

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, April 7, 2010, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn Van Millon
Member George Wittman
Member Henry Williams
Member Debra Kaufman
Member Anthony Fusco

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Thomas Jacobellis.

Chair Van Millon called the meeting to order at 7:05 p.m. and began with the Pledge of Allegiance.

No members from LukOil or the public were present.

Chair VanMillon: The first item on the Agenda is a discussion/public hearing for LukOil. LukOil is not here tonight, so I don’t think we should open the public hearing.

Attorney Jacobellis: The public hearing was noticed for tonight so my suggestion from a legal standpoint would be to make a motion that the public hearing be opened; we weren’t sure if there would be public comment or not. It appears that there is going to be no public comment then I would ask that a Board member make a motion to keep the public hearing held open, this way the publication requirements are met and then the LukOil applicant would be permitted at the next meeting to make any presentation they would like to the Board before they deliberate to make their decision.

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

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Chair Van Millon read the Agenda as follows:

DISCUSSION/PUBLIC HEARING - LukOil - Z 2009-07 – The applicant seeks to appeal Sections 145-39 C. (2) and D. (3) of the Town of Dover Zoning Law. The requested area variances would, if granted, allow the applicant to have a freestanding price sign exceeding the 16’ maximum dimension by 9’ and exceeding the 10’ height maximum by 2.6’ and also be internally illuminated. This property is located at 3160 NY Route 22 in Dover Plains, NY, and is located in the HM district on tax map #7063-11-534507.

Member Wittman: I have one comment form from George Hearn, the Code Enforcement Officer, and I also have a Zoning Referral from Dutchess County Department of Planning, which comments on this site.

Chair Van Millon: From George Hearn, the Code Enforcement Officer, it says that Cumberland Farms and Sunoco have been sent letters ordering them to bring their signs into compliance. Just because others are not currently in compliance does not mean we can authorize the

Town of Dover ZBA Minutes – April 7, 2010

expansion of nonconformance in Town. I do have copies of both letters that he sent to Cumberland Farms and to Sunoco and he gives them 20 days to contact the ARB as of March 24, 2010.

Member Wittman: I found this letter to be very confusing; it doesn't address anything specifically except that it compares Cumberland Farms and Sunoco with not being in compliance and it doesn't specifically state anything about what LukOil is applying for, so I find this to be a very confusing letter to say the least.

Chair Van Millon: Also, we received a letter from Dutchess County Planning.

Attorney Jacobellis: One thing I do want to point out which is important from a legal point of view from the Dutchess County Planning letter is they have reviewed the application before the ZBA; they have a positive recommendation regarding the height of the sign and they also have a positive recommendation on the square footage of the sign which exceeds the Town of Dover Code; however, they give a negative recommendation on the illumination. Obviously, the ZBA of this Town has autonomy over the Code Enforcement Officer as well as Dutchess County Planning; however, under Town Law, if the ZBA feels they want to grant the variance for illumination due to the negative referral from Dutchess County Planning, it requires a super majority vote versus a simple majority, so it will take four out of five votes to grant that variance.

Member Wittman: The Department does object strongly to the request for a variance for internal illumination. I assume that what they're doing is referring to Dover Zoning?

Attorney Jacobellis: I think they review the request for the variances compared to the Town of Dover Code. I think there is a County as well as local, if you take contiguous counties of Dutchess, Putnam and Westchester and go North to get less illumination of signs at night, I think it's more of a regional goal, but they are looking at the Town of Dover Code.

Member Wittman: Perhaps you have experience with these kinds of things; I'm just wondering what the basis for objection for internal illumination is, they're not objecting to external illumination. I could understand if the zoning or the sign regulations has something to do with operating hours or the intensity of the sign or something like that, but I'm just curious as to why internal illumination

Attorney Jacobellis: I think, again, when you look at the Dover Town Code I believe it permits down lighting as well as up lighting, and I think that's done for aesthetics and although this is located in a commercial area, I think they feel, I don't want to speak for Dutchess County Planning, but for dealing with them from past experiences I think they feel internal illumination kind of illuminates the night sky, it makes it look more like a Vegas strip rather than a rural setting;

Member Wittman: What I would like to hear is what the applicant, the applicant obviously wants a variance for this, and I would really like to hear their rationale, other than the fact that they currently have an internally illuminated sign and there are others in the neighborhood; why do they think that this is a better way of doing things than what is in here.

Chair Van Millon: It may not be a better way of doing things, it might be a cost efficient way of doing it.

Town of Dover ZBA Minutes – April 7, 2010

Attorney Jacobellis: And the Board ultimately has to deliberate and reach a determination, however the Dover Code as it exists now permits illumination of a sign; it's not like it's either internally illuminated or not, there are alternatives.

Chair Van Millon: Also, from the ARB, Scott Daversa also says that variances will be required for the height and of the free-standing price sign, which is what's in front of us now, but it is also recommended that variances for the height and dimension be granted and that no variance be granted for the internal illumination, so they're also against internal illumination.

Member Williams: I just don't understand the difference between internal illumination and external illumination.

Attorney Jacobellis: Internal illumination from years past, gas station signs that you see, any of the brands where you have plastic on both sides and is lit in the middle. The external illuminations are more like you see in some type of rustic New England towns where you have typically wooden or plastic signs and you have lights externally coming up lighting it aimed on the sign or on the top coming down. From my years working with the Planning Board and working with architects and lighting engineers, that's supposed to regulate lighting better specifically to the sign and less light escapes into the night sky; that's one of the main concerns, especially if you have intense lighting of a building or a mall where you have a lot of light escaping into the night sky.

Member Williams: Do they have foot candle requirements that we have to go by?

Attorney Jacobellis: Yes, but I don't know the wattage off the top of my head. I can look into that for the next meeting.

Member Wittman: I'm very concerned about any of these things regardless of how the lighting is, of light pollution, and we already went through with the other gas station in Wingdale, it is very annoying, it's illegal in many cases, that extraneous light, and this goes for residential as well as commercial, which causes, actually can cause an accident, if you come around a corner and this light is right in your face, so I'm very concerned about it; I'm more concerned about that than I am about how the sign is lighted. There's another thing that I had commented about and I went out and checked it out already. I would strongly suggest that you folks, if you feel that way, do the same thing. I was concerned about whether reducing the height of the sign would in some way affect the site distance as you are exiting that South entrance to the gas station and I went up there and drove through and tried to visualize actually the sign the way it is and I will have to wait and see how the applicant tells us exactly where the thing is, but if they're not going to relocate the posts and the new sign is going to be located between the two current posts, I don't think there is going to be any kind of site distance problem; you're already coming out far enough in a car, you can see very clearly Southbound through the traffic light, which I was very concerned about because it's only a couple hundred feet down, people were turning right. I strongly suggest that you take a look at it maybe now or after the applicant presents its case. I feel satisfied that regardless of what the County may comment on it, although I am interested to see what the State DOT comments,

Chair Van Millon: I don't think that bringing that sign down is going to be a problem with site traffic.

Member Wittman: I don't think so, but I guess we'll have to wait until the applicant tells us exactly where it is going to be

Town of Dover ZBA Minutes – April 7, 2010

Member Williams: How many different sources of modification were presented to them; does anybody know if they were told to do it this way or you can do it that way?

Attorney Jacobellis: I'm not sure, I wasn't present at the ARB meeting, so I don't know how they were presented.

Member Williams: I'm just trying to get a determination whether they're just dead set on being this particular way or are they flexible in trying to make this happen.

Member Wittman: I think that they are trying to bring the sign into somewhat closer into compliance with Town Code without having to remove the two posts that are currently there and put up a new sign so it's probably saving money; however I think we ought to wait until the applicant tells us. We can ask him or her how many different possibilities they have because actually we don't have to issue any of these variances unless they can show us good cause to do that.

Chair Van Millon: That should be in the ARB minutes that everyone should have. Any other comments?

Member Kaufman: How long will that light be on? All the time or just when they're open?

Chair Van Millon: In the past, I don't think that gas station is open past 9:00 p.m., I think that would be one of the things that we would have to ask the applicant.

Member Fusco: If you look at page three of the ARB minutes there was a question of hours. Probably not 24/7, possibly until 10:00 p.m. as an average time.

Member Wittman: I similarly thought that if we, and this goes for just about anybody, if there's no need for signs to be on 24/7, then they shouldn't be on 24/7.

Member Williams: Usually it's an indication that when the lights are off that the place is closed.

Member Wittman: You would think that they would want to save money. I would be in favor of them reducing the intensity of the lighting by turning it off after hours.

Member Fusco: How are the Cumberland Farms and Sunoco stations lit?

Member Wittman: Internal illumination. If you're up that way, you might want to take a look since Mr. Hearn referred to those signs you might want to take a look and see what you think about those as far as what internal illumination looks like.

Chair Van Millon: And they're one right after the other so you see the Sunoco then you see the Cumberland Farms right after and they're big.

MOTION: Member Kaufman motioned to keep the public hearing open; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Town of Dover ZBA Minutes – April 7, 2010

MOTION: Member Wittman motioned to approve the January 20, 2010 minutes; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

MOTION: Member Williams motioned to adjourn the meeting at 7:25 p.m.; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Meeting adjourned at 7:25 p.m.

Respectfully submitted by:

Maria O’Leary
Secretary to the Zoning Board of Appeals