

The Minutes of the Village of Haverstraw Zoning Board of Appeals Meeting on Thursday October 14, 2021 beginning at 7:00 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL :

- Edwin Rivera (Chairman) Present
- Dennis Michaels (Asst. Village Attorney) Present
- Ruben Berrios (Building Inspector) Present
- Jose Guareno Absent
- Jose Hilario Absent
- Tom Price Present
- Richard Santiago Present
- Gisbeth Ramos (Clerk to the ZBA) Absent



Chairman Rivera opened the meeting inviting the first applicant, Carlos Urena of 13 Dowd Street to address the Board.

Attorney Michaels reminded the Board that the Public Hearing on this matter was continued from a prior meeting and remained open.

Jeffrey Millman, law offices of Phillips & Millman, representing the applicant: Mr. Millman reminded the Board that he had appeared before them previously and that they were discussing the size and scope of the accessory building, which is the garage. The applicant has scaled the size down considerably and has submitted plans for review for a structure that is 24X20X14. The 4 variances that they will be seeking is the minimum side yard - the requirement is 10 feet and the proposed is 9 feet, the maximum lot coverage - the maximum required is 30% and the proposed plan provides 46%, the height requirement in this district is 12 ft. and the proposed plan is 14 ft., and the distance between the main house and the accessory structure, based on the calculations of Building Inspector Berrios, is 15 ft. and we are providing 6 ft. Regarding the 5-pronged test for the review of the ZBA:

- An undesirable change will not be produced in the character of the neighborhood because the garage is 30 ft. off of Route 202 and 91 ft. off Dowd St. There is no adverse impact and we voluntarily

agreed to move the structure and reduce the structure so as not to have any adverse impact.

- The benefit sought can be achieved by some other method; the original attempt at this project was 24X30X16 and we've taken ZBA guidance and significantly reduced the size thereby achieving some other method than where we started.
- The requested area variance(s) are not substantial, on the side yard it's 1 foot, on the lot coverage there's a 16% differential but it's in conformity with many other lots in Haverstraw and how they are structured.
- The proposed area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood: this is a garage to be used by the homeowner and is an accessory structure similar to many others in Haverstraw.
- The alleged difficulty may be self-created: This is just a consideration and the Urena's are interested in putting a garage for their private use on their property.

Based upon these facts we think we've accommodated all of the Board's suggestions and nothing should prevent the Board from overriding any of the comments from the Rockland County GML Review. In addition no other agencies have responded with comments regarding the project.

Edwin Rivera questioned Mr. Millman on the size of the structure in the drawings he submitted, commenting that they say 28X24. Mr. Millman responded to the question by informing Mr. Rivera that he was looking at an old drawing.

Mr. Rivera asked to see a rendering of what the structure would look like.

Mr. Millman agreed to provide one.

Edwin Rivera asked if there were any members of the public that wished to comment, ask questions or raise concerns.

Larry Montroy at 289 Westside Ave.: Mr. Montroy expressed that he was concerned about the runoff from the hill and down his driveway. There are 2 culverts there that get clogged, not on my property but between my house and the properties above. There is a lot of erosion there already.

Board members asked Mr. Montroy how this project would affect what he was bringing up and Mr. Montroy responded that he didn't know.

Attorney Michaels reminded the Board that this matter was going before the Planning Board for site plan review and the Village Engineer would be doing a thorough review of any drainage issues.

Inspector Berrios interjected that there was a proposed dry well and he invited Mr. Montroy to come forward and take a look at the plans so he would see where the structure and drainage measures were going in. Using the plans, he further showed Mr. Montroy exactly where everything was located.

Mr. Michaels reassured Mr. Montroy that the Village Engineer would be very thorough in reviewing any drainage and runoff components of the project but that didn't mean that it would solve any regional or neighborhood problem.

Mr. Montroy wanted to know how his issue could be addressed and fixed.

Mr. Michaels suggested FEMA and asked Inspector Berrios to be sure to send the plans to Engineer Mancuso.

Mr. Michaels announced that the project known as Carlos Urena, garage project at 13 Dowd Street, will continue and will remain open and be heard again on Tuesday November 9, 2021 at 7 PM.

Chairman Rivera invited the applicant for 7-Eleven at 197 Westside Ave., SBL 26.51-1-67.3 proposing retail convenience store with fueling stations to come forward.

Attorney Michaels asked Inspector Berrios if, to the best of his knowledge, all public notices required by State and Local Law had been complied with.

Inspector Berrios responded affirmatively.

Chairman Rivera entertained a motion to open the Public Hearing on the matter of area variances for the 7-Eleven project.

RESOLUTION # 34 – 2021

Motion by: Tom Price

Seconded by: Richard Santiago

Motion Carries: All

Amy Miele, attorney for the 7-Eleven applicant, Ira Manuel: Ms. Miele explained that the application for the 7-Eleven project proposed on the corner of Route 9W and Gurnee Ave. For the record, Ms. Miele confirmed that the Section, Block and Lot #'s for the proposed site are 26.42-1-9, 26.50-1-50, 1-51, 1-53. They are seeking 3 area variances; 1 for a rear yard setback, 1 for parking and 1 for signage. Ms. Miele stated that she had sent a narrative for submission to the Board earlier that day and also went on the Rockland County Planning Department website to check on the GML Review. As it turned out there was a report for the project issued to the Village Board and there was a comment that was directed to the ZBA not the Village Board. She submitted copies to the Board.

Inspector Berrios informed Ms. Miele that he spoke to the representative at the County and they were supposed to make a correction to the report and resend it. To his knowledge that hadn't been done yet.

Ms. Miele informed the Board that the applicant would also be seeking overrides to the GML Review Report as well as the variances. She continued with an explanation of the project, a proposed convenience store located in the highway business district along Route 9W at the corner of Gurnee Ave. The Planning Board had previously designated this a Type II action under SEQR because the applicant is seeking to build less than 4,000 sq. feet. They've been before the Planning Board, before the Zoning Board previously and to the ARB several times. She expressed that they are proposing a particularly nice design of a 7-Eleven building using brick, including a clock tower, which compliments the Village's architecture and downtown. They are proposing 2 entrances, 1 from Route 9W and 1 from Gurnee Ave. and they have been in close contact with the NYS DOT about the entrances to this parcel and the project is an allowable use on the site but requires a Special Permit from the Village Board by virtue of the fueling stations. Regarding the variances: The parking variance is being requested because they are required to have 23 parking spaces and they are providing 17, which

doesn't include the 8 spots under the canopy at the fueling stations. This is an interpretation by the Building Inspector and they feel that the 8 spaces under the canopy really do act as parking spaces in the type of facility that is proposed. They believe these additional 8 spaces mitigate the need for any additional parking spaces. Ms. Miele used herself as an example and stated that she's never gone to a filling station and then moved her car to go in and use the convenience store and she believes there's some precedent for including those spaces in the count, which if you do, they're at 25 spaces and that is more than sufficient. The second variance being requested is for a rear yard setback. The lot is an odd shape and the area along the side (pointing it out on the map) is considered the rear yard even though it seems and looks more like the side yard. Under the existing conditions, there's a house on the corner of a triangle shown on the map/plans, and it is going to be removed. That house is about 3.5 feet away from the property line. The 7-Eleven proposal is to move it back 14.2 feet and that's an improvement over existing conditions. It only affects that side of the property line and is next to a wooded area. The final variance requested is signage. Ms. Miele stated that the Village Code doesn't have any specific signage regulations specific to gas stations and basically says there's a 60 ft. maximum. She stated that they weren't taking up more than 60% on any single façade they should be ok and she noted that the applicant was not being picky about the signage due to the fact that the entrances on Gurnee and Route 9W were far from the convenience store. They do need to direct people as to where they should be going and that will require additional signage.

Inspector Berrios added that he had spoken to the Village Planner and had been advised that directional signage and the information signs over the gas pumps should not be included in the calculations for the variance.

Ms. Miele noted that the pylon signs on Route 9W and Gurnee Ave would be about 16 feet in total sq. footage. This is part of the 7-Eleven sign package and under the circumstances they believe this is reasonable. She continued her presentation to the Board and addressed the factors for the variances and the GML Review comments and the overrides they were requesting.

- An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be

created by the granting of these variances: The setback variance is an improvement to the current existing conditions and for a previous application, a self-storage facility, the area variance had been granted. The parking variance won't create an undesirable change as it is in the business district and will actually create less impervious surface. The sign variance is appropriate in the area.

- The benefit sought by the applicant cannot be achieved by some other method: Due to the odd shape of the lot the applicant and representatives believe the design has been done with the least variances needed as possible. In addition, Ms. Miele informed the Board that the applicant has offered to donate the rounded corner of the property on the corner of Gurnee & Route 9W to the Village for a pocket park that 7-Eleven will build and maintain.
- Is the variance substantial: The rear yard setback is an improvement over existing conditions, the parking variance is not substantial and the sign variance, based on the Village standards, and although the County doesn't agree, isn't substantial.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood: The project is located in the Highway Business District at the corner of an intersection with a major state road, the Planning Board and the Architectural Review Board have worked with the applicant to make the building attractive, there's a pocket park provided and it enhances the entrance to the Village.
- The alleged difficulty may be self-created: Although this always comes up in the review Ms. Miele reminded the Board that this is an odd shaped lot and the design is the best that can be done with that.

Ms. Miele explained that the Rockland County Planning Department GML Review, dated October 12, 2021, seems to be overstepping their responsibilities of reviewing regional and county wide matters and the applicant was requesting overrides on Comment # 1-the general disapproval, Comment #2-the setback variance and Comment #3-the parking variance.

Attorney Michaels noted that the GML Review Report is addressed to the Haverstraw Village Board but he's in agreement that there seems to have been a typo and it should be to the ZBA. He further noted that he had checked the County website and found 3 GML reports for this project

and two were addressed to the Village Board of Trustees. The report that they believe should be to the ZBA is numbered VH-143B.

Ms. Miele continued to explain that the County is disapproving for maximum sign coverage. She believes that this is a matter for the ZBA to decide, the Village Code's current sign standards are a little vague and what is appropriate for a small mom and pop shop may not be the same for a large business like a 7-Eleven.

Mr. Berrios reminded the Board that this was the same situation the Board recently faced with the Popeye's Restaurant, the Village Code doesn't address it and they need more signage because of the size of their establishments.

Ms. Miele stated that regarding the County Comments # 2 (setback) and #3 (parking) the applicant is asking for an override on these based on the reasons stated earlier. Comments # 4, 5, 6, 7, 8, 9 and 10 the applicant was fine with. Comment # 11 states that parking is partially in the state right-of-way and the feasibility of parking behind the building must be explored so as to close the north driveway. The applicant is requesting an override on this comment because, while they can explore it, they aren't interested in closing this driveway and neither is the property owner. In addition, there is already parking behind the building. Comment #12 – building to north bulk info should be provided: Ms. Miele stated that this is Inspector Berrios' decision as to what's included in the bulk table not the County. Comment # 13 needs clarification. Comment # 14 they are requesting an override as it's confusing; they're suggesting they referenced the wrong table, which they didn't, and that it's located on 2 US highways, which it isn't. Comment # 15 no override needed as the narrative has been updated. Comment #16 – the applicant is asking for an override. The comment suggests that the plan "should" have a back-up generator. Ms. Miele stated that she doesn't know what the developer has planned for a back-up generator and she can argue that "should" doesn't mean "must" so it would be more beneficial to ask for the override on this. Ms. Miele stated that they were OK with the remainder of the comments in the County's letter/report.

Attorney Michaels asked if Comment 20.1 was to be an override.

Ms. Miele responded that Comment 20.1 is ok as it is just a suggestion and they will take the suggestion under advisement.

Zach Chaplin, Stonefield Engineering & Design: Mr. Chaplin informed the Board that this was an application for a gas station and convenience store at the intersection of Gurnee Ave and Route 9W. The topography change across the property, the shape of the property and the fact that there is a big mound in the center of the property makes it challenging for how the site gets laid out. What they've been able to do with this design is to provide the modern gas station/convenience store model that you see more and more of. Everything is good circulation, substantial parking, access provided on Route 9W with a right in and right out driveway and full access from Gurnee Ave. Both driveways have been subject to DOT review and the applicant currently has an active application in to the DOT. Variances needed for the signage, requirement is no more than 60 sq. ft. or a certain percentage of the building façade. It was unclear to them whether the calculation was to be per each façade or something different. Using the renderings to support his position for a requested variance, Mr. Chaplin pointed out that there would be 2 small signs on the side of the building, a pylon sign that is 16 ft. high and 4 ft. wide which is a standard sized sign for a gas station and there's nothing in the Village ordinance that talks about the size of a gas station ID sign. It therefore makes it difficult to meet the criteria for the sign coverage. Furthermore, they have wall mounted signs which are small and then 2 pylon signs for Route 9W and Gurnee Ave. He expressed that he believes the rendering does a good job of showing the corner pocket piece as well.

Tom Price asked how tall the signs on Route 9W would be. Mr. Chaplin responded that it would be 17.25 ft. and the overall width is a little over 5 feet.

Mr. Chaplin continued with a statement about the setback, showing on the plans that the setback they had on the western side of the property was 60 ft. and it changes down to the 14 + ft., remarking that it was merely a "pinch point" where the variance was needed.

Attorney Michaels, referencing the designated street line mentioned in the County GML Report-Item # 13, The Village Zoning Code, §245-19 Paragraph A Subparagraph 1 is the only place in the code where a designated street line is mentioned. He advised Inspector Berrios to review that as it also makes reference to Bulk Table columns D and H to determine if it is applicable to this project and the front yard setback.

Andrew Villari, Stonefield Engineering & Design: Mr. Villari, focusing on the parking variance being requested, informed the Board that the Village Code for retail space is a required 1 parking space for each employee and 1 space for every 150 sq. ft. of design. For the 7-Eleven 3,043 sq. ft. building that would be 21 spaces and for the 2 employees that would add another 2 spaces, giving them a total requirement of 23 parking spaces. The design is providing 17 traditional parking spaces and 8 additional fueling spaces under the canopy. In a situation such as a gas station/convenience store those 8 spaces function as additional parking, stressing that the common practice is to leave your car at the pump and run into the convenience store. Mr. Villari stated that the nature of a convenience store is that there is quick turnover. Even with a large volume the people are coming in, getting what they need and leaving, unlike a clothing store for example. Stonefield Engineering has worked with 7-Eleven before and they feel that the 17 parking spaces will be more than enough to accommodate the customers.

Edwin Rivera asked how the fueling truck would enter and exit the property to provide fuel to the pumps.

Mr. Chaplin explained that the fueling tanker would make a right from Route 9W into the 7-Eleven property and situate in a corner, which he pointed out on the plans, that is somewhat out of the way, and then they would make a right turn onto Gurnee Ave.

Edwin Rivera asked how the big tanker would make the right from Gurnee Ave to Route 202.

Mr. Chaplin explained that the engineering company has software where they run the vehicle through the proposed plans and he showed the Board an exhibit that depicted the turn, an oversized curb cut coming in and the turn onto Route 202.

Board members continued to discuss the logistics of turning there and the potential difficulties of making that turn.

Mr. Chaplin told the Board he would go back to the 7-Eleven people and get more information for them regarding that particular turn. The Board was satisfied with this.

Edwin Rivera suggested that the turn on Gurnee only be a right turn as there are vehicles that fly down that road and there is a potential for T-boning accidents there.

Mr. Chaplin added that they had done many observation studies of the gas queues and determined that the results of this was to put the driveway right on the middle, pointing it out on the map, and the DOT has approved the design of this curb cut.

Attorney Michaels advised the Board that the Planning Board and the Village Engineer are responsible for the site plan review and were addressing this, which also included a traffic impact study, and these questions and resolutions were more in the Planning Boards purview.

Chairman Rivera announced that this was a Public Hearing and the public was welcome to address the Board with any questions, comments or concerns.

Lawrence Garvey, attorney representing Ms. Pena, 302 Westside Ave: Mr. Garvey asked that the Public Hearing be continued as he was not fully prepared because of his recent access to the GML Report. He also asked that it be noted that Ms. Pena, for over 20 years, had tried to make changes to the use of their property and had been denied. Mr. Garvey stated that the applicant's attorney was trying to represent that this was something it was not. It was, in fact, a gas station, just like gas stations around the area. The community and the neighborhood don't need it and he stated that everyone knows what a 7-Eleven is with a gas station and without a gas station. As much as they may want to make it look nice, and he's sure they will try, at the end of the day, the project is a 7-Eleven gas station. In the variances being requested they are asking to triple the size of the signs and that is a large change to the signage. They're asking for a very well-lit gas station so it will have a huge impact and no matter what goes on for the rest of Route 9W the signage law is written as it is. They are asking to cut two thirds off the setback and he feels there is no reason for that. In terms of the parking variance being requested, Mr. Garvey stated that the applicant would like us to believe that the spots under the canopy are adequate because when you get gas you run in for a cup of coffee. Although he felt that it was a great argument he moves his car when he gets gas and coffee because he thinks it's the right thing to do in case someone wants to get gas behind you. As to the requirements; there is an adverse impact-this is a gas

station and they all have an environmental impact and it's a time when municipalities are reducing the number of gas stations so there's no reason to add one in this neighborhood. It will be a substantial change in the neighborhood-compared to what's on the corner now the change is significant and there are plenty of other uses for that property, i.e. Small convenience store, some type of retail, something without a gas station. Mr. Garvey stated that he reserved his right to provide further comments and thanked the Board for their time.

Ms. Pena, 302 Westside Ave, expressed that she felt it was very dangerous for people to get in and out. A lot of people will get killed, accidents will happen and it's too crowded already.

Angel Perrea (sp), 10 First Street: Mr. Perrea stated that he's lived in Haverstraw for 50+ years and it's a very dangerous corner and people get killed every day at his corner.

Linda Montroy, 289 Westside Ave.: Ms. Montroy stated that she lives right on the corner in question, has been there for over 40 years, and she feels that it is a dangerous intersection. Going up Route 9W, from the cemetery to Railroad Ave., there are 5 gas stations, 4 with convenience stores in them. Ms. Montroy asked why the Village needed another one. She expressed concern with the traffic, tankers coming in and out, where the storage tanks will be located as there is a car repair shop across the street that uses torches and chemicals, there's a gas station right across the street on Route 9W, the people who live in the apartment nearby have health issues and outside odors in the environment is not healthy for them. As to the ingress and egress on the proposed design, Ms. Montroy thinks that Gurnee Ave is already a problem and she doesn't think this project is appropriate for the area.

Gil Carlevaro, Village Trustee, 43 Leonard St: Mr. Carlevaro stated his comments were as a Trustee and he asked if there was some way there could be an agreement, like they made with Popeye's Restaurant, that deliveries of fuel be done off hours so as not to impact the traffic in the area. Between 7-9 am and 5-7:30 pm there is a large amount of traffic in this area and if it's possible for them to alter their deliveries it would be appreciated.

Attorney Michaels suggested to Trustee Carlevaro that the Village Board is entitled, under their review for a Special Permit, to issue conditions such as he was suggesting.

Rudolpho Pena, 13 ?? Circle (Name of street was unintelligible): Mr. Pena stated that his mother was the owner of 302 Westside and he personally felt this was a bad spot for this project. There was a bus stop around the corner, a lot of traffic and it will be a hassle and hazardous to the area residents to be breathing the fumes from the gas station. There's also too much traffic in the area.

Attorney Michaels asked if there were any other members of the public that were interested in addressing the Board. Nobody responded.

Mr. Michaels asked Inspector Berrios if the sign variance contained certain aspects of the sign square footage that should not be included in the calculations, such as directional signs. He asked Mr. Berrios to elaborate, mentioning that the sign variance may need to be recalculated.

Inspector Berrios informed the Board and the Public that he had spoken to Village Planner Max Stach, of Nelson Pope Voorhis, and he was informed that directional signs, menu signs and canopy signs that go above gasoline pumps should not be included in the sign square footage calculation.

Mr. Michaels asked if the square footage of all the signs was included in the variance requested.

Ms. Miele noted that she and Mr. Berrios had spoken earlier and they did not include the signage over the canopy but she believes there is some menu and directional signage that was included. She stated that they would go back and recalculate to be sure they were including the proper signage.

Mr. Chaplin stated, for the record, that their determination on the site plan was based on 60 sq. ft. per sign and he believes that Inspector Berrios reviewed it and calculated it.

Inspector Berrios remarked that they had spoken about it at the time and discussed it.

Attorney Michaels suggested the applicant review it again to be certain of what was included.

Ms. Miele stated that taking out the directional signage may have a small impact but she's certain they didn't include the canopy signage. She also asked for time to wrap up and respond to public comments.

Ms. Miele commented that she appreciates and respects everyone's comments about the application but she believes that most of the comments raised were site plan related and not related to the variances being requested of the ZBA. She stated that the applicant would be before the Planning Board and invited everyone to attend that open meeting. She also stated that she would submit a formal comment letter in response to the County GML Report prior to the next meeting and she would confirm their calculations regarding signage. She then asked that the matter be adjourned to the next meeting.

Tom Price remarked that the Zoning Board of Appeals listened to both sides of the proposed project and that although they don't say much while sitting there now they have heard the concerns of the public and they will talk further about it.

Attorney Michaels announced that at the request of the applicant, and if the Board consents, the Public Hearing regarding the proposed 7-Eleven project will remain open and will continue to be heard on November 9, 2021 at 7 PM.

Chairman Rivera: With no further business to be conducted by the Board, the Chairman entertained a motion to adjourn the meeting.

RESOLUTION # 35 - 2021

Motion by: Tom Price

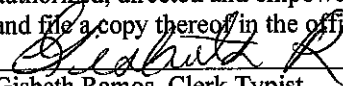
Seconded by: Richard Santiago

Motion Carries: All

Respectfully submitted by,
Judith Curcio



The Clerk Typist to the Zoning Board of Appeals is hereby authorized, directed and empowered to sign these Minutes, and file a copy thereof in the office of the Village Clerk.



Gisbeth Ramos, Clerk Typist