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Community Board 8

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District Manager, Marie Adam-Ovide

PUBLIC HEARING: **BSA Cal. No.: 436-53-BZ**
141-50 Union Turnpike
Flushing, New York

DATE: **Monday, February 29, 2016**

PLACE: **Hillside Manor**
188-11 Hillside Avenue
Hollis, New York

ATTENDANCE: **Zoning Chairperson Steven Konigsberg**
Edward Chung and Marc A. Haken

Others in attendance: **Jordan F. Most, Attorney - Sheldon Lobel P.C.**
Kulwant Singh, Owner
Marie Adam Ovide, CB 8 District Manager
Alma Karassavidis, CB8 Staff Member

Purpose of Public Hearing

This calendar application seeks to acquire a BSA Amendment and Extension of Term Application for Cal. No. 436-53-BZ, premises known as 141-50 Union Turnpike.

Zoning Chairperson Steven Konigsberg called this Public hearing to order at 7:30 p.m. He introduced the Board Members present and explained the rules governing the Hearing. There were 3 Board Members present; therefore, there was not a quorum. A vote will be taken by the full Board at the Community Board Meeting on May 9, 2016 at the Hillcrest Jewish Center, located at 183-02 Union Turnpike at 7:30 p.m.

Zoning Chairperson Steven Konigsberg introduced Jordan F. Most, representing the owner of the above premises.

Presentation by applicant, represented by Jordan F. Most

I have handed out a one page summary of this application, which is a number of different things. Primarily it is for a BSA Extension of Term and Amendment application for a gas station located at the corner of Union Turnpike and Main Street. It is a gas station that has a variance that dates back to the 1950s. It has been amended and extended on a regular basis since then. The most recent action by the Board of Standards and Appeals was for a 10-year term in 2005, which extended the

term to the end of 2014. We are seeking to extend the term of the application for another 10 years. We are also seeking to amend the application to allow for a change of use. The existing service station structure would be changed to a convenience store. The lot is 17,000 SF and the building is about 1,800 SF, which would be enlarged by 885 SF to 2,700 SF. They would be doing away with the service bays that are located in that facility. *Mr. Most passed around photos of the area mentioned.* The parking on site would be increased from the existing 2 spaces to about 9 spaces. There is no proposed change to the pump islands. With respect to the area's character, the site is located in an R3-2 zone. It had been located in a residential district before 1961 and remains in a residential district, which is why the variance needs to be in place. There are a number of significant uses in the immediate area. Diagonally across Union Turnpike and Main Street is a shopping center with a Key Food, Chase Bank and Dunkin Donuts, which is located in a C1-2 zone. Across Union Turnpike is the apartment complex, Regency Gardens. Immediately to the east of the property is the Ascension Church which runs from Union Turnpike to 81st Avenue on a long sliver-like property. On the back of the handout given out, is a 2-page sheet with a simple diagram of the proposed site plan as well as some local land uses to give some nearby context. The other side of Main Street is Parkway Village, a residential complex. On the west end of the block on which the property is located is the Kew Motor Inn, which is a 4-story motel containing 69 units with accessory parking for 69 cars. The area is a mix of commercial zone and commercial uses. Union Turnpike is an "on and off" commercial street with various commercial uses in certain spots and residential uses in others. There are residential uses and some community facility uses immediately adjacent to the property. There is a spa in use there and the C of O indicates some sort of medical facility. There are residential uses behind, which are fronted on 81st Avenue.

Basically the essence of the application requests that the BSA:

- Extend the term of the variance (ZR 11-411) for an additional 10 years.
- Amend to enlarge and convert (ZR 11-412) the service station building to an accessory convenience store
- Waive the rules regarding the timing of the filing

Questions by the Board Members:

Marc A. Haken: Why did it take 2 years, from February 2014 until February 2016? It appears to me that it invariably happens with service stations, whether they are franchised, company owned or individually owned. They come and ask for an extension.

Answer: Often as it gets near or at the end of that term, is when we will get engaged to try and extend that term. It takes time to get the application together. By the time the materials are prepared and the denial is secured from the Department of Buildings, it can be many months to even more than many months. In order for the application to be in condition to be filed with the BSA. This application was not filed until as recently as about one month ago on January 12th. There are various things that hold things up, such as delays with the architect. Ideally, I would get a call a year before an expiration so that everything can be in place or filed as timely as possible. Unfortunately that is not often how it works.

Are there any outstanding violations?

Answer: I believe we addressed that in the statement of facts. I think there are a few if any. There are 5 violations that we are actively working to clear right now.

Can you tell us what those violations are and might one of those violations be failure to maintain exterior building wall, a hazardous condition?

Answer: That is one of them.

Are the present owners of this facility new owners? If they are, when was this facility purchased?

Answer: About 4 years ago.

The violation that was just mentioned is dated March 13, 2006. There was an \$800.00 penalty imposed but the work was never done. It is now 2016, so even the new owners have had it for 4 years and during that time they chose not to address this hazardous condition. A second violation was issued dated May 27, 2014, can you explain that one to me?

Answer: That is the current situation. The term expired almost exactly 2 years ago.

Can you tell us what the other 3 violations are?

Answer: Looks like several of them are related to the wall condition.

They all are for failure to maintain the exterior building wall. All the fines have been paid on those. There is still an outstanding fee of \$250.00 on the C of O violation. Am I wrong in saying, regardless of what happens here this evening that things cannot be in place until these violations are dealt with to the satisfaction of the Buildings Department?

Answer: What we propose to do with the property will obviously correct any of these conditions; unless they have already been corrected. I will find that out for you. The proposal is to modify, enlarge and update this existing structure. Any conditions of this nature will be addressed in that rebuild and renovation.

Would they like to put in a convenience store?

Answer: They would like to renovate, modify and enlarge the existing structure by 885 SF.

Will they be applying for a liquor license to sell beer?

Answer: They may do that in the future. That is not part of our action today. This operator has several other gas stations, not in New York City, that operate a similar type of business. There is one in Lynbrook that has a small convenience store and a Subway shop as part of the gas station. (Mr. Most provided photos of the other location)

It has become somewhat standard for such a facility. There is no question in my mind that the community would frown upon your selling beer.

Edward Chung: Is there anything else on that lot? You want to expand the place to put the convenience store where? (Pointing to the map)

Answer: Mr. Most pointed out the different areas at the site on a diagram he provided.

No. There is a gas station here. It is not an open lot. Here is the canopy, these are gas pumps. The existing building is here and this is the proposed enlargement.

So there is nothing here.

Answer: Correct, in the back of the building it's the same thing. There is currently a 35-45 foot buffer from the existing building to the back. We are pushing back about 10 feet into it. The buffer will remain at about 25 feet. It is a wooded area with trees and weeds. There is growth in that area.

Steven Konigsberg: Is there any driving economic factor in making this expansion, in terms of putting in this convenience store as a necessity for the profitability of the location?

Answer: There is little to no profitability in the building as it is today, as a service structure.

It has been a gasoline station for almost 70 years.

Answer: Over the years there has been a significant decline in the service business, in the service bays. Gasoline has remained a necessity, but the service bays are not part of the economic equation. It is not a hardship argument that we are making.

Does the applicant intend to do away with the service bays and repair portion of the business?

Answer: Yes. The service bays will become the convenience store. There is an existing structure, which houses the service bays that would be completely replaced by the convenience store. The building as it stands would be enlarged by about 10 feet.

When was the last time that the storage tanks were inspected, replaced, schedule to be inspected and/or replaced?

Answer: I will try to find that out for you.

Edward Chung: Will the convenience store abide by the health codes? In other words, there will be food sold and would have to be up to all health codes.

Answer: Of course it would have to comply with all regulations; DOB and any applicable health codes without question. It's not going to be a fast food place.

Marc A. Haken: Will there be bread and milk sold?

Answer: More like a 7-Eleven type of place but smaller in size.

Edward Chung: I am just thinking about how it will affect the homeowners around there. They don't want the garbage and trash ending up on their lawns.

Answer: There is a dumpster here in the corner. They tried to locate it away from the residents. This is a photo of another one of their locations. As you can see it is a very clean, well operated space.

Marc A. Haken: This is a self-service gas station. Would there be someone available to pump gas or service a handicapped person? Would there be an additional cost?

Answer: There will be someone there and no extra charge. One of the principals, Mr. Singh indicated that they have already taken care of the violation concerning the wall. The contractor was there and fixed the wall. I can get the paperwork and receipts to indicate that the work was done by the contractor.

A picture would have been great! We realize that sometimes the City does lag in paperwork, but surely a picture would suffice to show the corrections that were done on the wall.

Answer: I will get you photos and invoices of the work completed and find out what the status is of getting the violation removed.

Public Participation:

Dwaraka Poltzpalle: I live behind the gas station for 25 years. About 15 years ago, one of my neighbors had a problem with the height of the lights that were on all night. That was taken care of. The easement property between my house and the gas station property is supposed to be maintained by them but it has not been maintained. I don't have a wall behind my house. The gas station wall is not very high. In the last 10 years, there have been 2 hold-ups at the gas station. They jumped the wall and came to my house. I was not home at the time. The police came later and checked everything. That wall height needs to be increased. At the time I heard that the easement property has to be maintained. Now they are extending that easement and I want to know if it is legal?

Marc A. Haken: You spoke about three things. The first one being the lighting. You have complaints about the present lightning?

Answer: No, it was taken care of.

In the past your neighbor had complained about the lighting and the owners of the station at that time, in some way had addressed that complaint. The second thing you are saying there is an easement between their property and your property and that easement is for what purpose?

Answer: It is just left over land, it's vacant.

So there is a wall there which is theirs and then on your side of the wall, there is property that belongs to them?

Answer: Yes.

And there is a wall but you don't feel that the wall is high enough?

Answer: It's not.

When it comes to the wall, there is a set height. It can't be above a certain height but there is no set height that it has to be. It is their property, you can't tell them that they have to have a wall. The easement would have to be checked out by the Buildings Department. It is an easement for what?

Answer: I don't know.

An easement is when you permit a piece of your property to be used for some type of common purpose. For example; there is a gas line in the back that the gas company needs to gain access to and they have permission to go on your property to get to it. You are on a lake, which is a private lake but there is a public easement that goes through your property that anyone can take a boat and go down into it.

Jordan F. Most: As a lawyer, I am concerned about using the term easement. I am not sure it is an easement.

Answer: The previous owner told me that it was empty land and he planted all those trees. They are very big trees.

The wall we are speaking about is the wall right behind the building. So after the wall is the wooded area. I don't know if I would call it an easement.

Marc A. Haken: Is it a piece of property that belongs to the gas station?

Answer: Yes.

So it is the responsibility of the gas station to maintain its cleanliness.

Steven Konigsberg: Beyond whatever is growing there and the neighbor's property there is no division?

Answer: Right. After my land it becomes the wooded area.

Bella Ibragimova: I am right behind the gas station. I am more concerned with what is going to happen to the property, the trees. The problem is that the gas station is much higher than us. You can see what is going on in my house from there. There is no privacy.

Steven Konigsberg: That's a function of topography. Your land is lower than their land.

Answer: Yes, if they take away the tree, they are going to be right behind my wall.

Jordan F. Most: They will still be 25 feet away. Is this your property? There is a metal shed showing up here, is that you? There are 2 properties here. This distance from the wall to this wall.

Answer: I have a wall, I built it.

This is 25 feet. The applicant can build a taller wall on their side. We have to rebuild the wall anyway when the building goes back.

Marc A. Haken: I think you need to check with the Buildings Department as to how high a wall can be. There are limits and people do complain about that.

Dwaraka Poltzpalle: I was told by my neighbors when I moved in that there is an easement between the commercial property and the residential property. So they cannot use this property anymore.

Marc A. Haken: Do not use the word easement. You are using the word wrong. I tried to explain it to you and so did the attorney. An easement is a piece of land that belongs to you that you must permit other people to use in order to access something. In general, that is not what this is. This is not an easement. This is a piece of their property which is on the other side of the wall, but is still their property.

Jordan F. Most: It was a condition of the old BSA grant, to maintain this buffer area. We are asking the Board to modify the buffer area. To allow for the building to be pushed back another 10 feet. In fact in our preliminary discussions, before we even filed, we were asking to push back farther and they suggested that we push back less. We redesigned the building to try and go back as little as possible. We made the building less square and more rectangular so it would not go as deep as we originally conceived. There is probably some flexibility in that. It is probably not an easement, but a condition of the prior grant and it is our responsibility to maintain it. We would explore building the best possible wall on our side of it, or even on the other side. If you would want a wall at the back of your property.

Bella Ibragimova: My wall doesn't do anything because my house is much lower. Unless they build it a little higher, then there would be a little privacy.

Marie Adam-Ovide: The wall that we are referring to, is it a retaining wall?

Steven Konigsberg: No, it is a division wall.

Marie Adam-Ovide: There is a limit as to how high it can be. I think 6 feet is the limit.

Steven Konigsberg: Ms. Ibragimova do you wish to make a statement or just what you described; that your property is lower?

Bella Ibragimova: Yes, and I am concerned that there will be a lot of noise and it will be very close to our house. It is already a lot of noise.

Steven Konigsberg: There is no change to gasoline pumps, they will remain where they are.

Dwaraka Poltzpalle: The extension to the back, is it appropriate with the codes?

Steven Konigsberg: Yes.

Steven Konigsberg: As part of the application, will the structure that is there now or anything else that will be added have any additional height to it? Whatever the roof line is now. It sounds like Ms. Ibragimova is most concerned with privacy issues.

Jordan F. Most: The proposed building is a one story peaked roof, which is the same as the existing building.

Steven Konigsberg: I think we have concluded in terms of the presentation as well as the public participation. Are there any additional questions or clarifications?

Marc A. Haken made a motion to accept BSA Cal. No. 436-53-BZ, 141-50 Union Turnpike, between Main Street and 141st Street, seconded by Edward Chung.

Committee Discussion:

Marc A. Haken:

This is an existing gas station. They are still going to be pumping gas. They will no longer be repairing cars. In the facility that they used to repair cars, they are putting in a convenience store, which hopefully will not sell beer. As far as the back goes, we have seen the plans. I can't fathom why we would not approve such a thing.

Edward Chung: I think the gas station has a right to use their property without infringing too much on the neighbors next to them. When there is repair work being done in the bays, there is always a chance of danger. Eliminating the bays for the convenience store will minimize the danger for the neighbors. I see this as an improvement to the neighborhood.

Steven Konigsberg: It seems to me that the change is not going to be one which imposes a greater burden on the property but perhaps lessens the burden. Of course if there is a convenience store, the community would hope that the owners take into account any requests that they consider to not dispense beer or other liquor from the store. Anything in terms of new lighting would have to be in compliance with all pertinent directives. We are looking forward to receiving an update in terms of the tanks before we go to the entire Board on the 9th of March. One of the neighbors did mention something about noise. That seems to be the condition of the property existing there for the last 40-50 years and is not really going to change that much in that regard. In terms of adding the convenience store, I am sure that many of the other stores in the neighborhood that sell similar items; coffee, candy, newspapers, cigarettes, are probably not too happy about it. They had the opportunity to come tonight and failed to advise our committee about that.

I am in favor of the application. We look forward to coming back to this issue and presenting our findings to the Full Board on March 9th. If you would like to speak at that meeting please call the Community Board office at 718-264-7895 and indicate that you would like to participate at the 7:30 Public Participation portion of the meeting.

Vote:

3 in favor 0 opposed

Board Members who voted in favor: Edward Chung, Marc A. Haken and Steven Konigsberg.

Board Members who voted against: None

The motion was passed unanimously

Adjournment

This Public Hearing adjourned at 8:13 p.m.

Respectfully submitted

Alma Karassavidis, CB8 Staff

March 9, 2016

