

**TOWN OF HYDE PARK, N.Y.
ZONING BOARD OF APPEALS**

March 10, 2010

MINUTES

PRESENT: Mary Donohue, Chair
Dennis Eagan
Stanley Frangk, Vice Chair
Brenda Moore-Frazier
Herbert Sweet

OTHERS PRESENT: James P. Horan, Town Attorney
Kathleen Moss, Zoning Administrator
Lorraine Turra, Secretary

The meeting was called to order at approximately 7:08 p.m. by the Chair and the secretary was asked to note the roll of the Board. The Chair explained that this special meeting replaces the February 24, 2010 meeting that was cancelled due to weather conditions. The next regular meeting of the Zoning Board of Appeals will be on Wednesday, March 24, 2010.

APPROVAL OF MINUTES: MOTION made by Mr. Eagan, seconded by Mr. Frank to approve the January 27, 2010 minutes. VOICE VOTE – ALL IN FAVOR

(5) AYES (0) NAYS – MOTION CARRIED

RESOLUTION & VOTE:

#2122-09 STOP & SHOP SUPERMARKET COMPANY, LLC
Hyde Park Mall
U.S. Route #9 and Kessler Drive, Hyde Park, NY 12538
VARIANCES – wall signs from 2 signs permitted to 4 signs proposed (Section 108-24.2.C(2)(b); symbol or graphic from 24 in. all directions to 32 in. height and 30 in. width (Section 108-24.2.F(2)(a) in the **Town Center Historic District** of the Town.

Ms. Noelle V. Crisalli, Esq. (Hocherman, Tortorella & Wekstein, LLP) was present to represent the applicant. The Chair explained that this public hearing was closed on January 27, 2010. The Findings of Fact, resolution for signs and a resolution for the size of the logo will be read and voted on by the Board, as follows:

**APPLICATION FOR AREA VARIANCES
FINDINGS OF FACT & DECISIONS**

Appeal No.	2122-09
Application Date:	October 20, 2009
Applicant	Stop & Shop Supermarket Company, LLC
Premises Located at:	3999 Albany Post Rd at Kessler Drive
Tax Grid No.:	133200-6064-04-948267
Zoning District(s):	Town Center Historic District
Record Owner of Property:	Hyde Park Mall
Variance of Code Sections:	§ 108-24.2.C (2)(b) Request for 4 signs where 2 are permitted. § 108-24.2.F (2)(a) Request for 32”x 30” graphic where 24”x 24” permitted.

Description of the Premises

The premises that is the subject of this variance application is the shopping center known as the Hyde Park Mall (the “Mall”) which is located on the western side of US Route 9, south of its intersection with Kessler Drive in the Town of Hyde Park. The premises are located in the Town Center Historic District. The applicant has a site development plan application pending before the Planning Board.

A site plan showing the Mall is annexed to the application as Exhibit C. The Applicant is the prospective tenant of the former Ames store which is located in the southern portion of the Mall. The former, now vacant, Ames store is 76,830 square feet and the applicant is seeking to raze that building and replace it with a new building containing a 59,100 square foot supermarket and an additional 2,000 square foot retail space that is adjacent to the supermarket. This building is depicted as Unit B on Exhibit C. The site plan shows that the supermarket building is set back 435 feet from the road. In addition, the applicant seeks to erect a free standing fuel facility, south of the supermarket with four double sided fuel dispensers covered by a canopy, together with a 60 square foot kiosk.

The mall contains a stand alone bank building currently occupied by the Hudson Valley Federal Credit Union and existing rental units depicted as Unit A on the site plan. The Applicant does not lease these buildings and no work is proposed on them. The Applicant proposes to provide landscaping throughout the site and replace the freestanding sign at the entrance to the mall. Annexed to the application as Exhibit B is a front elevation of a building with an overall length of 288 feet. Four signs are located on the elevation. The main sign shown is a Stop & Shop sign with 24” high letters and a graphic that is 32 inches high by 30 inches wide. The overall length of the Stop & Shop sign with graphic is 15 feet 7 inches long. Also shown is a Citizens Bank sign that is 14 inches high by 11 feet 8 inches long. There are also two “Welcome” signs that are 14 inches high by 80 inches long. The “Welcome” signs are located above two entrances to the building. The total area of the signs proposed is 60.41 square feet.

The applicant has requested two variances in its application.¹

Proposed Variances

Variance 1

The first variance it is seeking is a variance from the requirements of § 108-24.2.C(2)(b). § 108-24.2.C(2)(b) provides:

“In addition, each separate business within the center with a separate external entry may erect no more than two wall signs. Such signs shall be restricted to the name and logo of the business, information lines (excluding pricing) and/or pictograph indicating the nature of the business. The size of such signs shall be no more than one square foot for each lineal foot of the individual store front occupied by such business, but in no case shall the total area of such signs exceed 100 square feet for each such business.”

The bank enterprise located within the supermarket does not have a separate entrance so the applicant is limited to 2 wall signs. The applicant has determined that the Stop & Shop and the Citizens Bank signs are permitted signs and it is requesting a variance to allow for the two “Welcome” signs.

Variance 2

The applicant is requesting a second variance from the requirements of § 108-24.2.F(2)(a). § 108-24.2.F(2)(a) provides:

- “(2) The size and graphic content of any sign shall be appropriate for its intended audience. Signs that are meant to attract pedestrian interest shall be smaller than those meant to attract the interest of persons traveling in vehicles with local destinations, which in turn shall be smaller than those meant to address persons traveling in vehicles comprising through traffic.
- (a) The maximum size of any symbol or graphic shall be 10 inches in any dimension. The Planning Board may in its discretion grant an additional inch in dimension for every 20 feet a wall sign for a business or structure is set back from its primary access roadway to a maximum of 24 inches, if it finds that the additional size is necessary or appropriate due to such circumstances as the sign's distance from the road, the design speed of the road or the size of the building on which the sign is placed; or that the symbol or graphic is of special aesthetic merit.”

The applicant is seeking permission to erect a graphic that is 32 inches high by 30 inches wide. The maximum permitted under the section is 24 inches. The applicant seeks this variance because it wishes to have the graphic height 1.33 times the height of the “Stop & Shop” letters.

¹The application included the request for a third variance regarding fuel signs; however, an amendment to the Town Code has obviated the need for that variance.

The Planning Board has authorized the letters to be 24 inches high. The variance requested is 8 inches in height and 6 inches in width.

Evidence Presented

An application dated October 20, 2009 with four exhibits:

- 1) Area Variance Application – Exhibit 1
- 2) Exhibit 2 Letter of Hocherman Tortorella & Wekstein, LLP to Hon. Mary Donohue, Chair, and Members of the Zoning Board of Appeals, dated October 20, 2009 – Exhibit 2
- 3) Stop & Shop Fueling Facility Monument Sign Plan.....Exhibit A to Exhibit 2
- 4) Stop & Shop Wall Sign Plan.....Exhibit B to Exhibit 2
- 5) Stop & Shop Proposed Site Plan.....Exhibit C to Exhibit 2
- 6) Full Environmental Assessment Form – Exhibit 3
- 7) Letter of The Stop & Shop Supermarket Company LLC to Hon. Mary Donohue, Chair, and Members of the Zoning Board of Appeals, dated October 8, 2009 – Exhibit 4;
- 8) Letter from Planning Board
- 9) Report from Dutchess County Planning dated January 26, 2010 by John Clarke.
- 10) Letter from Planning Board dated November 19, 2009 recommending approval.

Public Hearing

A public hearing on the application was held on January 27, 2010. Henry H. Hocherman, Esq. and Noelle V. Crisalli, Esq. of Hocherman, Tortorella & Wekstein, LLP were present and spoke on behalf of the applicant. The secretary confirmed that Notice of Public Hearing was published in the Poughkeepsie Journal on Friday, January 22, 2010. No other members of the public spoke either for or against the application.

SEQRA

The Town of Hyde Park Planning Board was named lead agency and determined that the proposed action was a Type 1 action and that there would be coordinated review. At the Planning Board’s November 18, 2009 meeting it adopted a resolution determining that the proposed action will not cause a significant environmental impact and that an environmental impact statement would not be prepared. Based on that negative declaration, no findings under SEQRA are required by the ZBA.

Findings of Fact

1. By Resolution dated November 18, 2009, the Planning Board of the Town of Hyde Park, as Lead Agency, adopted a Negative Declaration of Significance, thereby determining that the proposed action would not result in a significant adverse effect upon the environment.

2. The applicant has a Special Permit Use and Site Plan Application pending before the Planning Board under Application Number 12-06.

3. The property to the south of the premises is vacant land, except where the Colonial Plaza shopping center is located.

4. The property to the north of the premises is vacant land owned by the National Park Service.

5. A single family residence abuts the premises to the west, but the proposed sign is not visible from that location. This residence is not typical of the neighborhood.

6. On the east side of US Route 9, across from the premises is a vacant parcel of land 125 feet deep that screens a residential subdivision off of Farm Lane from US Route 9 for six months of the year. Also located on Farm Lane, which abuts Route 9 across from the premises, is an apartment complex, Springwood Village, and a senior apartment building at the end of the street. Because of this buffer, the Mall will not be visible from the subdivision for six months of the year.

7. The neighborhood area affected by this variance is the Mall itself, the Colonial Plaza, the vacant lands of the United States to the north and US Route 9 in the immediate vicinity of, and visible from, the Mall.

8. The proposed supermarket building is 288 feet in length and is set back 435 feet from the fog line of US Route 9.

9. The supermarket and the bank are permitted two wall signs pursuant to §108-24.2.C(2)(b) because the bank does not have a separate entrance.

10. The Planning Board has approved "Stop & Shop" letters and fruit basket logo to be 24 inches high.

11. The fruit basket logo requested by the applicant is shown to be 1.33 times the height of the letters which equates to the requested 32 inches height proposed in the application.

12. The total area of signs proposed by the applicant is 60.41 square feet which is less than the 100 square feet allowed by the Zoning Code.

13. The former Ames retail store's wall sign on this portion of the Mall building is still in place with letters 72 inches high. The Mall building was built in the 1970's under a previous Zoning Code. The Town Board enacted a new Zoning code in 2005 and in 2009 amendments were enacted to the sign portion of the Code, 108-24. The former Ames retail store and former bank on the corner will be razed to accommodate the proposed use.

14. The former Ames retail store and much of the Mall is presently vacant.

15. Stop & Shop would be an anchor tenant in the Mall, if its applications are approved.

16. The supermarket proposed by the applicant, after consultation with the Planning Board, is more architecturally and visually pleasing than the existing Ames building.

17. By letter dated November 19, 2009, the Planning Board indicated that it has unanimously recommended that the variances be granted.

18. After a referral pursuant to General Municipal Law § 239-m, the Dutchess County Department of Planning has recommended that the variance from the provisions of § 108-24.2.F(2)(a) be denied and has determined that the variance from the provisions of § 108-24.2.C(2)(b) is a matter of local concern.

Read by: Mr. Frangk

Decision on Area Variance from Provisions of § 108-24.2.C (2)(b)

Standard

In making its determination whether it is appropriate to grant an area variance, the Zoning Board of Appeals shall follow the standards created under §108-33.6(B)(2) of the Code of the Town of Hyde Park and § 267-b(3) of New York Town Law. The provisions of § 108-33.6(B)(2) are:

(2) Area variance. The Zoning Board of Appeals, in making its determination, shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the general neighborhood or community by such grant.

(a) The Zoning Board of Appeals, in making its determination, shall also consider:

- [1] Whether an undesirable change will be produced in the character of the general neighborhood or a detriment to nearby properties will be created by the granting of such 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 area variance will have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district; and
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

- (b) The Zoning Board of Appeals, in the granting of any area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the general neighborhood and the health, safety and welfare of the Town.

Decision

The Zoning Board of Appeals determines that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the general neighborhood or community by such grant.

The Zoning Board of Appeals further determines that no undesirable change will be produced in the character of the general neighborhood which has been found to be the Mall itself, the Colonial Plaza, the vacant lands of the United States to the north and US Route 9 in the immediate vicinity of, and visible from, the Mall. The character of the neighborhood will not be changed as the existing character is retail in nature with existing signs. The two additional "Welcome" signs are small in size and do not change the character of the neighborhood. The Zoning Board of Appeals further determines that there will be no detriment to nearby properties by the granting of such area variance because the small signs are a great distance from the property borders.

The Zoning Board of Appeals further determines that the benefit sought by the applicant could be achieved by some other feasible method, other than the instant area variance. The applicant has stated that the 'Welcome' signs are to identify entrances. Entrances could well be defined by signs on the insides of the doors or by the door molding and decoration as is generally common with structures.

The Zoning Board of Appeals further determines that the variance is numerically substantial but the impact to the neighborhood is not substantial due to the size of the signs, the large size of the front of the building, and the distance from the building to the property border.

The Zoning Board of Appeals further determines the proposed area variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district as the signs are small and considerably distant from the borders of the property. The Zoning Board of Appeals further determines that the alleged difficulty is self-created.

NOW THEREFORE, the Zoning Board of Appeals hereby determines that the requested area variance allowing four wall mounted signs where only two are permitted under § 108-24.2.C (2)(b) is hereby **GRANTED** subject to the following conditions:

- a) All fees and escrows associated with this application must be paid.

- b) Special Permit Approval and Site Plan approval from the Planning Board for the associated application must be received.
- c) All taxes and other fees due and payable to the Town of Hyde Park must be paid.
- d) The two additional signs permitted shall read “Welcome” and shall be in accordance with the design prepared by Agnoli Sign Company, Inc. of Springfield, Massachusetts which is attached to the application as Exhibit B.
- e) The two additional signs shall comply with the Town Code in all other respects, including illumination.
- f) In the event that the proposed structure is destroyed, removed or demolished, the variance shall terminate.
- g) The variance being granted is the minimum variance necessary to meet the needs of the applicant.

Adopted: March 10, 2010

Dennis Eagan	<u>AYE</u>
Herbert Sweet	<u>AYE</u>
Stanley Frangk	<u>AYE</u>
Brenda Moore-Frazier	<u>AYE</u>
Mary Donohue	<u>AYE</u>

Lorraine Turra
Secretary

Read by: Dennis Eagan
Seconded by: Stanley Frangk

Decision on Area Variance from Provisions of § 108-24.2.F (2)(a)

Standard

In making its determination whether it is appropriate to grant an area variance, the Zoning Board of Appeals shall follow the standards created under §108-33.6(B)(2) of the Code of the Town of Hyde Park and § 267-b(3) of New York Town Law. The provisions of § 108-33.6(B)(2) are:

- (2) Area variance. The Zoning Board of Appeals, in making its determination, shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the general neighborhood or community by such grant.

- [1] Whether an undesirable change will be produced in the character of the general neighborhood or a detriment to nearby properties will be created by the granting of such 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 area variance will have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district; and
 - [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (b) The Zoning Board of Appeals, in the granting of any area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the general neighborhood and the health, safety and welfare of the Town.

Decision

The Zoning Board of Appeals determines that the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety and welfare of the general neighborhood or community by such grant.

The Zoning Board of Appeals further determines that no undesirable change will be produced in the character of the general neighborhood which has been found to be the Mall itself, the Colonial Plaza, the vacant lands of the United States to the north and US Route 9 in the immediate vicinity of, and visible from, the Mall. The character of the neighborhood will not be changed as the existing character is retail in nature with existing signs. The Applicant is requesting a 32” high graphic Fruit Bowl logo where a maximum of 24” was permitted by a resolution of the Planning Board in November 2009 under Section 108-24.2F(2)(a) due to the distance of the Mall from US Route #9.

The Zoning Board of Appeals further determines that there will be no detriment to nearby properties by the granting of such area variance due to the distance from the sign to the property borders.

The Zoning Board of Appeals further determines that the benefit sought by the applicant cannot be achieved by some other feasible method, other than the instant area variance if they wish to maintain the corporate logo to text ratio of 1.33:1. The Planning Board has authorized text height of 24 inches for both the text and the logo. There will be a freestanding sign on the Route 9 entrance to the Mall which will display the Stop and Shop name and logo. Wall signs will be viewed after entering the mall parking area.

The Zoning Board of Appeals further determines that the variance, a 33 percent increase, may be considered numerically substantial but the impact to the neighborhood is not substantial due to the size of the graphic and its distance from the property borders.

The Zoning Board of Appeals further determines the proposed area variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district due to the size of the sign and its distance from the property borders.

The Zoning Board of Appeals further determines that the alleged difficulty is self-created due to the formula 1.33 to 1 set by the company for the logo to the text. The location of the new building is predetermined by the location of existing buildings in the Mall that are to remain in place. Customers may be a considerable distance from the building and will still be on the premises and need adequate visibility of the sign.

NOW THEREFORE, the Zoning Board of Appeals hereby determines that the requested area variance allowing a 32 inch graphic where only 24 inches is permitted under 108-24.2F(2)(a) is hereby GRANTED subject to the following conditions:

- h) All fees and escrows associated with this application must be paid.
- i) Special Permit Approval and Site Plan approval from the Planning Board for the associated application must be received.
- j) All taxes and other fees due and payable to the Town of Hyde Park must be paid.
- k) In the event that the proposed structure is destroyed, removed or demolished, the variance shall terminate.

The variance being granted is the minimum variance necessary to meet the needs of the applicant.

Adopted: March 10, 2010

Dennis Eagan	<u>AYE</u>
Herbert Sweet	<u>AYE</u>
Stanley Frangk	<u>AYE</u>
Brenda Moore-Frazier	<u>AYE</u>
Mary Donohue	<u>AYE</u>

Lorraine Turra
Secretary

Motion read by: Herbert Sweet
Seconded by: Stanley Frangk

NEW PUBLIC HEARING:

#2127-2010 RANDALL & LISA PRENTISS
16 Mountain View Avenue, Staatsburg, NY 12580
VARIANCE – side yard setback from 10 ft. to 5 ft. for an addition
to a single family residence (Section 108-5-15) in the **Hamlet District**
of the Town

Mr. Prentiss was present to answer questions from the Board and/or or the public. The secretary confirmed that notice of public hearing was published in the Poughkeepsie Journal twice, once for the cancelled February meeting and again for the March 10, 2010 special meeting.

In answer to a question from the Board, Mr. Prentiss explained that the original home was built in about 1925 and is set back 5 ft. from the property line. When Mr. Prentiss purchased the property (it was a foreclosure) the deck was replaced as a condition of the purchase. It was also noted that the addition will be no closer than the existing home. The applicant has two sons, 13 and 11 years old and they need more room for their activities and more light will be provided with the extra windows.

Mr. Eagan added that very small lots are common in Staatsburg and the addition to the Prentiss home will be consistent with other homes in the area.

MOTION made by Mr. Sweet, seconded by Mr. Frangk to close the public hearing for Application #2127-10 (Prentiss). VOICE VOTE – ALL IN FAVOR

(5) AYES (0) NAYS – MOTION CARRIED

VARIANCE RESOLUTION

Application #: 2127-2010

Grid #: 6167-03-261427

Introduced by: Brenda Moore-Frazier

Date: March 10, 2010

Seconded by: Stanley Frangk

The Town of Hyde Park Zoning Board of Appeals, at a meeting duly convened on March 10, 2010, reviewed the facts in Application #2127-2010 as submitted by Randall & Lisa Prentiss.

WHEREAS, the application was determined to be a Type II Action under Section 6NYCRR Part 617 and Section 54-7 of the Code of the Town of Hyde Park, and

WHEREAS, said application requests a variance or adjustment to the strict application of the Zoning Code, specifically regarding a side yard setback from 10 ft. to 5 ft. for an addition to a single-family dwelling (Section 108-5.15) in the Hamlet District of the Town, and

WHEREAS, the Board held a Public Hearing, notice of which was duly published in the Poughkeepsie Journal on Friday, February 19, 2010 and Friday, March 5, 2010 and posted as required by law, and

WHEREAS, at said Public Hearing all who desired to be heard were heard and their testimony recorded, and

WHEREAS, all testimony has been carefully considered and the following pertinent facts noted:

1. Many lots in Staatsburg are small and narrow.
2. Many of the homes in Staatsburg have been granted similar variances.
3. The home is set back 5 ft. from the property line.
4. The addition will be no closer than the existing home.

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Appeals that application **#2127-10** a request for a variance from Section 108-5.15 as set forth above be granted on the following grounds:

1. The variance requested will not produce an undesirable change to the character of the neighborhood or a detriment to nearby properties since virtually all of the homes have small setbacks. The addition will be minimally visual since it is in the back of the home.

2. The needs of the applicant can not be achieved by other than an area variance because there is no room for the structure on either side of the house due to the location of the driveway and the small setback.
3. The requested variance is numerically substantial but the impact to the neighborhood is not substantial due to nature of the homes having small setbacks and the addition will be no closer than the original home (built circa 1925.)
4. The requested variance will not affect the physical or environmental conditions in the neighborhood as the addition is small and will be built to comply with all existing codes.
5. The hardship for which the variance is sought to rectify was self created.
6. The variance being granted is the minimum variance to meet the needs of the applicant.

Adopted: March 10, 2010

Dennis Eagan	<u>AYE</u>
Herbert Sweet	<u>AYE</u>
Stanley Frangk	<u>AYE</u>
Brenda Moore-Frazier	<u>AYE</u>
Mary Donohue	<u>AYE</u>

Secretary: _____
Lorraine Turra

CONTINUED PUBLIC HEARING:

#2120-09 DEMETREUS MOUSTAKAS
87 East Dorsey Lane, Poughkeepsie (Hyde Park, NY 12601
VARIANCE – side yard setback from 25 ft. to 7 ft. for the construction
of a 32 ft. x 32 ft. garage (Section 108-4.4 and Section 108-5.15) in the
Greenbelt District of the Town.

MOTION made by Mr. Eagan, seconded by Mr. Sweet to continue the public hearing for Application #2120-09 (Moustakas) to Wednesday, March 24, 2010. VOICE VOTE – ALL IN FAVOR

(5) AYES (0) NAYS – MOTION CARRIED

Since there was no further business to be discussed a motion was made by Mr. Eagan, seconded by Mr. Frangk to close the meeting at approximately 8:15 p.m.

Respectfully submitted,

Lorraine Turra,
Zoning Board Secretary

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Approved: March 10, 2010
Dennis Eagan
Stanley Frangk