

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
August 7, 2018**

MEMBERS PRESENT

Art DePasqua, Chairman

Jack Auspitz
Tracie Ruzicka

Paul Thomas

Secretary – Arlene Campbell

MEMBERS ABSENT

Gerald Dolan

Robert Marrapodi

ALSO PRESENT

Eliot Werner, Liaison Officer

Chairman DePasqua called the meeting to order at 7:34 pm. He explained the two-step process of the variance application to the applicant.

VARIANCE APPLICATION:

Stewarts Shop Area Variance – property located at 2300 Salt Point Turnpike, **Tax Grid No. 6566-00-33145.**

The applicant requests an area variance to Section 250-11(C)(5) of the Town of Clinton Zoning Law allowing hours of operation from 5:00 a.m. to 11:00 p.m. for the store and gas station.

Section 250-11(C)(5) of the Town of Clinton Zoning Law limits hours of operation for commercial uses in the Hamlet District to 6:00 a.m. to 10:00 p.m.

Chuck Marshall appeared on behalf of the corporation. He stated that the store is currently doing well. He indicated the amendment to the original site plan about the building addition, additional parking spaces, and charging station that were granted over the years since the original approval in 1993. One of the conditions of the special permit that was granted in 1993 was about the hours of operation, which limits the hours from 6 am to 10 pm. According to the Zoning Administrator, he can appeal the hours of operation by seeking an area variance. Mr. Marshall underscored that they are simply requesting an hour-early opening and an hour-late closing. He indicated the demand for the 5:00 am opening. The charging station is accessible 24 hours/day but noted that that they are not proposing store hours of 24 hours of operation.

Chairman DePasqua asked for questions and comments from the board.

Mr. Thomas asked about the violation letter issued by the Zoning Administrator dated June 4, 2018. Mr. Marshall explained the letter that was received from Mr. Appolonia

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regarding the violation of Section 250-11C-5 (Hours of Operation). He stated that the staff recently opened the store an hour earlier due to early commuters.

Mr. Marshall stated that he is not sure why the zoning hours are connected to the special permit approval unless there is a positive declaration for SEQRA. He indicated the original Negative Declaration for SEQRA when the initial approval was granted in 1993. The subsequent declarations for the renovation and building addition were always negative.

Mr. Auspitz asked about the 5 am opening instead of 6 am. Can you quantify the number of cars that come in? How big is the demand for the 5 am opening?

Mr. Marshall responded that this all depends on the date. He cannot compare the demand during Labor Day or Memorial Day weekend, but they can average 800 to 900 cars/day. He added that this also depends on travelling days. The morning hours are in more demand than late hours. People stop by to grab coffee and breakfast.

Mr. Auspitz asked if the customers who are coming in are local or from the Taconic State Parkway. Mr. Marshall responded, that he is not sure.

Mr. Auspitz asked about the demand at night. Mr. Marshall responded that the demand at night is lower compared to the morning traffic.

Chairman DePasqua stated that Stewarts Shop was made aware about the hours of operation in the Hamlet when the original approval was granted in 1993. This is part of the code regulations. He explained the history of this property to the applicant. He also noted that the board is only doing a recommendation to the Zoning Board of Appeals. It is up to the ZBA to make the final decision.

Mr. Thomas indicated the history of Stewarts Shop based on his reading of the minutes. There was the same variance requested in 1996 that was ruled as a use variance. This request was denied. Another attempt to extend the hours was made in 2005 but the application wasn't pursued at the Zoning Board of Appeals.

Mr. Marshall noted that he wasn't aware of the 1996 variance request. He only knew about the Site Plan approval and Special Permit that were granted in 1993.

Mr. Thomas indicated the interpretation of the previous ZEO in 2013 that this is an area variance. There is also a determination from the current Zoning Administrator that this is an area variance.

Mr. Thomas expressed his comment though the arbiter of this application is the Zoning Board of Appeals. Whether there is a detriment to the neighborhood or not, Mr. Thomas feels that there is a question of whether this application is an Area or Use Variance.

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Mr. Marshall said that he is not an attorney but there is a gas station proximity rule. For instance, you cannot have a competing gas station within 500 or 1,000 feet in case there is an explosion. The court ruled that any dimensional relief is an area variance. Mr. Marshall opined that a relief from the permitted operating hours of 6 am to 10 pm is an area variance.

Mr. Thomas stated that if Stewarts Shop were to extend the hours of operation, then this becomes a Convenience Store and a Convenience Store is not a permitted use anywhere in the town.

Sec. 250-105 of the Town of Clinton defines Convenience Store – a retail store, primarily used to sell food, beverages, and/or household supplies, which has hours of operation outside of those prescribed in § 250-11 and constructed after the effective date of this chapter.

Mr. Thomas stated that the intent of the zoning is clearly not to have 24 hours of operation. Ms. Ruzicka concurred and added, “and definitely not in the Hamlet.”

Mr. Thomas stated that he understands the applicant’s argument about this application; however, extending the hours of operation means changing the use to a Convenience Store. He underscored that Stewart’s Shop is not a Convenience Store.

Mr. Marshall remarked that it is the Zoning Administrator’s decision to classify this application as to which variance this is. The Planning Board is not in a position to classify this as a Use Variance.

Mr. Thomas agreed. It is the Zoning Board of Appeals who can rule on this. The Planning Board can only make a recommendation. He underscored that there was also precedence that this was a use variance in the past.

Chairman DePasqua expressed good comments about the store. Stewarts Shop is a great company and runs a great operation. The facility is always clean. He indicated his strong concern about setting a precedent if they extend the hours of operation. The law is clear. They cannot change the law.

Ms. Ruzicka feels that the neighboring property owners should express their comments how they are going to get impacted. Ms. Campbell stated that there will be a public hearing at the ZBA meeting.

Mr. Auspitz shared Ms. Ruzicka’s thoughts. It is really the reaction of the neighboring property owners. He suggested giving a recommendation based on the level of how the neighbors are going to react on this. Let the ZBA hear what the neighbors say about this proposal and the ZBA can decide on that level. Maybe some neighbors will want the store to open up at 5 am and close at 10 pm or vice-versa, or maybe they don’t want these changes at all.

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Ms. Ruzicka stated that the Planning Board doesn't have the right input from the neighbors to make this decision. The board agreed. The ZBA will have the chance to hear the voices of the neighboring property owners.

The board had a lengthy discussion about the above concern. Mr. Thomas stated that one of the criteria of an area variance is about the impact to the neighborhood.

Ms. Ruzicka commented that when the store is lit up at night, the neighborhood is also lit up. This is also an impact to the neighborhood.

Mr. Auspitz suggested finding out how many cars shows up during the first hour in the morning. He commented that he would be interested to know, if he is sitting on the ZBA, how much business the store gets in the first morning hours.

Ms. Ruzicka said that the critical point for her is about the impact to the neighborhood. This is a Hamlet. People who drive by might not be affected by this proposal but the people who live in the vicinity might have a problem with it. Some people might also find it handy to have a store nearby.

Mr. Auspitz agreed, the Planning Board does not have this info.

Mr. Marshall said that this is what variances are for – to get a relief of the code and the board's job is to have an ultimate balance.

The board had a lengthy discussion about the recommendation to give to the Zoning Board of Appeals. Mr. Thomas said that he doesn't want to give a negative recommendation since he doesn't live next to the store. He doesn't know the impact to the neighborhood. The board does not have an idea how the neighboring property owners will feel about this.

Ms. Ruzicka and Mr. Auspitz agreed. It is hard to give a positive or negative recommendation without knowing the neighbors' minds. They would love to get the public's opinion about this.

After all the reviews and opinions were made, the board passed a resolution, to wit:

Mr. Thomas motioned the following resolution:

BE IT RESOLVED that the Town of Clinton Planning Board is making a **neutral** recommendation to the Zoning Board of Appeals with respect to the area variance requested by Stewart's Shops Corp. from Section 250-11(C)(5) of the Town of Clinton Zoning Law allowing hours of operation from 5:00 a.m. to 11:00 p.m. for the store and gas station located at 2300 Salt Point Turnpike, **Tax Grid No. 6566-00-331457**, which is in the Hamlet Zoning District in the Town of Clinton.

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WHEREAS:

1. The applicant requests an area variance to extend the hours of operation of the store and gas station it operates at 2300 Salt Point Turnpike from 6:00 a.m. to 10:00 p.m. to 5:00 a.m. to 11:00 p.m.
2. Section 250-11(C)(5) of the Zoning Law limits hours of operation for commercial uses in the Hamlet District to 6:00 a.m. to 10:00 p.m.
3. The Zoning Law defines a “Convenience Store” as “[a] retail store, primarily used to sell food, beverages, and/or household supplies, which has hours of operation outside of those prescribed in Section 250-11.” Convenience stores are not permitted in any Zoning District in the Town of Clinton.
4. The Planning Board notes that the Zoning Board of Appeals previously denied a similar variance request by the applicant in 1996, and that at that time the ZBA characterized the relief requested as a use variance.
5. The Planning Board also notes that it issued a negative recommendation with respect to a request for identical relief by the applicant in 2005. In connection with the 2005 application, the Zoning Enforcement Officer determined that the request was for a use variance because the proposed change to the hours of operation would have the effect of changing the use to that of a convenience store as defined in the Zoning Law.
6. The Planning Board further notes that, per the ZEO’s interpretation dated April 13, 2013, a request for relief from the requirements of Section 250-11(C)(5) should be considered an area variance. Per the ZEO’s letter dated June 4, 2018, an area variance is required in this matter.
7. The site is in the Ridgeline, Scenic and Historic Protection Overlay district and is in a CEA. The site is in a mixed use area consisting of commercial establishments and residences.
8. The factors to be considered in evaluating whether to grant an area variance are whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting it, whether the benefit sought by the applicant can be obtained by other means, whether the requested variance is substantial, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood and whether the alleged difficulty is self-created.

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9. Whether the proposed variance will produce an undesirable change to the character of the neighborhood or detriment to nearby properties should be determined through the ZBA's public hearing and SEQRA review process.
10. The benefit sought by the applicant cannot be obtained by other means.
11. The proposed variance is substantial.
12. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood should be determined by the ZBA in the course of its review. The Planning Board acknowledges that extended hours of operation may also benefit the community.
13. The alleged difficulty is self-created. The Planning Board notes that the applicant was aware of the limitation on hours of operation when it acquired the property and has been successfully operating the business for over 20 years without obtaining the relief it is now requesting.
14. The ZBA should consider whether granting the variance may create an undesirable precedent with respect to future applications for similar relief.
15. An application for an area variance relating to a commercial use requires SEQRA review, which will be conducted by the ZBA.
16. There are no known zoning violations on the property per the ZEO.
17. All required fees have been paid.

NOW THEREFORE, BE IT RESOLVED, the Town of Clinton Planning Board is making a neutral recommendation to the Zoning Board of Appeals with respect to the applicant's request for an area variance.

Seconded by Ms. Ruzicka.

Discussion. None.

All Aye, Motion carried, 4-0.

PUBLIC HEARING:

None

BOARD DISCUSSION:

Mr. Werner gave an update about the zoning revision.

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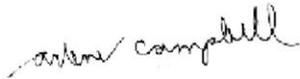
APPROVAL OF MINUTES:

Mr. Auspitz motioned to approve the minutes of July 17, 2018 as amended, seconded by Ms. Ruzicka, All Aye, Motion carried, 4-0.

ADJOURNMENT:

Mr. Thomas motioned to adjourn the meeting at 8:45 pm, seconded by Mr. Auspitz All Aye, Motion carried, 4-0.

Respectfully Submitted,



Arlene A. Campbell, Clerk
Planning & Zoning Board of Appeals