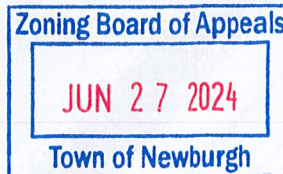




THE LAW FIRM OF WILLIAM G. SAYEGH, P.C.
The Sayegh Building
65 Gleneida Avenue
Carmel, New York 10512
845•228•4200 sayeghlaw.com

Dutchess County
1100 Route 9
Fishkill, New York 12524

Town of Newburgh
Zoning Board of Appeals
21 Hudson Valley Professional Plaza
Newburgh, NY 12550



June 27, 2024

William G. Sayegh
Robert A. Weis
Zena M. Dubas
Christopher W. McClure
Tracy C. Reimann
Samantha H. Sayegh
James P. McEleney
Amy L. Covais
Naim Bajraktari, *Of Counsel*

S. Barrett Hickman, *In Memoriam*
*retired Justice of the Supreme
Court of the State of New York*

Mona J. Sayegh,
Executive Administrator

**RE: Application for Variances: 2 Lakeside Road
June 27, 2024: Zoning Board Agenda Item
Our Client: Mid-Hudson Civic Center, Inc.
Our File No. 27909.01**

Dear Zoning Board of Appeals:

This office represents Mid-Hudson Civic Center, Inc., the owner of 21 Lakeside Road, which is located in the Town of Newburgh, New York, and the home of IceTime Sports Complex. IceTime Sports Complex is a premier ice skating and sports facility that features two full sports rinks and a state of the art hockey training system. Ice rink activities include public skating, private lessons, birthday parties, figure skating camps for all ages and ice hockey leagues. IceTime is home to the Mid-Hudson Polar Bears, the Mid-Hudson Adult Hockey League, and Roller Hockey.

Mid-Hudson Civic Center Inc is a not-for-profit community organization dedicated to providing cultural, recreational and educational opportunities to the Hudson Valley. Our client, Mid-Hudson Civic Center, Inc., strongly objects to the Town Zoning Board of Appeals's consideration of an additional gas station with convenience store at the above referenced location, which encroaches on the 1,000-foot setback to another such facility, for the following reasons: 1) The location is an important Town Gateway; 2) Major health concerns; 3) Major traffic concerns; 4) Disproportionate share of noxious enterprise in environmental justice/disadvantaged area; and 5) Future blight.

Pursuant to Town Law, 267-b, the Town's Zoning Board of Appeals is authorized to grant variances which are not contrary to the public interest and shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In addition, the Board is required to consider the five area variance criteria: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals. Finally, in granting the variance, the Board shall grant the minimum variance deemed necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The requirements of Zoning Section 185-28 G, Motor Vehicle Service Stations, Car Washes and Rental Agencies are:

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 for 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.

This above zoning requirement for motor vehicle service stations was the result of Local Law No. 3 approved on July 15, 1996 by the Town Board. As described above, the 1,000-foot setback was proposed to protect against adverse traffic conditions. As part of the Comprehensive Plan, written in 2005, the Town described the traffic and transportation problems as a quality of life issue stating (page III-13):

Traffic and transportation problems in the Town are a primary interest and quality of life issue. In fact, transportation issues were among one of the main concerns leading to the Town's decision to proceed with a Comprehensive Plan Update process. Although many questions have been raised related to transportation, the major issue identified for the Plan was to determine how the transportation network throughout the Town can be improved, while balancing other important factors such as quality of life, economic development and environmental preservation.

In addition, the five major corridors of concern were identified and included Route 17K and Lakeside Road, see page III-14. Finally, on page III-48, the Comprehensive Plan recommended,

The Town may want to pursue restricting the number and location of motor vehicle service stations permitted at a single intersection. For instance, stations could be permitted only on opposite sides of the street and within a certain specified distance from other stations on the same side of the roadway."

Please note that there was no recommendation in the 2005 Comprehensive Plan to reduce the 1,000-foot setback established in 1996, and in fact, there was a recommendation to introduce additional restrictions to prohibit clustering of motor vehicle service station uses. Indeed, the Town foresaw that zoning restrictions were needed to maintain desirable community character in a

gateway area, protect community health, maintain reasonable traffic conditions, ensure there is not a disproportionate share of gas stations in one area, and protect against future brownfields.

Community Character in a Gateway Area

The Mid-Hudson Civic Center Inc. has invested in the Town of Newburgh as part of its investment in the Hudson Valley. Sports and family recreation are a desirable resource in the area and contribute directly to the economic development and revitalization of the area and overall region. Sports and family recreation are undeniably good for everyone and the IceTime venue supports families and various hockey leagues from all over the Hudson Valley.

Does the Town desire a major gateway to be characterized by three gas stations? There is an opportunity here to build on the success of IceTime and other contributors to the tourism industry. Gas stations are important, undoubtedly, but in addition to Mobil and Pilot there is Cumberland Farms further west and Shell just east of the subject interchange. How many gas stations are desired in this area? Is the economic benefit to the applicant being weighed against the detriment to the health, safety and welfare of the community? Surely, the Town does not need another gas station here to provide gasoline services to residents and visitors. There is definitely no shortage of gas stations in this area justifying consideration for a change in the existing zoning.

Major Health Concerns

The applicant is proposing 16 fueling stations, which necessitates 60,000 gallons per month of petroleum stored beneath the ground in underground storage tanks. Assuming these tanks are 12,000 gallon tanks, that involves five underground petroleum tanks. These would be added to the tanks already located underground at the Pilot and Mobil facilities. This addition to the pre-existing concentration of highly flammable material close to a major interchange is simply not necessary.

Aside from concerns of explosion, underground petroleum storage tanks can cause significant harm if not appropriately designed or maintained. These tanks are historic and common sources for the release of toxic substances into the soil, nearby aquatic resources, and into the air. Gas stations often require remediation from spills both on the surface and underground. According to the Environmental Protection Agency, about half of the nation's 450,000 brownfield sites¹, approximately one-half, include property comprised of the presence or protentional presence of petroleum, much of it leaking from old gas stations². Gasoline service facilities are responsible for serious environmental hazards and present health risks due to increased air pollution, contamination risks (leaks in underground tanks, spills at pumps, and spills associated with tank filling), noise pollution, and light pollution. Gas stations also emit the carcinogen benzene in addition to other toxic substances including toluene, ethylbenzene, and xylene which carry significant health risks including effects to the nervous system, cognitive impairment, eye and throat irritation, dizziness, hearing damage and impaired memory³. Repeated high exposure to

¹ A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

<https://www.epa.gov/brownfields/overview-epas-brownfields-program>

² <https://www.epa.gov/ust/petroleum-brownfields>

³ [https://blog.trybooster.com/Gas-Stations-are-Slowly-Dying.-Maybe-We-Should-Let-them.-\(trybooster.com\)](https://blog.trybooster.com/Gas-Stations-are-Slowly-Dying.-Maybe-We-Should-Let-them.-(trybooster.com))

gasoline, whether in liquid or vapor form, can cause lung, brain and kidney damage⁴. Constructing a gas station in close proximity to other gas stations is undoubtedly detrimental to the health, safety and welfare of the public.

Traffic Safety

We understand that the applicant has done a traffic impact analysis. This analysis considers the capacity of the traffic network, but it cannot foresee the potential for traffic accidents. It does not take a traffic engineer to identify this area, immediately adjacent to a major interchange for I-84 and NYS Route 17K, as a dangerous congested area further compromised by a high proportion of non-resident drivers. Drivers exiting the highway in search of gasoline and/or hotels commonly drive erratically as they are unfamiliar with the locale. Traffic problems are identified by the Town, as noted above, as a quality of life issue. As it relates to IceTime, we have young athletes accessing our site and our share of tourists. It is prudent that our facility remain safely accessible for everyone involved.

Environmental Justice Area/Disadvantaged Community

This area of Newburgh is designated by NYS Department of Environmental Conservation (NYSDEC) as a potential Environmental Justice (EJ) Area. NYSDEC explains on its website⁵, "Potential EJ Areas are U.S. Census block groups of 250 to 500 households each that, in the Census, had populations that met or exceeded at least one of the following statistical thresholds:

1. At least 52.42% of the population in an urban area reported themselves to be members of minority groups; or
2. At least 26.28% of the population in a rural area reported themselves to be members of minority groups; or
3. At least 22.82% of the population in an urban or rural area had household incomes below the federal poverty level.

As an Environmental Justice Area, it is important that consideration be made as to whether the siting of another gas station requiring an appeal of the Zoning Law is fair treatment for the residents of this community.

This part of Newburgh is also considered a Disadvantaged Community by New York State, which "ensure[s] these communities directly benefit from the State's historic transition to cleaner, greener sources of energy, reduced pollution and cleaner air, and economic opportunities."⁶ Potential pollution exposures, including benzene concentrations, particulate matter PM_{2.5}, and vehicles, diesel trucks and bus traffic are already identified as disproportionate environmental burdens for this community. The Town has a responsibility to consider its unique ability to protect the community.

⁴<https://www.medicalnewstoday.com/articles/323426;>

<https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=465&toxid=83-;>

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2788517/;](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2788517/) <https://www.scientificamerican.com/article/is-it-safe-to-live-near-gas-station/>

⁵ [Maps & Geospatial Information System \(GIS\) Tools For Environmental Justice - NYSDEC](#)

⁶ https://climate.ny.gov/-/media/Project/Climate/Files/Disadvantaged-Communities-Criteria/LMI-daccriteria-fs-1-v2_acc.pdf

Future Blight

Electric vehicles have had a tremendous impact on the motor vehicle industry. Gas stations as they have historically existed will change to accommodate the shifting technology. Given the number of gas stations at this location, it is fair to say that at least one of them will cease operations for any number of reasons. However, as potential brownfields, former gas stations sites are very difficult to redevelop, which lowers property values. The Board must consider again whether the applicant's benefit is balanced with the potential detriment to community character, health, safety and welfare of the community.

Area Variance Criteria

Providing adequate separation between gasoline filling stations is a well-established zoning tool used to mitigate the negative impacts of having such stations in close proximity to one another. Based on the statutory criteria listed below, the separation variance should be denied.

- i. Will the variance result in an undesirable change in the character of the neighborhood.

The variance will result in an undesirable change in the character of the neighborhood because it will introduce a gasoline alley at a Town gateway, endanger public health, create unsafe traffic conditions, allow for a disproportionate share of gas stations in a disadvantaged area, and create an area where future blighted properties will lower property values.

- ii. Are there alternatives to the variance.

There are a number of uses permitted in the Zoning District that would be a better alternative to another gas station in this area.

- iii. Is the size of the variance substantial.

The variance is very substantial. The site is approximately 350 feet away from the Mobil gas station to the north. That is a 650 foot (65%) encroachment into the required 1,000 foot setback. Stated another way, the applicant is requesting that 65% of the required separation distance be waived.

- iv. Will the variance have an adverse impact on physical or environmental conditions.

The variance will have an adverse impact on physical and environmental conditions because it would locate two high-risk uses in close proximity to one another. An incident at any of the gas stations would greatly increase the risk of such an incident at the nearby stations, resulting in physical risks to emergency response personnel as well as to the environment. In addition, the

2 Lakeside Road

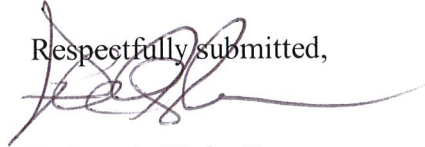
site is part of a disadvantaged community already suffering the adverse effects of benzene, particulate matter PM_{2.5}, and traffic and truck congestion.

v. Is the variance self-created.

The variance is completely self-created. The applicant does not own the parcel and wishes to purchase it with full knowledge of the restrictions applying to it.

As demonstrated, there are several reasons to deny the requested variance. There is no need to accommodate another gas station at this location due to 1) The location is an important Town gateway 2) Major health concerns 3) Major traffic concerns 4) Disproportionate share of noxious enterprise in environmental justice/disadvantaged area, and 5) Future blight. There is no appropriate basis to grant the multiple requested variances. There is no need to accommodate another gas station in such close proximity to two others which would result in a substantial negative impact to the area. To grant the variance would render the existing 1,000 foot restriction meaningless.

Respectfully submitted,



Robert A. Weis, Esq.

The Law Firm of William G. Sayegh, P.C.

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