

**TOWN OF POUGHKEEPSIE
ZONING BOARD OF APPEALS
AREA VARIANCE APPLICATION
NARRATIVE**

6/6/2022

Submitted by

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BACKGROUND

The site, which is the subject of this application, is located at 20-50 Love Road, Town of Poughkeepsie, County of Dutchess and State of New York bearing tax identifier #6261-01-187898 (“the site”). The site is zoned B-H and is comprised of 4.59 vacant acres. The purpose of B-H zoning districts is to provide a variety of shopping and commercial facilities for adjacent residential areas and the community at large where the lot has frontage on a major state highway, such as Dutchess Turnpike and Love Road.

This site was the subject of an application to the NYS DEC under the Brownfield Program. Over many years, applicant undertook much testing and remediation work which culminated with the issuance of a Certificate of Completion (COC) and an Environmental Easement (EE) in favor of the NYS DEC. The COC and EE permit this site to be developed into residential and/or commercial uses.

Love Road is owned by the State of New York and maintained by the Town of Poughkeepsie. The site also borders Dutchess Turnpike, another state highway.

An application has been made to the Planning Board to obtain site plan approval and a special use permit for the construction of an approximate 71,413 SF temperature controlled self-storage building. This is a permitted use provided that the applicant obtains site plan approval and a special use permit (See §210-35(C)). The PB application is pending. On May 19, 2022, the PB issued a Negative Declaration under SEQRA which enables this application to proceed. A public hearing was held by the PB which was adjourned until July 21, 2022 pending application to the ZBA.

VARIANCES SOUGHT

The site plan shows that the site will be Code compliant with the exception of the (1) front yard setback, (2) side yard setback, (3) wall mounted lights on the front of the building, (4) lighting in excess of 0.2 footcandles which spills over into the Love Road cul-de-sac and (5) a monument sign which applicant wishes to place on another's property. This application is made seeking area variances for all of these items.

Section 210-148(D) provides that area variances are permitted where an application is made and approved by the ZBA provided that certain criteria is met to the satisfaction of the ZBA.

The criteria to be reviewed and considered by the ZBA is:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

Pursuant to Town Code §210-148D and Town Law §267-b, the ZBA must use the balancing test in assessing whether to issue variances. This test requires the ZBA to

balance the benefit to the Application in granting the variance against the potential detriment to the surrounding properties and to the public health, safety and general welfare. This site has been dormant for decades with Love Road bisecting portions of the site which imposes constraints that limit its development potential. Here, the variances will provide a substantial benefit to the Applicant as it seeks to open its business and operate in an efficient and economic manner. This benefit far outweighs any alleged detriment to the surrounding properties and neighborhood. As a matter of fact, the surrounding properties and neighborhood will greatly benefit from this project in that an eye sore of a site will be transformed into an aesthetically pleasing project.

The Court of Appeals has held that a zoning board of appeals performs a “quasi-judicial” function when it considers applications for variances, and, as such, should act according to its own precedent. *Knight v. Amelkin*, 68 NY2d 975 (1986). Thus, where a local zoning board is considering an application that is substantially similar to a prior application that had been previously determined, the zoning board is required to provide a rational explanation for reaching a different result.

FRONT YARD SET BACK

Applicant seeks a front yard variance from the Town Code requirement of 40' to 28' or a variance of 12'.

Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.

The site is literally surrounded by other commercial uses such as banks, Job Lots, Shop Rite, Verizon, Burger King, liquor stores, a county office building and a health club. Applicant's use of the site will not change the character of the neighborhood or be a detriment to nearby properties.

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Due to the topography of the site and the constraints of the Brownfield Program, specifically the Site Management Plan, the building cannot be located anywhere else on the site.

Whether the requested variance is substantial.

The variance is not substantial in that the existing conditions show that the present front yard set back is only 21'6". The plan before this Board is extending this existing front yard setback.

Despite the dimensional extent of the requested variance, substantiality is not measured by mathematical means alone. Instead, it must be assessed by consideration of the facts and circumstances surrounding potential impacts if the variance is granted. Soho Alliance v. New York City Bd. Of Standards and Appeals, 264 AD2d 59 (1st Dept

2000). Indeed, the spatial extent of the requested variance is ameliorated by the absence of any tangible, detrimental effect cast by the variance. The requested variance is not substantial when considered in the context of the surrounding area.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The granting of this variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. This building will be “off the beaten track” and not subject to through traffic. The only users of Love Road will be customers of Applicant and those who may wish to access the Dutchess County Rail Trail using an easement donated by Applicant to the County.

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

While one could argue that the alleged difficulty is self-created, Applicant is, in fact, lengthening the present front yard setback. A self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).

SIDE YARD SET BACK

Applicant seeks a variance for its southern side yard setback from the Town Code requirement of 40' to 10'6" or a variance of 29'6".

Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.

The site is literally surrounded by other commercial uses such as banks, Job Lots, Shop Rite, Verizon, Burger King, liquor stores, a county office building and a health club. Applicant's use of the site will not change the character of the neighborhood or be a detriment to nearby properties.

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Due to the topography of the site and the limitations of the Brownfield Program, the building cannot be located anywhere else on the site.

Whether the requested variance is substantial.

The variance is not substantial in that the existing conditions show that the present front yard setback is 1'2". In essence, Applicant is making the existing side yard setback less non-conforming.

Despite the dimensional extent of the requested variance, substantiality is not measured by mathematical means alone. Instead, it must be assessed by consideration of the facts and circumstances surrounding potential impacts if the variance is granted. Soho Alliance v. New York City Bd. Of Standards and Appeals, 264 AD2d 59 (1st Dept 2000). Indeed, the spatial extent of the requested variance is ameliorated by the absence

of any tangible, detrimental effect cast by the variance. The requested variance is not substantial when considered in the context of the surrounding area.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The granting of this variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. This building will be “off the beaten track” and not subject to through traffic. The only users of Love Road will be customers of Applicant and those who may wish to access the Dutchess County Rail Trail using an easement donated by Applicant to the County.

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

While one could argue that the alleged difficulty is self-created, Applicant is, in fact, lengthening the present front yard setback. A self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).

WALL MOUNTED LIGHTS

Applicant seeks a variance to permit wall mounted decorative lights on the front of the building. The Code has a maximum height of such lights of 15' whereas the plans call for a height of 29, requiring a variance of 14'.

Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.

The site is surrounded by other commercial uses. Applicant's use of the wall mounted lights will not change the character of the neighborhood or be a detriment to nearby properties. Moreover, there is a County office building a stone's throw away from Applicant's site which has exterior wall mounted lights at approximately 18' and 30' above ground level. A photo of this nearby building is annexed hereto.

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Due to the façade characteristics of the proposed building, the location of the proposed lights cannot be lowered without taking away aesthetic value. The placement of the lights provides symmetry for the front entrance. Furthermore, the building façade is designed to evoke multiple buildings which is consistent with the Town Code provisions for the B-H Zone. The Applicant seeks to construct a visually pleasing, competitive self-storage facility that will serve the needs of the public.

Whether the requested variance is substantial.

The variance is not substantial in that the wall mounted lights are decorative only and only shine downward.

Despite the dimensional extent of the requested variance, substantiality is not measured by mathematical means alone. Instead, it must be assessed by consideration of the facts and circumstances surrounding potential impacts if the variance is granted. Soho Alliance v. New York City Bd. Of Standards and Appeals, 264 AD2d 59 (1st Dept 2000). Indeed, the spatial extent of the requested variance is ameliorated by the absence of any tangible, detrimental effect cast by the variance. The requested variance is not substantial when considered in the context of the surrounding area.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The granting of this variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. This building will be “off the beaten track” and not subject to through traffic. The only users of Love Road will be customers of Applicant and those who may wish to access the Dutchess County Rail Trail using an easement donated by Applicant to the County.

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

While one could argue that the alleged difficulty is self-created, Applicant is, in fact, providing an aesthetic value to the entrance of the building. A self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).

LIGHTING IN EXCESS OF 0.2 FOOTCANDLES

Applicant seeks a variance to permit a few of the proposed exterior pole lights to be allowed. The plan shows that there are a couple of areas where exterior pole lighting in excess of 0.2 footcandles will ‘spill over’ on Love Road.

Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.

The site is literally surrounded by other commercial uses which have pole lights which provide visibility, safety and security; so, applicant’s lighting will not change the character of the neighborhood or be a detriment to nearby properties.

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Due to the façade of the proposed building, the location of the proposed lights cannot be changed without jeopardizing visibility, security and safety. As a matter of fact, the ‘spill over’ area only provides lighting for the Love Road cul-de-sac.

Whether the requested variance is substantial.

The variance is not substantial in that the area of exceedance is a small portion of Love Road. All other lights comply with Town Code. A self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).

Despite the dimensional extent of the requested variance, substantiality is not measured by mathematical means alone. Instead, it must be assessed by consideration of the facts and circumstances surrounding potential impacts if the variance is granted. Soho Alliance v. New York City Bd. Of Standards and Appeals, 264 AD2d 59 (1st Dept 2000). Indeed, the spatial extent of the requested variance is ameliorated by the absence of any tangible, detrimental effect cast by the variance. The requested variance is not substantial when considered in the context of the surrounding area.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The granting of this variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. This building will be “off the beaten track”, not subject to through traffic and site down from Dutchess Turnpike. The only users of Love Road will be customers of Applicant and those who may wish to access the Dutchess County Rail Trail using an easement donated by Applicant to the County.

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

While one could argue that the alleged difficulty is self-created, Applicant is, in fact, providing an aesthetic value to the entrance of the building. A self-created hardship cannot solely be the reason for the denial of a variance. See Byron Associates v. Zoning Board of Appeals of the Town of Mamaroneck, 142 AD2d 643 (2d Dept. 1988) and

Springer v. Zoning Board of Appeals of the Town of Somers, 109 AD2d 888 (2d Dept. 1985).