² Because this application was referred to the Zoning Board by the Planning Board, Code Compliance did not prepare any calculations regarding the total signage variance required. During the course of the hearing, however, Code Compliance did express views regarding the signage calculation which view ultimately led to the Zoning Board analyzing the “Sign Area” definition as applied to this application.

7. The applicant has been referred to the Zoning Board of Appeal by the Town of Newburgh Planning Board pursuant to correspondence from their counsel dated April 3, 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 variances, the Board considered the five standards for determining whether the applicants have sustained their 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.

The issue for the Board to confront when analyzing this factor as it relates to the variance requested regarding the 1000 foot separation between gasoline stations, however, is whether or not the traffic generated by this permitted use will cause an undesirable change in the character of this existing neighborhood or result in any undue detriment to properties within that neighborhood.³ The applicant has submitted a detailed Traffic Assessment prepared by Langan Engineering & Environmental Services. This traffic assessment concludes that that the proposed project "could occur with no significant impact to the Union Avenue corridor."

Accordingly, based on an objective analysis of the engineering data provided, the Zoning Board of Appeals determines that the additional traffic generated by this application will not cause any undesirable change in this existing neighborhood nor result in any detriment to any nearby properties in this neighborhood.

The applicant's representatives further testified at the hearing that the proposed signage would be in harmony with this existing and well-established commercial neighborhood. The applicant also testified that the proposed sign-

³ A reading of the Code provision in question – 185-28(G) – reveals that the underpinnings of the prohibition against gasoline dispensing establishments being within 1,000 feet of each other is to minimize adverse traffic impacts. Specifically, the Code provision provides that the planning board shall "consider the potential interference with or danger to traffic on all abutting streets. The cumulative effect of all curb cuts for any such new use shall also be considered."

age would not in any way result in any undesirable change to the neighborhood nor cause any detriment to any nearby properties. The applicant further testified that the signage proposed is appropriate as to scale and is in harmony with other buildings and signs in this commercial neighborhood.

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 buildings and signage 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 variances will not result in any serious, undesirable, detriment to the surrounding neighborhood.

(2) Need for Variance

Because the prohibition imposed by Section 185-28(G) is absolute, it is not feasible for the applicant to obtain the relief sought herein relative to the distance between gasoline stations without the issuance of a variance from this Board.

The applicant testified that signage of the quantity and of the size proposed was integral to the identification of their businesses. Given the size of the property in question and further given the fact that it has limited road frontage, it is clear that the difficulty confronted by the applicant cannot be overcome by any method, feasible for the applicant to pursue, except by issuance of the area variance.

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.

(3) Substantial Nature of Variances Requested

The variances requested are substantial. However, under the circumstances present here, and because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, that the substantial nature of the variance requested does not prohibit the Board from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence produced that would indicate that issuance of the requested variances would result in any adverse physical and/or environmental effects. The applicant testified that no such effects would occur.

(5) Self-Created Difficulty

The need for these variances is clearly self-created in the sense that the applicants are charged with the knowledge of the requirements of the Town of Newburgh Zoning Ordinance.

However, given the fact that the Board has determined that issuance of the requested variances will not result in any adverse impact upon the surrounding neighborhood and further given that the Board has determined that the variances requested is the minimum variances that may be issued to allow the applicant the relief sought, the Board determines that the self-created nature of the

hardship confronting the applicant is not a bar to issuance of the relief requested herein.

Decision

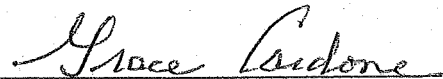
In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the variances as requested upon the following conditions:

1. The variances hereby granted are 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: June 28, 2012




*Grace Cardone, Chair
Town of Newburgh ZBA*


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
JUL 30 2012


ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH

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