

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, September 17, 2008, AT 7:00 PM AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn VanMillon
Member George Wittman
Member Anthony Fusco

Also in attendance was Secretary to the Board, Maria O’Leary and Attorney Michael Liguori of Hogan and Rossi.

Chair VanMillon called the meeting to order at 7:00 pm and began with the Pledge of Allegiance.

Chair VanMillon read the first item on the Agenda as follows:

Possible Final Decision - **CAMP RAMAH** – Z 2008-02 – Applicant seeks two area variances to appeal Section 145-11 B. of the Town of Dover Zoning Law. The requested 9,576 sq ft area variance and the requested 25’ area variance would, if granted, allow the applicant to erect a gymnasium on the property without meeting the required 6,000 sq ft maximum and the required 40’ front yard setback from Ramah Road for the RU district. This property is located at 91 Ramah Road, Wingdale, NY, on tax grid #132600-7161-00-610450.

In attendance was the applicant, Curt Johnson of Zarecki & Associates.

Chair VanMillon: Some of the conditions that we would like to put on this variance at this point would be: 1. The north end of building should have vegetative screening from its view from the Appalachian Trail. 2. Building must have sound proofing to reduce/contain the noise generated inside. 3. All noise ordinances pertaining to Section 107(16) must be complied with. 4. Limit outdoor activities to inside gymnasium after 9:00 pm. 5. A Special Permit from the Town board for the use of sound amplification and loud speakers is required per Section 107(9) & (10) of the Town Code before variance can take affect. Can I take a vote from the Board?

MOTION: Member Fusco motioned to grant the area variances; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
Member Wittman – Nay

Member Wittman: As I said before, the size of the variance is huge and I thought about this for quite a long time; the variance is 159% of what’s required in that zone. I think that alone is enough to cancel it for me.

Chair VanMillon: I personally feel that by putting this up, it will fit into the scope of the area, even though it is a very large variance. The only thing that bothers me about the

whole thing is the noise issue, which is not an issue for us to have to deal with, that's up to the Town Board.

Member Fusco: I was also comfortable that it would fit within the scope of the area; I wasn't worried about that, and again, the noise is not something we can't address; I was hoping that this would alleviate some of the complaints of the noise.

Chair VanMillon: Yes, granted also that we have to understand that the Town Board will be receiving copies of what goes on here with a letter stating that it's not up to us to enforce the law, but they have to find ways to enforce that law. I've seen over the last few months that Camp Ramah has basically showed the Town Board that we do have a problem with our noise ordinance that has to be followed and they have to find a way to enforce those laws.

Mr. Johnson: With the Board members that are here tonight for this vote...

Chair VanMillon: This is the Board...

Mr. Johnson: It's the majority and it's passed?

Chair VanMillon: Yes.

Member Wittman: No, it has to be three out of five.

Chair VanMillon: It has to be three out of five, but we only have three members.

Attorney Liguori: Curt, there's currently three members of the Board in existence; there's no other members of the Board at this time; there was a fourth, but no longer. There now are two vacancies.

Richard Cantor of Teahan and Constantino: It's not my business, but the correct answer is, you need the majority of the whole Board so two-to-one would fail. You would need three (votes) even though there are only three members.

Chair VanMillon: That's right.

Member Wittman: Unfortunately, you have to have a complete agreement in order to pass.

Mr. Johnson: So, if that's the case, the vote on the variance would be denied? Could we ask that it be adjourned to the next meeting and maybe there would be another Board member that would come on?

Attorney Liguori: The Board has voted. I would have to take a look at the Town law to see if there is any authority to undo your vote for right now and then agree to adjourn it. There is no guarantee that there would be (another). I just found out tonight that Roz

has resigned, so I'd have to research that issue, I just don't know if they have the authority to do that now.

Chair VanMillon: So, what do you think we should do at this point? Deny the variance?

Attorney Liguori: You voted, it's denied, it's done; it is what it is for right now. I'll have to take a look at it; it is the majority of the Board, not as it's constituted, but as a majority of the members, so we have a five member Board and it would have to be a majority, which would be, at this point, a three member vote. It might have been more appropriate to advise you that there are only three people before the Board did vote, so I'll take a look at that and get back to you and if we need to do something different, then we'll do it.

Chair VanMillon read the next item on the Agenda as following:

Public Hearing - **DUNKIN' DONUTS** (Kevin Allardi) – Z 2008-03 – Applicant seeks to appeal Section 145-39 D. (3)(a) of the Town of Dover Zoning Law and requests a 6.7 square foot area variance and a 3.5 inch height area variance to keep an existing sign that was not erected in accordance with ARB approval. This property is located at 3042 Route 22, Dover Plains, NY, on tax grid #7063-00-562258 and is in the HC district.

In attendance was the applicant, Kevin Allardi.

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Chair VanMillon: Mr. Allardi, over the last month, I did do my homework and I did contact the ARB on this because I wasn't comfortable with the original area variance specifications you made. I have a letter from the ARB, which I would like to put into the record. She read the attached letter from the ARB dated 9/10/08 and mentioned that when Mr. Daversa spoke about the applicant, Mr. Allardi was not the applicant at the time, it was the previous owner.

Mr. Allardi: I bought it on July 13, 2007, so the sign was already up. They put it up knowing that it didn't match. I had no idea until someone came along and pulled out their tape measure and said, "Your sign doesn't match, you have to do something about it," so that's why I came here, I wasn't aware of it.

Chair VanMillon: So that's notation that I want to make; you were not the applicant who signed "yes."

Mr. Allardi: It was David Neshiewat.

Chair VanMillon: I never got the attachment that the ARB is referring to.

Secretary O'Leary: That was sent out quite a while ago; it was a response from Dutchess County, that's what he's referring to.

Chair VanMillon asked for any comments from the public or the Board.

Member Wittman: I would like to have that entered into the record; I don't recall having received that record. What was the recommendation from the ARB?

Secretary O'Leary: It was back in July when I gave it to you.

Chair VanMillon read the attached referral letter from DC dated 7/31/08 into the record.

Mr. Allardi: Dunkin' Donuts always works within the guidelines of the town rules, so we have to adhere to whatever the town rules are. The Neshiewat's seemed to think they can follow the rules that they created for themselves. I had nothing to do with that at the time, but I certainly wouldn't try to get away with putting up something that wasn't within Code and then try to get a variance after the fact.

Member Wittman: We fully understand your position here; you did not put the sign up. My thought on this would be that we're talking about the overall height is 3.5". The 3.5", to me, doesn't really constitute much of a problem as far as a variance goes, but I understand about the 16 square foot business and it just bothers me to have somebody to arbitrarily tell somebody to tear down a perfectly good sign that cost a lot of money to put up. It's an attractive sign, I've been up there and looked at it several times, I don't find it offensive, and I don't think that most people in Town would find it offensive, either. If it was possible to remove the "Drive Thru" part of that sign and leave the rest "as is", I would personally feel that this would be a good compromise. I don't know how you feel as the current applicant to doing something like that.

Mr. Allardi: I want to keep my sign and if that helps me keep my sign, then we'll go along with it and then would there be another process to add that back in to get approval?

Chair VanMillon: You would have to go back to the ARB.

Member Wittman: I don't think they're going to do that. The point is that if that brings it into compliance with the 16 square feet, then it's in compliance. If you're looking to increase the size of the sign, they would have some comments on it, but it would eventually wind up back here again for a variance.

Mr. Allardi: What if we leave the sign the same size, and just paint that part?

Chair VanMillon: You would have to remove that part.

Member Wittman: From what I understand, that is a separate part.

Me. Allardi: It's one piece; they just built the sign bigger than it was supposed to be; they didn't add that piece on.

Member Wittman: Just "whiting out" that part wouldn't make any difference; it would still be the same size. I'm trying to see how we can get this down to 16 square feet then we won't have a problem.

Chair VanMillon: Is there any chance in the near future that you are considering re-doing the sign? Is it in bad shape that it's going to have to be re-done?

Mr. Allardi: We are required to remodel stores every ten years; typically, they try to give you incentives to do it every five or six years. The store is two years old now; realistically, I wouldn't remodel the store. I'm assuming that sign is the way it is because it had to meet the Town standards 'cause usually it would have been illuminated, orange, white and pink, so I think that sign was designed not to be illuminated probably because that's in the by-laws. A typical Dunkin' Donuts has the plastic sign that's orange, it's illuminated on the inside; this one has lights on the outside and it was made to look like wood to probably meet something that was suggested by the Town, I'm guessing. Generally, Dunkin' Donuts wants that big, bright sign and will opt for a sign like that so this is probably something that we use in towns that want signs that are too overpowering.

Member Wittman: I believe you're correct, but that's the ARB.

Attorney Liguori: Are you familiar with the criteria that the Board reviews in connection with determining whether or not they grant the variance.

Mr. Allardi: I read it. I know it's not going to create a hardship. I don't know if it gives me an unfair competitive edge over other people. I don't think it's harmful because it is in an business area, it's not in a residential area, it has been there for two years and it hasn't been a problem with the other businesses or the residences.

Attorney Liguori: What I'm saying is that that's the information the Board is really looking for in order to make a determination on the variance and without the applicant coming and giving that information to the Board, you leave it to the Board to do it for themselves and they're less likely to do it for themselves than they are if you're going to do it, especially in connection with an application to fix something that was done wrong; I'm not saying that you have to do it right now.

Mr. Allardi: I don't mind doing it right now; it is in a commercial area, there's banks there, there's McDonald's; McDonald's clearly has the "biggest sign in the world;" we have CVS across the street, a supermarket; we have Subway. I think my sign, if anything, meets more of the country look, more of the look that this Town wants; it looks like a wood sign, it doesn't illuminated like some of the other people that are out there. I

don't imagine that it's going to harm the residential area because I'm not in a residential area; I'm actually in a commercial area. It's been there for two and a half years and we haven't had an issue with it to this point. I think someone from the Town happened to notice that it hadn't been fixed from before and made a measurement, but it certainly hasn't been an eye-sore or something that was a problem with the other people in the area as far as other businesses. I would like to request the variances so I can keep that sign the way it is, if possible.

Attorney Liguori: Before the Board, if they're going to make a motion, I just want to advise you that there are only three members on the Board and you need a unanimous vote from the Board. If the Board desires to close the public hearing and vote, they certainly can. If you would like to wait a month to see if we can get a new member, your chances will increase by 25% or so, or some percentage, so be advised.

Mr. Allardi: I'll wait.

Chair VanMillon: I would like to keep the public hearing open in hopes that we do get another member.

MOTION: Member Wittman motioned to keep the public hearing open; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Chair VanMillon: We will keep it open.

Attorney Liguori: I'll make sure someone gets in touch with you before the next meeting to let you know. The difficulty here is that the sign ordinance was adopted specifically to reduce signage.

Mr. Allardi: I know; I have never erected a sign that doesn't meet Code; I wasn't aware of it until after a year after I owned it.

Chair VanMillon read the next item on the Agenda as follows:

Public Hearing - **KEJEM PROPERTIES, LLC** – Z 2008-04 - Applicant seeks to appeal Section 145-11 B. of the Town of Dover Zoning Law. The requested 1,000 square foot area variance would, if granted, allow the applicant to build a 7,000 square foot waste transfer station, which will exceed the 6,000 square foot maximum, in the same general location as the existing 2,500 square foot building on a nonconforming lot. This property is located at NY Route 22, Wingdale, NY, on tax grid #7060-00-7554036 in the RU district.

In attendance was the engineer, Curt Johnson of Zarecki & Associates, and applicants, James Constantino and Richard Cantor of Teahan & Constantino.

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye
Member Wittman – Aye

Member Fusco – Aye

Mr. Johnson: I wasn't at the last meeting, but I'll do a quick run-through of what is being proposed. We will start with the existing approved site plan and basically, we have an approved site plan on the project. Mr. Johnson showed on his maps approximately where the existing building is on the rear of the property and there's about 7,000 square feet in that approved area where the waste handling operations were going on inside the building to the exterior of the building. Looking at it from Route 22, he showed the South side of the building and the North side of the building; basically, waste comes in on the Northerly entrance of the site and tips into the building. There's a large overhead door on the North side of the building and the waste is sorted through there. There is compacting that is visible from Route 22; there's a tractor trailer which backs in and there's a loader that compacts it into the truck and the recyclable containers on the exterior of the building on the South side of the building.

The building is in some state of disrepair, just as a function as what goes on at the site. What the current applicants are proposing to do is actually take all the operations interior and exterior of the waste handling, and bring that to a building that will be 7,000 square feet so everything would occur on the interior of the building. Along with that, there is a building on the front portion of the property that exists that we're proposing to upgrade; that's where the offices and the garage are, so that would be upgraded and have curb appeal. There would be a portion of that building which will be removed, which is to the South side of the building that's going to go away, and there's going to be a wing-wall façade setback to allow for some landscaping in front of the building and give some screening to the building in the rear, which will be a completely new structure approximately the same height as the existing structure and a little over double the size of what's there now. It will be a metal skin building, there would be a series of windows on that and all the doors on that would actually be to the West side to the rear of the property, so that would actually mitigate some of the potential issues for noise and odor that surround the property. We're looking to upgrade what's there. We do have a valid NYS DEC permit for the amount of waste that's handled at the site that will not increase with this proposal.

Member Wittman: Did the site plan approval come from the Planning Board?

Mr. Johnson: Yes.

Member Wittman: Does the DEC review these types of renovations?

Mr. Johnson: Yes, they're going to take a look at this as well. There's a valid permit that I think expires in 2010, but as part of this process, they're going to look at this project as well, because we are near the wetlands on this.

Mr. Constantino: In fact, we already received from the DEC a list of technical comments that they would require in support of this improvement.

Member Wittman: This has already been showed to them?

Mr. Constantino: Yes, they've already been referred and we've already received comments. In fact, we've responded to some and some we're working out.

Attorney Liguori: Those DEC comments, I think, are a part of the application package that was submitted to the Zoning Board; some of the comments from the DEC are that having this in an enclosed structure is a real benefit to you and the adjacent wetland, just in general because of the nature of the activity that's involved.

Chair VanMillon: George and I went there to the site and what they're doing is going to be a great improvement to the area. It really is going to look good; just to walk up to it and see something like that instead of the existing buildings is going to be a plus.

Mr. Cantor: The gentleman who addressed you just a moment ago is James Constantino, who is a direct representative of Kejem and also with the firm, Teahan and Constantino. My name is Richard Cantor and I'm also with the firm, Teahan and Constantino. The comment before that there are statutory standards for the granting or denial of the variances is correct and it's described as a balancing test and the balance is the benefit to the applicant vs. the detriment, if there is detriment to the community, and we've attempted in our application papers to provide you with our analysis of that balancing test and in summary as the Chair, know that we believe that not only do we benefit, but that the community benefits.

Whatever issues there may now be of unsightliness or noise or odor, will all be improved by putting into a new building the activities that currently take place with the emphasis that Curt noted that this is not an application to make the business bigger. The amount of product that goes through is limited by the existing permit and there's no application to increase that amount, so we're hoping that you will agree that when you apply the balancing test that the balancing test comes out in favor of granting the variance. The other point is, I obviously heard the conversation about three members. If, after you close the hearing, if you're otherwise inclined to consider voting, I would ask for the courtesy, and the courtesy would be to let us know if one of you has a problem before you vote, because if one of you has a problem before you vote, we would obviously punt; if you don't have a problem, then we'd like you to go ahead, so we would ask you for that courtesy.

Chair VanMillon: Is there anyone else who would like to address the Board? There were none.

Member Wittman: I don't have a problem with it and I do want to say that all of these cases that you know are different, but I understand your concern, well taken. I don't have any real problem with this. I've read the stuff over yesterday and prior to that we went on the site walk and the only questions I had at that time were the fact that we're going to be dealing with the same amount of material moving through. The benefit to the area, I think, will be very great. I think if Curt promises it's going to look the way he presented it, I have no problem with that at all, I think it's going to be a big improvement to the area.

Member Fusco: I've stopped and looked and I'm fine with it.

MOTION: Member Wittman motioned to close the public hearing; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Chair VanMillon: The area variance is a Type II action under SEQRA?

Mr. Cantor: If I may, the Planning Board opted to do a coordinated review and they issued a negative declaration, so the SEQRA proceeding is completed.

Chair VanMillon went over the five questions:

Code of the Town of Dover – Section 145-59 D. (2)

- a. Whether an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance? No.
- b. Whether the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? No.
- c. Whether the requested area variance substantial? No.
- d. Whether the proposed variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? No.
- e. Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance? Yes.

MOTION: Member Fusco motioned to grant the variance; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

APPROVAL OF MINUTES - Approve August 20, 2008 minutes.

MOTION: Member Wittman motioned to approve the August 20, 2008 minutes; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

MOTION: Member Wittman motioned to adjourn the meeting at 7:40 pm; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Meeting adjourned at 7:40 pm.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals