

STATE OF NEW YORK : COUNTY OF ULSTER

TOWN OF MARLBOROUGH ZONING BOARD

-----x

In the Matter of

CHESTNUT PETROLEUM DISTRIBUTOR,
#1417 Route 9W
Marlboro, New York 12542

TAX PARCEL: SECTION 109.1; BLOCK 4; LOT 14 (HD ZONE)

-----x

SPECIAL MEETING

Date: January 28, 2016
Time: 7:00 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: BILL GIAMETTA, CHAIRMAN
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN
GEORGE SALINOVICH

RONALD C. BLASS, JR., ESQ.

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

PENNY E. CASHMAN, ZONING BOARD SECRETARY
APPLICANT'S REPRESENTATIVE: LEO NAPIOR, ESQ.

-----x

LISA MARIE ROSSO
Certified Shorthand Reporter

CHESTNUT PETROLEUM DISTRIBUTOR

CHAIRMAN GIAMETTA: Good evening. Please join us for the pledge of the flag.

(Pledge of Allegiance)

CHAIRMAN GIAMETTA: Thank you and welcome to the special meeting we hold tonight, January 14th, regarding the Zoning Board of Appeals. And first on our agenda is the approval -- I'm sorry, correction on the date, January 28th it is. Thank you very much. Approval of the meeting minutes, I don't believe we can do. We just received the minutes tonight for the last meeting, so I'm going to defer approval of the minutes. I do see one item on the minutes cover page indicating a Building Inspector/Code Enforcement absent. I believe Mr. Corcoran was here last time, so I'd like to see that cover page corrected.

We have a legal notice before us, and I'd ask one of the board members to read that, please.

MR. MEKEEL: Town of Marlborough Zoning Board of Appeals Legal

CHESTNUT PETROLEUM DISTRIBUTOR

Notice: Please take notice that the Town of Marlborough Zoning Board of Appeals will hold a special meeting on January 28th, 2016 at 7:00 p.m. at the Marlborough Town Hall, 21 Milton Turnpike, Milton, New York 12547 to address procedural issues and to consider the scheduling of a public hearing concerning an amended application of Chestnut Petroleum Distributor for appeal interpretation and/or additional variance relief related to Real Property Tax Parcel, Section 109.1, Block 4, Lot 14 (HD Zone) having an address of 1417 Route 9W, Marlborough, New York 12542, dated January 21st, 2016. William Giametta, Chairman, Town of Marlborough Zoning Board of Appeals.

CHAIRMAN GIAMETTA: Thank you. In the context of this legal notice is a notation of procedural issues. I'd like to ask Counsel Blass if he could comment on that.

MR. BLASS: Well, Mr. Chairman, you received an amended application from the applicant with respect

CHESTNUT PETROLEUM DISTRIBUTOR

to one, I think an appeal from an earlier rule of the building inspector, and two, a modification of the pending variance application to add one additional area variance dealing with separation from the intersection of two street lines.

So as you know, the board has had these matters before in front of them for quite some time, the earlier matters. And the issue before the board now is whether to -- I think you should hear from the applicant as to the nature of the application preliminarily, and then whether or not it's appropriate, in your view, to schedule a public hearing for this amended application. And in the fashion, either it does or does not duct tape with the adjourned date of the public hearing in the earlier filed application.

CHAIRMAN GIAMETTA: Thank you very much. We'd now like to hear from the applicant or the applicant's representative, please, loud and clear for the court reporter.

CHESTNUT PETROLEUM DISTRIBUTOR

MR. NAPIOR: Certainly. For the record, Leo Napior with the law firm of Harfenist, Kraut & Perlstein. As Mr. Blass had indicated, we did submit a modification to our pending application before your board. The modification request was twofold.

The first portion of that was as addressed at your last meeting. We requested an appeal slash interpretation from the building inspector's prior determination that an area variance was required for the non-conforming minimum lot size as noted in our cover letter to the board and covered at your last meeting. Section 155-14 subsection C of your code allows the continuation of a non-conforming lot, provided that the lot size is not being further reduced. Certainly, as part of our application, there is no proposed reduction in the minimum lot size.

The second part of our lot application request was to include an area variance request from Section 155-27 D1 of

CHESTNUT PETROLEUM DISTRIBUTOR

your code, which requires that automobile filling stations maintain a 500-foot separation from the intersection of two street lot lines. The subject site is approximately 200 feet from James Street and 9W. Again, it was covered at the last meeting. The applicant is proposing significant improvements to 9W in order to handle the anticipated additional traffic load, as well as the turning movements into and out of the property. I understand that a similar variance was granted to Stewart's when that was installed at Milton Turnpike and 9W, and that is literally at the intersection of those two streets. Here we have 200 feet from the intersection. In addition, I understand from a review of the legislative history of that statute that that provision of code was put into place as a result of the fuel shortages in the past, and from fuel stations being on smaller sites, having less capacity to handle traffic and from automobiles queuing up and basically backing up down the road and blocking

CHESTNUT PETROLEUM DISTRIBUTOR

intersections, and this is somewhat an antiquated provision of a zoning board as to this day and time.

In addition, the subject property certainly has a fair amount of size in order to handle the additional traffic laws that will be generated by the proposed business.

With that, I request of the board to schedule a public hearing and incorporate all of the prior proceedings before this board on the original application as part of this modification, and I would be happy to address any questions that the board has at this time.

MR. ZAMBITO: It's not James Street, it's Mount Rose Road. James Street is located above Mount Rose. Mount Rose is the one that intersects 9W.

MR. NAPIOR: Understood.

MR. ZAMBITO: And it's 109 feet, just for the record. I don't know if it makes a difference.

MR. NAPIOR: I was scaling it

CHESTNUT PETROLEUM DISTRIBUTOR

off of Google.

MR. CORCORAN: It's confusing. I don't know why it was put up there. James Street is approximately 400 feet up Mount Zion Road.

MR. ZAMBITO: Mount Rose.

MR. CORCORAN: Mount Rose.

CHAIRMAN GIAMETTA: Is that clear, folks, the naming of the nearest street is Mount Rose rather than James Street. James Street is above Mount Rose. Does the panel have any questions for Chestnut Petroleum's representative at this point regarding the new matter?

MR. CONN: No.

MR. MEKEEL: No.

MR. ZAMBITO: No.

MR. SALINOVICH: No.

CHAIRMAN GIAMETTA: Is there anyone else from Chestnut who wishes to add to that or delete? I see someone in the audience from a former meeting.

AUDIENCE: No.

MR. BLASS: The board might

CHESTNUT PETROLEUM DISTRIBUTOR

want to deem the application of January 19th amended to change the reference from James Street to Mount Rose Street, if that makes sense, or to make --

MR. ZAMBITO: I think we all understand where it is.

CHAIRMAN GIAMETTA: Let's get it straight. Say that again, please.

MR. BLASS: Right. Now the application SEQRA variance from the -- affected the intersection of Route 9W and James Street. That is page one of the Zoning Board application in front of you. And if, in fact, that is not accurate --

MR. ZAMBITO: Mount Rose Road.

MR. BLASS: -- then perhaps we should just deem it to be Mount Rose Street.

MR. ZAMBITO: Mount Rose Road.

MR. BLASS: Mount Rose and/or James Street to cover all of the contingencies.

CHESTNUT PETROLEUM DISTRIBUTOR

MR. ZAMBITO: James Street is just a continuation to the top.

MR. BLASS: It's probably a housekeeping matter that you may want to take care of now.

CHAIRMAN GIAMETTA: We need a motion on that?

MR. BLASS: Yes.

CHAIRMAN GIAMETTA: Can someone offer a motion?

MR. SALINOVICH: Make a motion to correct the street to Mount Rose.

MR. ZAMBITO: St. James Street to Mount Rose Road.

MR. MEKEEL: I will second that motion.

CHAIRMAN GIAMETTA: A vote.

MR. CONN: Aye.

MR. ZAMBITO: Aye.

MR. MEKEEL: Aye.

MR. SALINOVICH: Aye.

CHAIRMAN GIAMETTA: And aye. Okay, so that is clear. Mr. Blass, is this a continuation of the public hearing for

CHESTNUT PETROLEUM DISTRIBUTOR

input?

MR. BLASS: This evening?

CHAIRMAN GIAMETTA: Yes.

MR. BLASS: No, January 14th public hearing was adjourned to February 11th, I believe, for two limited purposes. And so in the meantime, we have this amended application that's come in. It, in part, deals with matters discussed on January 14. It's the state of practice of the board to have a preliminary meeting to discuss the contents of an application before the public hearing date. So the real issue for you, I think, is whether or not to establish a public hearing date for this application as February 11th or some other date. If it's February 11th, it will bring the matters together.

CHAIRMAN GIAMETTA: Yes.

MR. BLASS: Which obviously will be the same subject matter.

CHAIRMAN GIAMETTA: There has been discussion about the area variance appeal request. Can you lend us some input

CHESTNUT PETROLEUM DISTRIBUTOR

on that?

MR. BLASS: How so?

CHAIRMAN GIAMETTA: The code states -- Mr. Mekeel was going over it a little earlier. Mr. Mekeel, can you contribute to that, please?

MR. MEKEEL: 155-14, letter C, I think we touched on this a little bit back at the last meeting, but I think we're going to proceed with the variance request.

MR. BLASS: Oh, all right. Well, I think that the application is, in part, an appeal up until this point in time. There has been an interpretation of the code overall. The area variances needed to address the fact that the lot size is 1.93 acres as opposed to the minimum of 2.00 acres in HD district. It was pointed out at the January 14th public hearing that this provision of 155-14 C, may have the effect of grandfathering the preexisting lots from the lot size requirements that were established when the code was adopted. It has been reported to me that this particular

CHESTNUT PETROLEUM DISTRIBUTOR

1
2 parcel of 1.93 acres existed in its current
3 configuration and size before zoning was
4 adopted. And so the issue is whether or not
5 it needs a 3.5 percent area variance at all,
6 and that is the component of the appeal
7 aspect in the application in front of you.

8 So you have power both to
9 hear appeals from the zoning administrative
10 determination, and to grant area variances.
11 So you would now, with this current
12 application, have an appeal aspect added to
13 the mix.

14 CHAIRMAN GIAMETTA: Okay.

15 MR. BLASS: And if, in fact,
16 you determine that the lot is grandfathered
17 with respect to its under performance size,
18 then that would render academically the need
19 for that particular area variance.

20 CHAIRMAN GIAMETTA: Okay. I
21 think that should be clarified the best that
22 we can. Perhaps Building Inspector
23 Corcoran, do you have anything to lend
24 toward that?

25 MR. CORCORAN: After the last

CHESTNUT PETROLEUM DISTRIBUTOR

meeting, I did review both 155-14 C and also the 155-27 D1 about the intersection. Then I made an original determination on since change after a couple of hours of review in the code book. I did write the letter of 155-27 D1, the intersection of two street lot lines to meet variance. But in review of 155-14 C, I would agree that the lot existed. I did do the history search on that. The lot existed prior to zoning, and this section of the code would exempt them from the area variance.

MR. ZAMBITO: So I have a question. So with that being said, the fact that the current or the older business was shut down for a two-year period, that doesn't come into effect that they have to come back now and become compliant?

MR. BLASS: Not with respect to that provision. I might make a suggestion. The status of this matter, as of the filing of the appeal on January 19th, and the amended variance application along with it, I think that we're talking about

CHESTNUT PETROLEUM DISTRIBUTOR

tonight, as of that point in time, the applied meeting of the town code was that a .07 acre area variance was necessary with respect to this undersized lot.

As of the filing of the amended application, I think you would have two issues with respect to the size of the lot of 1.93 acres. The first is whether or not to determine and interpret the code, which is your function, that the lot size is grandfathered by virtue of the provisions we're talking about. And alternatively, you would also have the authority to go ahead and determine the area variance -- apply the area variance standards to that undersized lot as well. You could do both. You could do both in the alternative. You could craft a ruling where you interpret the code with respect to whether or not the lot size is grandfathered, and you could, in your decision, determine that even if hypothetically it wasn't a grandfathered lot size, the decision on the area variance is as follows, and that way you would be covering all basis and wrapping all

CHESTNUT PETROLEUM DISTRIBUTOR

issues into one package. Probably an efficient way to go.

CHAIRMAN GIAMETTA: Thank you. Having heard that, I don't have any questions myself or the board doesn't seem to have any questions. I believe, correct me if I'm wrong, we can ask for a motion to adjourn to the next meeting.

MR. BLASS: I think your order of business this evening is to decide whether to establish this application -- this amended application dated January 19th for a public hearing on February 11th, your next meeting.

CHAIRMAN GIAMETTA: Okay. So we are then accepting this; panel? Can I hear a motion?

MR. CONN: I will make a motion to accept it.

MR. ZAMBITO: I will second.

CHAIRMAN GIAMETTA: Can you elaborate on that motion just a little bit?

MR. CONN: Make a motion to accept the amendment to variance Section

CHESTNUT PETROLEUM DISTRIBUTOR

155-27 D in regard to intersections of two street lot lines.

CHAIRMAN GIAMETTA: Thank you. And a second?

MR. ZAMBITO: I'll second.

CHAIRMAN GIAMETTA: A vote on that?

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. ZAMBITO: Aye.

MR. CONN: Aye.

CHAIRMAN GIAMETTA: And aye.

MR. BLASS: So I think I heard that you accepted the application; is that what you're saying?

CHAIRMAN GIAMETTA: Yes.

MR. BLASS: Okay. So the next order of business is whether or not to schedule for public hearing on February 11th.

CHAIRMAN GIAMETTA: We need a motion also?

MR. BLASS: Second motion, I guess.

CHESTNUT PETROLEUM DISTRIBUTOR

CHAIRMAN GIAMETTA: Yes.

Someone want to make a motion to schedule it to the next meeting?

MR. SALINOVICH: I make a motion for the public hearing on February 11th for that appeal.

CHAIRMAN GIAMETTA: All three matters; correct?

MR. SALINOVICH: All three matters.

MR. MEKEEL: I will second that motion.

MR. CONN: Aye.

MR. ZAMBITO: Aye.

MR. MEKEEL: Aye.

MR. SALINOVICH: Aye.

CHAIRMAN GIAMETTA: And aye.

MR. NAPIOR: Thank you.

CHAIRMAN GIAMETTA: You're welcome. Thank you everyone who contributed. A motion to close the meeting.

MR. MEKEEL: I make a motion that we close the meeting of January 28th, 2016.

CHESTNUT PETROLEUM DISTRIBUTOR

MR. ZAMBITO: I'll second it.

CHAIRMAN GIAMETTA: A vote?

MR. CONN: Aye.

MR. ZAMBITO: Aye.

MR. MEKEEL: Aye.

MR. SALINOVICH: Aye.

CHAIRMAN GIAMETTA: And aye.

oOo

(Time noted: 7:22 p.m.)

2 STATE OF NEW YORK)
3) SS
4 COUNTY OF ULSTER)
5

6 I, Lisa M. Rosso, Notary Public within and
7 for the State of New York, do hereby certify:
8

9 That I reported the proceedings in the within
10 entitled matter, and that the within transcript is a
11 true record of said proceedings.
12

13 I further certify that I am not related to
14 any of the parties to the action by blood or
15 marriage, and that I am in no way interested in the
16 outcome of this matter.
17

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 5th day of February, 2016.
20

21 

22 LISA M. ROSSO,
23 NOTARY PUBLIC
24
25