

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, September 1, 2010, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Member George Wittman
Member Debra Kaufman
Member Anthony Fusco

ABSENT: Chair Marilyn Van Millon
Member Henry Williams

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

Acting Chair Wittman called the meeting to order at 7:02 p.m. and began with the Pledge of Allegiance.

Acting Chair Wittman: There are a few housekeeping items before we get on to the Agenda. Cybill Gilbert submitted some corrections to the ZBA minutes from the last meeting. This is going to be entered into the record, some minor changes to her testimony. At the last meeting, there seemed to be some confusion as to how we handled public notices and new applications and I would like to read into the record a resolution that we passed unanimously on August 19, 2009. Mr. Wittman then read the resolution into the minutes. Essentially, this is to speed the process up; as most of you already know, everything that comes before the ZBA, unlike other Boards, requires a public hearing, so there are no exceptions. In order to speed this process up by about a month in some cases, we’re trying to do this and most of the applicants appreciate that. I’m sorry if the people were not familiar with this procedure, but notice was given on all of these. If you have any questions, please see us later. I would like to bring to your attention that I am filling in for the normal Chairperson Marilyn Van Millon for tonight; she is absent and so is one of the other Board members. We’re down to three, which gives us a quorum, however, I am not sure if any resolutions will be coming up for a vote tonight, but at the option of the applicants, if this did happen, we would permit you to choose whether you wanted to hold it over for a five-person vote or go with the three-person vote. I, personally, think it’s fairer to all of the applicants that they get the entire Board, but that’s up to the applicants.

He then read the first item on the Agenda as follows:

CONTINUED 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.

In attendance was Rob Spiak of CoreStates Group to speak on behalf of LukOil. Mr. Spiak was sworn in.

There were no members from the public present for this application.

Mr. Spiak: I was here last month before the Board and we discussed a number of items and the plan I just handed out was one that I had sent to the secretary recently and I didn't know if anyone got copies of it. To summarize the last hearing, we removed the request for internal illumination from our application on the record so we're no longer seeking that for the signs. The plans that I just handed out also goes another step towards reducing the variances required for this application in that we have reduced the sign area of the sign panels for 25 square feet down to 16 square feet each, bringing them into compliance with the Code as we interpret it. Basically, what we've done is we're still trying to keep the 5' pole that's existing out there so we don't have to rip it all up and put it back in, and what we're proposing here is to make the frame of the sign larger, which would be a completely opaque area so the sign panels themselves are only 4 x 4, which our interpretation of the Code, we think it complies with that.

The second part that we've talked about is the proximity of the Mexican restaurant sign and how it relates to this application. Currently, the only variance we are proposing at this point now is a height variance of 2.6' to have the top of the sign at 12' 6" vs. the Code requirement of 10' and we discussed at the last meeting that that will create an issue for both LukOil and the Mexican restaurant in that heading northbound on Route 22, our sign will be obstructed and heading southbound on Route 22, the Mexican restaurant sign will be obstructed. What I offered to the Board last month is maybe we can look at in order to solve that problem as the relocation of the sign would just be a huge cost impact and may create other variances moving to the other side of the property, what would be the minimum height that we would need in order to provide visibility to both signs. What I did, and I apologize that I couldn't get this to the secretary sooner, is prepare a quick rendering; we Photoshopped in the sign proposed at 12' 6" and also what we think the minimum variance height would be in order to provide visibility both of these signs.

Unfortunately, my guy really didn't follow my instructions too well, but I think it's a good starting point for discussion here, I wanted him to stand back a little further, but he basically stood in the driveway to the LukOil site. The first picture you see would be the sign at approximately 12' 6" currently as proposed in our application and again if he stood back a little bit further I think we're all aware that will be a blocking of visibility. The next two pictures, I do have one for both directions southbound and northbound, and what we did is measure the Mexican restaurant sign which ultimately was a height of 8' 3" and then we brought our sign up basically to the 5' 5" boxes, 9' to a height of 17' 3" where we think that will give a sufficient gap to provide him visibility and us visibility and the bottom line, if the Board may be willing to entertain this option, we would obviously have to amend our application to this Board, go back before the ARB and probably see you at a future date.

Acting Chair Wittman: Are the second and third sheet the same height?

Mr. Spiak: Yes, with an overall height of about 17' 3" and the existing is 22' 6".

Acting Chair Wittman: Would that be your preference?

Mr. Spiak: I think it's a win-win for everybody because as we've discussed in the past there's obviously going to be a blocking for both parties and from a cost perspective it's certainly our preference to lower it down to this height, reduce the panel size versus trying to dig it up and potentially look at moving the sign.

Acting Chair Wittman: We only have three members here tonight and I'd like the other two members to consider this, however, in the interest of getting this application completed and getting it to a final resolution, do you want to come back next month and talk to us about resubmitting the 17' 3" thing or do you want to do that in the interim and have us consider that?

Mr. Spiak: Probably what I would do as I'm not hearing any negative outcry at this point, if the Board is willing to consider this application, I would probably suggest that we withdraw the existing application, resubmit with the 17' height; we can discuss it at that point, if we have to come down lower, then we'll come down lower, however it ends up, and that will get us back before the ARB and back to you.

Acting Chair Wittman: I understand. I appreciate what you've done to reorganize these things that it becomes more palatable, shall we say, as far as variances go.

Member Kauffman: I agree; I just had a concern about the blockage.

Member Fusco: Where the LukOil is, on the top panel, would you consider moving the LukOil itself down almost to the bottom where you wouldn't need the height on that panel? If you just brought the word LukOil down? Would that be more feasible?

Mr. Spiak: It's all white background anyway, yes, I can certainly take a look at that.

Acting Chair Wittman: It appears that that's only perhaps maybe a sixth or so of the total height of the sign on that particular panel and I think that might be a suggestion to consider; if you just cut that 4' sign in half and relocated the LukOil into the center of that, then you gain some more height and clearance. Whatever you want to resubmit for our consideration, but I appreciate the fact that you reduced the size of the sign down to the current size and the fact that you have also withdrawn the internal illumination which is not going to fly, so if you would like to resubmit that or consider doing that now and between the meeting, that's up to you and your people.

Mr. Spiak: That's probably the path I'm going to recommend to my client; to just withdraw this application and we'll start with a new one.

Acting Chair Wittman: I'm just trying to get this moving along and I'm sure you want to get this resolved as well.

Member Kaufman: Are you going to put lighting on this, on top?

Mr. Spiak: It will probably be a goose-neck type fixture, something like that, which if we resolve this tonight, we would still have to go back to ARB and show them that, but in the interim, we will add that to any new application that we present and see everything all in front.

Acting Chair Wittman: We'll see you next month. He then read the next item on the Agenda as follows:

CONTINUED PUBLIC HEARING – RASCO Interpretation - Z 2010-03 – The applicant seeks an interpretation of a determination of the Code Enforcement Officer regarding whether the use of the property as a cold-mix asphalt facility is pre-existing non-conforming. This property is located at 2241 Route 22, Dover Plains, NY and is located in the M district on tax map numbers 7061-00-580190 & 7061-00-5850063.

In attendance was Jack Nelson of Rasco.

Acting Chair Wittman read the Speaker Sign-In sheet: I think we have some people who would like to speak on behalf of this issue. He then called Liz Cowan and then Chris Wood.

Liz left and Chris Wood thought it was a general sign-in sheet.

Acting Chair Wittman: It's a Speaker Sign-In sheet and we did hear quite a bit from Oblong last month and I didn't know if you had something in addition. He then called the next name on the list.

Evelyn Chiarito: I'm a resident and taxpayer of the Town of Dover and I just have some comments on the last application. My biggest concern is with water and with the 1999 Chazen study that indicates the Harlem Valley Aquifer provides water for about 20,000 people from Amenia down to Patterson, so possible contamination of water has always been a big concern of mine. I'm sorry I have to do this, but I do see a conflict of interest with ZBA attorney Liguori. He is the same firm, the same attorney who represented and advised the Town Board that drew up the stipulation between the Town Board and Town Planning Board with Rasco, which the majority of the Town Board members signed and that's what's gotten us where we are today. Also, attorney Liguori appeared at the 4/19/10 Planning Board meeting and he spoke at that time in favor of Rasco. I've attached the minutes of that meeting, pages 2 & 3, and highlighted the information, so I just don't understand how he can be impartial in advising the ZBA, and I assume that his role here is to advise you on the issues involved in processing this application. I

think the ZBA needs the guidance of an unbiased attorney to advise them and I believe there is a clear conflict of interest of here.

Mr. Liguori seems like a very nice gentleman and I'm sorry, but this is the truth and this what I planned and this is what I'm telling you what I see, so at the 4/19/2010 Planning Board hearing, Mr. Liguori came to research case law and he didn't recite any of the case law, so I can't read it and determine what it is or if it would have any affect on Rasco or applies to it, and then he said he was fresh off a case in the Town of North Salem, where it was the same argument on the cessation of nonconforming uses. I was a little concerned, so I went to the Town of North Salem's website and I read their October 29, 2009 minutes; it's the Town Board minutes off the North Salem Planning Board, the Zoning Board and the ARB regarding the gas station that Hogan and Rossi represented and I attached it here and I have highlighted it also, so please read it. If you don't have enough information on it, you can also go to the Town of North Salem website.

The Town of North Salem did handle that situation in the correct way. First it went to the CEO, which is how this should have gone, but it didn't, and it made its way through the various boards. It might still be hanging out there because we're still waiting for some plan drawings; there was no Town Board involvement, which there should not have been in this issue. The issue in North Salem was a convenient store; there was a gas station there, which has been there "forever", and they wanted to add a convenient store, which is something the Town thought was fine, but it required an area variance and the Town wanted it to look nice; Planning Board and Zoning Board all wanted it to look nice because it's the entrance to the Town of North Salem. I quote Planning Board Chairperson Cynthia Curtis in the minute pages that I have attached here. It says, "A question of use was raised and Cynthia explained that the convenient store use is the issue, not the gas station. The ladder, meaning the gas station, has a special permit under the prior ordinance" as I noted page 4 of the minutes.

I have to say I believe Mr. Liguori is already prejudiced in favor of Rasco and he also has the capacity to influence the ZBA since he is their attorney and I'm sure working with him you've come to like him, respect him, you're going to go by his advice. I think it's like having Rasco's attorney sitting on the ZBA Board, so I think you should have a different attorney.

Going back, I have other files from DEC and according to a DEC letter of February 8, 2005, titled, "Denial of Permit Renewal and Permit Transfer" I attached it, on March 6, 2003, renewal application by TT Materials was denied. Since the corporation was no longer a legally authorized corporation in New York State and the permit expired on October 11, 2003, there is no longer any permit as a quote from DEC's letter. DEC also stated, "An expired permit, which no longer exists cannot be transferred and DEC will treat any application for transfer of the permit as a new application." That's what happened in this case, TT Material's permit expired and it makes sense to me that you cannot renew an expired permit. And it also had to resolve all outstanding violations at the site and I did attach that as January 21, 2005, Notice of Violation. There were some

substantial violations cited in that and then TT Materials and Rasco were also addressed in that letter. Per DEC's letter, TT Materials permit expired October 11, 2003; the facility stopped operating in December 2004 per Mr. Stevens of TT Materials, and that's also in this information highlight. Evidently, they operated for over a year illegally, because they didn't have a DEC permit, so if you don't have a DEC permit, you're not legal. They were operating illegally in the Town of Dover without a DEC permit and therefore, lost any pre-existing, nonconforming benefit they might allegedly have had, I'm not so sure if it there ever was pre-existing, nonconforming.

I just want to liken this to something just to make it a little clearer. If a person has an illegal apartment, and they have a tenant who they are collecting rent from and that tenant doesn't pay the rent and the landlord takes him to court he says, "Wow, he hasn't paid rent and I want the court to make him pay." Well, the court is going to tell you that it's an illegal use and the court cannot allow you to benefit from an illegal use. I actually learned this from Judge Judy. It's not due to any fault, there has been a lot of people blamed for them not being able to get their permit transferred, but it couldn't be transferred because it ceased, it ended, it wasn't there anymore, so I don't think it's due to any fault of the Town of Dover. Rasco lost their permit and this industry does require a DEC permit to operate and I think it's their own doing and the violations they committed are their own doing, you'll see the list of violations and they did it, they should own up to it, we did it, own up to it, we're responsible, take care of it, and it took them a long time to really get around to taking care of it and I'm afraid that past history is a predictor of future history if they're committed to resume their operation.

Mrs. Chiarito submitted a copy of handouts. There were not other public speakers for this application.

Mr. Nelson: For the record, I'm Jack Nelson. To address the comments pertaining to operating over there illegally, we had a DEC monitor that was on site at a minimum 2-3 days a week and part of what Mrs. Chiarito said was correct, they had some problems with the permit, but never did the place run or operate illegally. There are weekly reporting requirements from the DEC, and it's highly unlikely that the DEC would provide a monitor and allow us to operate illegally, so I can honestly say that the place was never run without a permit in place or without DEC's approval through a consent order. If you look at all of the consent orders and read all of them, you would know that we did not operate there illegally.

Acting Chair Wittman: Can I just ask you a question here, about 2003 I think that's the period that she was referring to, what permit were you operating under at that point?

Mr. Nelson: That was TT Materials; I was never involved with TT Materials. Dick Stevens was the fellow that put the money up for TT Materials and he foreclosed his interest in TT and that happened some time in 2004; I don't know exactly what the date was, it was in that timeline that we submitted. In the fall of 2005 I got involved and we operated until the end of the season which was sometime late November.

Town of Dover ZBA Minutes – September 1, 2010

Acting Chair Wittman: Was there ever a period of time there that this operation, regardless of whether it was under Rasco or TT Materials, was operating without a DEC permit?

Mr. Nelson: No. If that was done, you can rest assured; the DEC inspectors wear guns and they would have been down there with their guns and their bracelets, whoever was at the scale running the place would have been dragged off to court and to jail; it's a highly regulated permit and like I said we had a monitor on site on a weekly basis, sometimes 2, 3 or 4 days per week and whatever was done was done under their watchful eyes.

Acting Chair Wittman: Having no one else from the public who wants to make a comment, I think that's all we have.

MOTION: Member Fusco motioned to approve the August 4, 2010 minutes with the noted corrections submitted by Cybill Gilbert; seconded by Member Kaufman.

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

MOTION: Member Fusco motioned to continue the Rasco public hearing until October 6, 2010; seconded by Member Kaufman.

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

MOTION: Member Kaufman motioned to adjourn the meeting at 7:35 p.m.; seconded by Member Fusco.

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

Meeting adjourned at 7:35 p.m.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals