

**Town of Southeast
Zoning Board of Appeals
Minutes of January 15, 2020**

Timothy Froessel, Chairman	Present
Paul Vink, Vice Chairman	Present
Roderick Cassidy	Absent
Greg Wunner	Present
John McNeill	Absent
Steve Corozine	Present
Andres Gil	Present
Willis Stephens, Jr., Town Attorney	Present
Victoria Desidero, Secretary	Present

Work Session:

Regular Session:

Chairman Froessel: We have a shortened agenda tonight. Item #1 DC3 Holdings, aka Fast Lane Quick Lube has been continued to next month while they await the result of a FOIL request with the DMV so the two items that remain are Item #2 UB Brewster, LLC aka Lakeview Plaza and Item #3 Allview Avenue aka Mazzotta Subdivision.

1. UB Brewster, LLC, aka Lakeview Plaza 1515 Route 22, Tax Map ID 46.-1-1.-1

Continued Public Hearing to review an application for a sign that requires the following variances: sign area variance of 9 sq. ft. where 200 sq. ft. is permitted and 209 sq. ft. is proposed; sign height variance of 5 ft. where 20 ft. is permitted and 25 ft. is proposed; sign face height variance of 8 ft. where 16 ft. is permitted and 24 ft. is proposed. Brian Vassar of Archer Signs and Monica Roth of UB Brewster, LLC appeared before the Board.

Chairman Froessel: Welcome back. Happy New Year.

Boardmember Vink: I'd like to remind you that you are still under Oath from last month.

Chairman Froessel: Since we last saw you, did we get a revised plan for the sign?

Mr. Vassar: It's the same height as the existing sign, which we did. We just took some spacing out here and there, took some trim out in little pieces and chunks so it doesn't reach the envelope of the existing sign. That's it, that's the only change we discussed.

Chairman Froessel: I, for one, am appreciative that you went back to the drawing board on this.

Mr. Vassar: Sure, sure, no problem. It didn't really affect the tenant's integrity and everything is pretty much the same. ACME came down a little bit. I had to shrink ACME a little bit.

Chairman Froessel: It doesn't look a whole lot different from what we saw last month so I think it's a change you can live with and we can live with, I think.

Mr. Vassar: Yep.

Chairman Froessel: But the proof is in the pudding after the vote, I guess. I just want to refresh myself on what variances... how does this affect the variances you've requested: your sign area originally was 209 sq. ft. Is it the same now or slightly less?

Mr. Vassar: If you're considering the ACME in that, which I believe they are, it will be a little less.

Chairman Froessel: OK.

Mr. Vassar: I can calculate that and get back to you exactly unless you are OK with the square footage variance the way that it is. That is what it's going to be. This design although it is a little less.

Chairman Froessel: I'd like to know the exact number but I'd also like to be able to vote on this tonight.

Mr. Vassar: Well, let's see. Let me see how they calculated it because I think they may have taken... they have 200 total...

Boardmember Vink: 209.

Mr. Vassar: And the difference was... (applicant talking to himself). It should be 8 sq. ft. less.

Chairman Froessel: OK, so you are down to 201?

Mr. Vassar: So, I guess that's a 1 sq. ft. variance.

Boardmember Vink: Almost what's permitted.

Chairman Froessel: Almost.

Mr. Vassar: And I was rounding. It might even have been 200; there was some change in there.

Chairman Froessel: Yes, if you're rounding in your favor a little bit so we will make sure we give you the variance you need and you don't end up short-changed accidentally.

Mr. Vassar: The tenant square footage, I didn't change that box at all. I'm just not certain how it was calculated (applicant talks to himself). Yes, so they took the tenant base and the ACME and they added those together so it really is 27 so if I round it up it would be 202 sq. ft., but the variance could be approved at 209. It's not like, you know...

Secretary Victoria Desidero: They'd rather not.

Mr. Vassar: It's not like you're going to change this. It's not like we're going to add much, if you want to keep the paperwork clean. The reduction in square footage was minimal. Instead of 25 ft. is 23 ft.

Boardmember Vink: From that perspective the 209 isn't really an issue anyway.

Chairman Froessel: Yes, I don't think that was really the issue for anyone. My only concern is that we'll give you a variance and it will turn out not to be sufficient and for the matter of a couple square feet you'll have to come back here.

Mr. Vassar: Well, that was my point...

Chairman Froessel: And I'd rather you not have to do that so it's let's leave it at 209. We know the height was down to 23. Now the sign face height is probably shorter now too, right?

Mr. Vassar: On face height 8 ft., we're 16. When I say sign, I see they had 52... (applicant talking to himself).

Ms. Desidero: So, it's 3 ft. for the height variance now?

Chairman Froessel: Yes.

Ms. Desidero: Thank you.

Mr. Vassar: Yeah, it looks like I took everything out of the top because it's still 52 and 13 and what do they have... 16...

Chairman Froessel: 52 inches is 4 ft. 4 in.

Mr. Vassar: (applicant talking to himself). Oh, I see, 24 is proposed. OK I see what was done. So, the reduction is going to be a foot less.

Chairman Froessel: That's what it was before: 25 x 24 so now it will be 23 x 22?

Mr. Vassar: That's correct.

Chairman Froessel: OK.

Boardmember Corozine: What's the specific definition of the face height?

Mr. Vassar: What do you mean?

Boardmember Corozine: What's being represented?

Chairman Froessel: I think it's the top of the red ACME circle.

Boardmember Corozine: At the top of the ACME down to the bottom of where the letters are?

Mr. Vassar: It's looks like it's from the gray to the top of ACME.

Boardmember Corozine: OK, it's gray to the top of that.

Mr. Vassar: Yes, because this was 25 and that was 24 and now we're down to 23 so it's about a foot difference.

Ms. Desidero: So, the variance for the face height is now 6; it's 2 ft. less?

Mr. Vassar: I'm not sure that's exactly a foot. It's close, I mean it's going to be very close. It's about a foot difference.

Chairman Froessel: Is there anyone in the audience that has any questions or comments about this application? No? Note for the record that both people in the audience shook their heads no. Does anyone on the Board have any other questions?

Boardmember Vink: No.

Chairman Froessel: OK, we are usually a seven-member board. We have two members out tonight and you need four affirmative votes to get your variance so we usually do when we have four or five board members we give the applicant the option of deferring to the next month because you have a better chance of getting four yes votes with seven people than you do with five people.

Mr. Vassar: Well that's like gambling. I'm a terrible gambler man. I'd lose at the blackjack table.

Chairman Froessel: We don't permit wagering on these things, but it's been a practice for as long as I have been on this Board that we would give an applicant that opportunity. You have to sort of make a calculation as to how things have been received.

Mr. Vassar: Right. How do you decide that? You're the boss. I don't know how to answer that. I'm, for one, stumped.

Ms. Roth: I'm not sure either what happens if we vote and we need to...

Mr. Vassar: If we vote and it's denied then...

Chairman Froessel: You would have to come back with an application that is materially different.

Ms. Roth: Oh.

Mr. Vassar: Basically, it costs us a month.

Ms. Desidero: You do know you have to go to the ARB (Architectural Review Board) after this as well, right?

Mr. Vassar: No, really?

Ms. Desidero: Yes, that's another Board you have to have the sign approved by. They only meet once a month also. Just putting it out there.

Chairman Froessel: I think, generally speaking, there's a favorable view.

Ms. Roth: OK, let's give it a go.

Chairman Froessel: You went back and revised your application and made several changes we asked for so...

Ms. Roth: OK, thank you.

Mr. Vassar: And we're not breaching the envelope of the existing sign so I feel OK. Are you OK with that?

Ms. Roth: Yes, let's vote, let's go for it.

Chairman Froessel: OK, let's roll the dice and hope we don't get snake eyes.

Ms. Desidero: So, you need four votes.

Chairman Froessel: That's State law; you need the four votes regardless of how many...

Mr. Vassar: Oh, I know, I'm on the ZBA (Zoning Board of Appeals) in the town I live in so I'm with you.

Chairman Froessel: OK, so you are going to let it ride?

Mr. Vassar: We're going to let it ride.

Chairman Froessel: Do you have any final comments you'd like to make in support of your application before we close the Public Hearing?

Mr. Vassar: Just the fact that we're not changing what's there; we are keeping the envelope the same and we're just trying to dress it up so that it's readable, legible and attractive.

Chairman Froessel: Do you feel you've been given a fair and adequate opportunity to present your application?

Mr. Vassar: I do.

Chairman Froessel: OK, very good, thank you. With that I think we've discussed this enough. I don't think we need any deliberation before we vote.

Boardmember Vink: Yeah, no.

Chairman Froessel: I'll entertain any motion anyone would care to make in support of this application.

Boardmember Vink: I'll make the motion to grant the applicant the three variances requested: 9 sq. ft. variance for the sign area; 3 ft. sign height variance; 6 ft. sign base height variance.

The motion to grant the applicant a 9 sq. ft. variance for the sign area; 3 ft. sign height variance; 6 ft. sign base height variance was introduced by Boardmember Vink, seconded by Boardmember Corozine. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
Obviously, there will be no change whatsoever to the character of the neighborhood. The sign is essentially staying the same, it's just being made to look better.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
No, it can't. There's an existing structure that is not in compliance with the Code and the applicant came in after that sign was built so there is no method other than a variance.
3. Whether the requested variance is substantial.
Under these circumstances I do not believe that the variances are substantial.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
There is no evidence to suggest that.
5. Whether or not the alleged difficulty was self-created.
No, it was not. The sign was in compliance when it was erected.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	Absent

P. Vink	In Favor
R. Cassidy	Absent
S. Corozine	In Favor
A. Gil	In Favor
T. Froessel	In Favor

The motion to grant the variances as stated in the motion passed by a vote of 5 to 0 with 2 absent.

**3. Allview Avenue aka Mazzotta Subdivision 212 Allview Avenue,
Tax Map IDs 67.1-1-6.1,6.2,6.3,6.4,6.5**

Public Hearing to review an application that requires the following variances: Lot 1: rear yard setback for a pool of 19 ft. where 50 ft., is required and 31.62 ft. is proposed; Lot 3: front yard setback for a chicken coop/cabana of 30 ft. where 50 ft. is required and 20 ft. is proposed as referred by the Planning Board.

Peder Scott, Engineer, was sworn in and the mailings were verified to be in order.

Chairman Froessel: OK, I read the Planning Board minutes because you were referred by the Planning Board and I have to admit I didn't completely understand everything.

Mr. Scott: I know, it's complicated.

Chairman Froessel: So, I'd appreciate it if you could give us from square one.

Mr. Scott: So, in 1991 this project was approved... I'm dating myself, but what it was was a five-lot subdivision with a private road servicing the lots and it was in a dedicated land component and the lots were arranged as Lot 1, 2, 3, 4, and 5. Lot 5 was approved with two residences on it and a pool and a cabana. Lot 1 had an existing residence on it with frontage on Allview. Lot 2 had a proposed residence and 3 and 4 were proposed as well. Mr. Mazzotta basically approved it and he was going to have his children live on the properties with him and they were going to build a road to accommodate them. But, over time only one of them remained in the area and the rest had moved away and there was really no demand. He realized the cost of building this road... the stormwater management components were excessive for a yield of only using one of the lots.

Chairman Froessel: What's the overall acreage of that whole area?

Mr. Scott: It's about 3 acres. Hold on a second...

Chairman Froessel: It has to be more than that.

Mr. Scott: About 8 acres total.

Chairman Froessel: OK, I'm sorry, go ahead.

Mr. Scott: We're in the R-60 but they were bigger lots than that requirement and the goal was to utilize all these structures built in the early 1900s and then create new elements for his kids to live in. So, we were asked to unwind the project, which was must more difficult than we thought when we first looked at it because a couple things took place. There is now an Ordinance in place that states you can't have a pool in your front yard of your house. So, accordingly we tried to make this as conforming as possible and what I did was I put in the old subdivision and we put the dark lines in just for our presentation tonight to show what's going on here. So, what we did was we kept Lot 1 as is with frontage but we added the pool in the back of the property to get rid of that problem of being in the front yard. Lot 2 became one big lot going front to back and we eliminated in the rear part of it Lot 3, which is 6.3. These are all filed and dedicated lots. To work out what was going on in the back of this property we had to keep the houses on that one lot because it's pre-existing, non-conforming lot from the 90s so both houses are on Lot 3 and we took this lot which is Lot 4 (inaudible) and eliminated that.

So, we ended up having a bigger Lot 2 and Lot number 4 and 5 became Lot 3; the third of 3 lots.

Chairman Froessel: So, you've gone from a five-lot subdivision to a three-lot subdivision.

Mr. Scott: Yes, so the issue is because we have all these existing structures everywhere, we had to thread the lot line through and between what was a cabana at one time but now is a chicken coop. Mr. Mazzotta likes it because he has goats and chickens and all sorts of things going on there. We are keeping the pool as is because that's a dedicated structure and we're threading the lot line between the two of them pretty much trying to split this issue in half of what the variances would be. So, (Town Planner) Ashley (Ley) presented a letter to you, which says that Lot 1 needs a variance of 19 ft. for the pool; we're required to have 50 ft. and we have 31.64 ft. and the result is a variance of 19 ft. and that's to make this line work with the pool. On the cabana/chicken coop we need a variance of 30 ft. Again, you need a 50 ft. setback and we're only providing 20 ft. and so we need a variance of 30 ft. for that component right here. We looked at many, many variations with Ashley (Ley) to try to make this thing as conforming as possible.

Chairman Froessel: Does the variance apply to the swimming pool or the chicken coop or both?

Mr. Scott: Both, each one because they're only 51 ft. apart. We did look at trying to snake a line around the cabana this way but then the residence here becomes non-conforming so I picked the weakest component on the site which would need a variance, which would be keep the pool and give it more land and then get as close as we could to the cabana/chicken coop and that has the most variance requirements because it's a minimal structure, it's small. The Health Department has also gone through the entire subdivision and we had to do new septic areas for two. We had to add a new septic area for the pool because we do have to show the cabana for health requirements and we had to re-do septic areas for Lot 3 to move away from all these new lot lines that we had and that's been reviewed by them as well. So, it comes down to this line moving through the area. At one time the cabana, we did talk to Mr. Mazzotta about taking down the cabana but it really doesn't help too much because you still have the septic issue with the setback.

Chairman Froessel: That's an existing septic that's there now?

Mr. Scott: Correct, servicing this house. This new septic over here is servicing this building here, but they accepted this one. It was substantial enough to be grandfathered while this one had to be brand new because this one was too substandard relative to regulations. So, that's the extent of it. We tried lots of different permutations on how to make it work. We minimized the extent of the variance to the maximum possible and again with the line running right through here like that. What's the intent of the property? His one daughter is going to build this house here, he currently lives here, and these basically are... this residence is being rented by one of his employees who maintains the site and this residence is currently a rental as well.

Chairman Froessel: Are there two dwellings on Lot 3?

Mr. Scott: There are two dwellings on Lot 3 but it's pre-existing, non-conforming because that lot still had two residences on it at one time. So, the extent of the residences are is as referred to. If I can answer any questions, I can do that for you now.

Chairman Froessel: Before we get into the questions; Victoria (Desidero) brought it to my attention that there was an issue with the mailings that some of the surrounding property owners were the same person but they were different lots and the mailings were combined.

Mr. Scott: Yes, so what happened is the post office wouldn't mail them because the addresses that are in the records of the Town are 45 to 49 is one of the ones; there are multiple numbers

on the physical addresses contained in the Town of Southeast Assessor's records and they were undeliverable.

Ms. Desidero: That was true for one out of three of them. The other two were just the same addresses with different Tax Map IDs.

Mr. Scott: It was a different tax map, same address.

Ms. Desidero: Because they own more than one lot, that's the only reason we send them.

Chairman Froessel: Typically, we prefer there be a separate mailing; it's cleaner, neater.

Mr. Scott: OK.

Chairman Froessel: And I can easily say 'hey, it's your problem' if someone comes out of the woodwork and challenges it and says 'I wasn't properly noticed' it's your problem, but it's kind of my problem too because I don't ever want to be accused of overlooking or worse being complicit in people not being properly noticed.

Mr. Scott: Technically each person was noticed of the event because each person... it was weird; they subdivided the land into different tax maps but they have the same address in the records of the Town.

Chairman Froessel: It's not an issue this time but in the future I would suggest you just be a little bit more careful about that because like I said it could be a problem for you and it could be a problem for us too.

Mr. Scott: Yes.

Chairman Froessel: That having been said, we will move forward. The only new structure that will be built as a result of that is the house on Lot 1, correct?

Mr. Scott: Actually, it's referred to as Lot 2 and everything else is existing. And as they are currently filed and mapped and paying tax for each lot, they're surrendering two of them. There is some paperwork we have to file at the end of all this and actually they're going to eliminate from the tax rolls.

Chairman Froessel: I don't think it's a bad thing that two of the five lots are being eliminated. I'd ask if there was anyone in the audience with any questions or comments but there's no one in the audience at all. We don't pack them in like we used to.

Boardmember Gil: What brought this on to clean up the property line?

Mr. Scott: About a year and a half ago I had a meeting with all the kids and the parents and I said 'we provided a cost estimate for the road construction and all the required stormwater management requirements, which were approved at the time' and we said to them 'if you guys eliminate this road and did a 280A for this lot here I can eliminate everything because all you want is one lot now and we'll keep the other lots intact.' At one time these lots were on the market for about \$165,000-\$170,000 but now the market has collapsed for lot prices they are probably only worth about \$60,000 at most and so, accordingly, the cost of the road far outweighed the elements of these lots. And also, two of his daughters gave their dad a heart to heart and said 'you know we're never going to live here'; they're in Ohio and New Jersey and it just seemed to be the dream. He held onto them since 1991 fully approved and paying taxes on them. Do the math, it's been quite a while. He gave it a shot.

Chairman Froessel: How is Lot 3 accessed; are the existing houses on Lot 3 accessed from the driveway that comes back from Allview?

Mr. Scott: Yeah, the driveway exists as well. It's a 280-a. We had to go to the Town Board to get that approved.

Chairman Froessel: So, you're not going to build a road at all then? That driveway will be used as it exists?

Mr. Scott: This is a '91 Plat map. The driveway is all here. At one time this was going to be existing to here and then be removed from here to here with access from this roadway but now

after all these years the intent would be to keep it existing as it is. I have to admit there's a minor improvement required right here just because it degraded. Again, it's a flat lot. All it is is some repairs and paving.

Chairman Froessel: And the house on Lot 2 will get its own driveway?

Mr. Scott: Yes, the driveway is right here and that has a full stormwater management structure as well. Everything else kind of went away because it's all pre-existing, non-conforming. It predates all the Ordinances.

Boardmember Corozine: You had mentioned that there's a cabana that's being used as a chicken coop. Is that being characterized as a cabana because of the type of structure that it is?

Mr. Scott: So, when it was approved in 1991, it was listed as a cabana even on the survey maps. But since time has passed it's now being considered a chicken coop/storage. I'm using the word cabana because that's what it's listed as in the old survey map, but with the Town's approval we modified the name of it to a storage shed/chicken coop.

Boardmember Corozine: So, it is an actual chicken coop...

Mr. Scott: The chickens are still there, but I can pretty much guarantee... I think when Mr. Mazzotta does vacate the premises in some form; he's in his 80s, there will no longer be any chickens there. I can pretty much...

Boardmember Vink: And there will be a pool there so it would make sense to use it as a cabana.

Mr. Scott: Actually, the cabana is on another lot. There's a cabana being proposed in front of the pool, which will be compliant with the setbacks.

Boardmember Corozine: OK, so that would be for the purpose of the pool.

Mr. Scott: Yes, whoever takes over this property in the future. In fact, the pool is operational but there's no need for a cabana because his house serves... there's really no one using it.

Chairman Froessel: What are the dimensions of the cabana for the chickens?

Mr. Scott: It's about 20 x 15.

Chairman Froessel: So, kind of like a big shed.

Mr. Scott: It's a big shed, one story. It was nice at one time, but the kids aren't there and he's on his own.

Boardmember Vink: Chickens don't take care of the place the way that you'd like them to.

Mr. Scott: A funny story when we were doing the deep test holes, he has these goats that are like pets and they wander and meander around the grounds so it's hard to get to the cabana because there's a goat in the way.

Chairman Froessel: Does anyone have any questions on this one? OK, you get the same question as the last applicant: do you want us to vote on this tonight?

Mr. Scott: Yes, I do.

Chairman Froessel: OK, very good. We will do that. If no one has any further questions for the applicant then I will ask you if you have any final comments or statements you'd like to make in support of your application.

Mr. Scott: Yes, I would. Again, we didn't create where the pool and the cabana are located and technically speaking the pool predated the Ordinance about not being in the front yard, but to make it as conforming as possible, with discussion with the Planning Board and mainly the Planning Consultant for the Town, she felt that it was most apropos to have the pool in the backyard but go for the setbacks is less of a serious variance than for going for a setback of a property line. So, that seemed to be the best solution of all that we tried.

Chairman Froessel: OK, do you feel you've been given a fair and adequate opportunity to present your application?

Mr. Scott: Yes.

Chairman Froessel: OK, thank you. With that we will close the Public Hearing. As part of the deliberation I will just throw in my two cents, that I think I agree that this is probably the least offensive way to accomplish this. He had to thread that lot line a little bit, but you end up with dimensions for a variance for the pool and chicken coop that are not outrageous. We've granted variances for things closer to lot lines than that before. The reduction of the five lots to three lots I think was also significant. I don't know if anyone agrees or disagrees.

Boardmember Vink: I agree, well stated.

Chairman Froessel: OK, with that I will entertain any motion anyone would care to make in regard to this application.

Boardmember Gil: I'll make a motion to grant the two variances: the one for Lot 1 for the pool of 19 ft. where 50 ft. is required and a variance for Lot 3, front yard setback for chicken coop/cabana of 30 ft. where 50 ft. is required and 20 ft. is proposed.

The motion to grant the variances in the application a variance for Lot 1 for the pool of 19 ft. where 50 ft. is required and 31.62 ft. is proposed and a variance for Lot 3 for the front yard setback for the chicken coop/cabana of 30 ft. where 50 ft. is required and 20 ft. is proposed was introduced by Boardmember Gil, seconded by Boardmember Vink. The Criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variance.
I think the record supports that it does not create an undesirable change to the character of the neighborhood. If anything, it is actually correcting the area for tax purposes and splitting the difference so that there are no undesirable foreseeable consequences in the future.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
I don't think that based upon the record and the map presenting... I don't think that there is the ability to achieve this in another method less feasible. In essence, the record indicates that in splitting the difference between the cabana and the pool to draw the lot lines appropriately.
3. Whether the requested variance is substantial.
I do not think that the variances are substantial and the record supports that.
4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.
I don't believe based upon the record and the application and the map presented that it will have an adverse effect or impact on the environmental conditions of the neighborhood. If anything, the environmental conditions were something that were taken into consideration when changing this from five lots to three lots.
5. Whether or not the alleged difficulty was self-created.
I don't think that this was self-created in the sense that the pool and cabana pre-date the Code and that, if anything, the applicant is trying to correct deficiencies so that he can move forward to clear up his property.

Roll Call Vote:

G. Wunner	In Favor
J. McNeill	Absent
P. Vink	In Favor
R. Cassidy	Absent
S. Corozine	In Favor
A. Gil	In Favor
T. Froessel	In Favor

The motion to grant the variances as stated in the motion passed by a vote of 5 to 0 with 2 absent.

The motion to approve the Meeting Minutes of December 16, 2019 meeting was introduced by Boardmember Vink, seconded by Chairman Froessel and passed all in favor.

The motion to adjourn the meeting was introduced by Chairman Froessel, seconded by Boardmember Vink and passed all in favor.

Respectfully submitted,
Cathy Chiudina
Victoria Desidero (rev. 2/18/20)

FULL AUDIO RECORDING OF THIS MEETING AVAILABLE AT:

<https://www.southeast-ny.gov/335/Zoning-Board-of-Appeals-Audio-Files>