



VILLAGE OF SAUGERTIES  
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**Zoning Board of Appeals  
Meeting Minutes  
February 26, 2019  
Jo Ostrander/ Southern Realty Development  
298 Ulster Avenue**

**Present:** Board Members Scott Campbell, Joe Gavner, Mary Frank, Sam Fisco, Ed Quirk, Liaison Jeff Helmuth, Building Inspector/Code Enforcer Eyal Saad, Attorney Ben Neidl

Others : Mark Smith, Mr. & Mrs. Robert Elmendorf, JT Elmendorf, Judy Elmendorf, JoAnne Ostrander, Mike Moriello, John Joseph, Barry Mendenbach

**Chairman Campbell called the meeting to order at 7:00pm.**

**Chairman Campbell presented minutes of the January 22, 2019 Zoning Board meeting. Mary Frank made a motion to accept the minutes of the January 22, 2019 Zoning Board meeting as presented. The motion to accept the minutes of the January 22, 2019 Zoning Board meeting as presented was seconded by Sam Fisco. The motion carried unanimously.**

The Public Hearing regarding the application for an Area and Use Variance by Joanne Ostrander and Southern Realty & Development, LLC - Auto Zone at 298 Ulster Avenue of January 22 remains open to receive additional comments.

**Chairman Campbell** invited anyone in attendance to speak.

**Mark Smith**, Town of Saugerties, Chair of the Chamber of Commerce, commented that he is opposed to the project on many levels. The location will cause traffic problems and the design is another template building that does not add to the rural character of Saugerties. He is also on the Tourism Committee. Tourism is the #1 industry in Ulster County and Saugerties. The reason people come here is not to recreate Rt17 in NJ which esthetically is what this looks like. I'm opposed to it.

**Robert Elmendorf**, owner of the NAPA Auto parts store on Ulster Avenue addressed the Board. We are not opposed to the AutoZone in the Town but we are opposed to it at this location. The Town put in millions of tax dollars into Kings Highway to attract new business with new water and sewer. There is property available on Kings Highway and the other side of Town. He agrees with Mr. Smith regarding his comment at being the first thing you see when entering the Village would be a big box store. Saugerties has been known as a tourist town with mom and pop stores, that's why people come here. Mr. Elmendorf submitted petitions signed by 264 people from the businesses in the Village and up and down Ulster Avenue. He states that 85% of the people on the list are opposed to the AutoZone. There are several letters also submitted. The signatures are some of the same people on the petitions listed on the petitions Ms. Ostrander submitted. Her petitions may have been misrepresented as for a variance to move her driveway not for an AutoZone. He stated that the change in zoning will not change that the property owner will still have to prove the hardship aspect. Ms.

Ostrander's previous business worked until she closed it and then RUPCO was a bad thing and renting out without a back ground check. The property has been shown to work the way it is zoned now.

**Sam Fisco made a motion to officially close the Public Hearing regarding the application for an Area and Use Variance by Joanne Ostrander and Southern Realty & Development, LLC - Auto Zone at 298 Ulster Avenue. Ed Quirk seconded the motion to officially close the Public Hearing regarding the application for an Area and Use Variance by Joanne Ostrander and Southern Realty & Development, LLC - Auto Zone at 298 Ulster Avenue. The motion carried unanimously.**

**Scott Campbell** presented the Planning Board's Comments regarding the use variance to the Board for discussion.

The use variance has 4 elements that the applicant must prove have caused the unnecessary hardship:

1. *That the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.*
2. *That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.*
3. *That the requested use, if granted, will not alter the essential character of the neighborhood.*
4. *That the alleged hardship has not been self-created.*

As to element #1 - The applicant must support the theory that the property is undesirable as to it being a residential property and is unable not make a reasonable rate of return.

The original application came with Joanne Ostrander's tax returns showing what rents she received from her property from 2003-14. Copies of tenant leases also were included. Ben Neidl created a Supplemental Income and Loss Statement to illustrate the rents received 2003-14. Additional documents were submitted by Joanne Ostrander; letters of support from tenants, business owners, leases, and appraisal report from Mark Bernholtz SRA. Joanne read a letter from Steve Hubbard Real Estate stating that 298 Ulster Avenue is not suitable as a residential property. Other letters that were read were in support of Rips Napa as a local business as well as supporting a new AutoZone. Joanne stated that the variance request is for a commercial driveway to make the property whole. It is not specifically an AutoZone, it could be any business.

**Jeff Helmuth** questioned Mark Smith if his comments were for himself or representing the Chamber of Commerce. Mr. Smith responded that it was his personal view but there are people on the Chamber Board who have expressed opposition to the project.

**Joanne Ostrander** submitted letters from previous tenants stating that they moved out of the rental property because of the noise from the trucks from Bottini and Paraco. Most of the complaints from her tenants were from the noise of the trucks and deliveries.

**Barry Mendenbach** of Mendenbach & Eggers Civil Engineers & Land Surveying, PC presented the site plan for the Auto Zone project and explained the use variance. The property is divided by the Village's Industrial zone and residential zone in the back. The original variance was to allow the parking within the 15ft set back and to allow for the commercial driveway in the residential zone. As an alternative to the setback requirement, a variance for the required number of parking spaces could be reduced from the required 37 to 28. The variance for the commercial driveway in the residential zone would allow delivery trucks to exit onto Railroad Avenue. John Joseph stated that he wouldn't need the additional parking if the variance for the reduction in parking spaces was considered.

**Ben Neidel** stated that the ZBA has 62 days from the close of the Public Hearing to make a decision. All four elements must be considered as well as SEQR.

**Mike Moriello** added that one of the comments from the Planning Board's report stated that there has not been a demonstration that there has been an increase or impact from railroad traffic. John Joseph explained that there was information on how to access the National Traffic Safety website submitted with the original application. The study gives information regarding the noise, frequency and length of the train traffic. The Federal website does not allow for printing of the information but can viewed online.

As to element #2 - The uniqueness of the property is proven by the property being in located in four separate zones with in the Village and the Town. All members agreed that the property was unique.

As to element #3 – The character of the area is already commercial and the Board doesn't think that the character would change with this project. The traffic aspect of the character may change. The Planning Board's comment stated they didn't feel that they had enough information and recommend a further traffic study.

**John Joseph** stated that the delivery trucks are a smaller box truck and would be approximately one per week. The Creighton Manning traffic study took into consideration for the left hand turn and the NYSDOT approved the turn. The illustrated traffic/accident study for the area was presented and explained. Most of the accidents (15 of 17) were from traveling too close or rear end collisions. Ulster County's recommendations were submitted previously and stated the need for additional signage but nothing against a left turn. It is projected that one customer per ten minutes at peak hours would be leaving the property.

As to element #4 – The applicant must prove that the hardship is not self -created. This ties in with # 1 as the applicant is stating that due to the changes in the area and inability to rent the property the variance is needed. The applicant would have to proof that the changes were beyond her control.

The area variance to reduce the number of parking spaces in the industrial zone or relief from the 15ft setback in the residential zone was discussed. The less offensive variance should be considered.

**Eyal Saad** stated that the number of spaces required by zoning code would be 37. The variance for the reduction in spaces would stay with the property forever, so consideration should be given to any uses of the property in the future which may need the additional spaces.

The area variance has 5 elements that the applicant must prove have caused the unnecessary hardship:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property 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 area 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 boards, but shall not necessarily preclude the granting of the area variance.*

**John Joseph** stated that there is not a lot to be done with the individual pieces of the property. Separately they have their own problems and would need variances.

The SEQR Part 2 – Impact Assessment was discussed and all questions 1 through 11 were answered –*No, or small impact may occur*. SEQR Part 3 - Determination of Significance was checked as - *the proposed action would not result in any significant adverse environmental impact* and signed. Resulting in a Negative Declaration.

**Sam Fisco made a motion to declare a negative declaration for SEQR. Ed Quirk seconded the motion to declare a negative declaration for SEQR. The motion carried unanimously.**

**Mary Frank** stated she would not be able to make a decision tonight based on not being able to support elements #1 and 4 of the use variance requirements. She wanted the applicant to realize that the letters of public support or outcry cannot override the requirements of the variances.

**Joanne Ostrander** discussed her reasons for the situation not being self- created. She explained the issues she had with previous tenants and RUPCO. She would provide more economic information if necessary.

The zoning went into effect in 1985 and the previous home occupation was already in that location.

**Mike Moriello** stated that he had supplied a supplement that analyzes the self-created hardship and how it relates to the financial hardship and the area changing over time. This is a very unique situation. Mr. Moriello inquired if there is anything else to be submitted? The Board agreed they had enough information to review.

**John Joseph** stated that he would be able to land bank the parking spaces that were not needed for parking. All the spaces would be available but not necessarily used until needed in the future.

**Mary Frank made motion to close the Zoning Board Meeting of February 26. Sam Fisco seconded the motion to close the Zoning Board meeting February 26<sup>th</sup> at 8:28 pm.**

**The next scheduled Zoning Board Meeting will be March 26<sup>th</sup> at 7:00pm.**

Respectfully submitted,

Lisa Mayone

Village Clerk

3/8/19