



TOWN OF AMENIA

4988 Route 22, AMENIA, NY 12501
TEL: 845-373-8860, x118 FAX: 845-373-9147

Amenia Town Clerk
FEB 20 2015
RECEIVED

TOWN OF AMENIA ZONING BOARD OF APPEALS (ZBA)

Resolution # 2 for 2015

Resolution Approving Sign Variances For Four Brothers Amenia Drive-In Theatre

February 16, 2015

WHEREAS, John Stefanopoulos (the "Applicant") is the authorized representative for Four Brothers Amenia Drive-In Theatre, the owner of 15.32 ± acres of land located at 4957 NYS Route 22 in Amenia, New York (the "Property"); and

WHEREAS, the Property is predominately located in the Hamlet Mixed Use (HM) Zoning District and the Aquifer and Historic Preservation Overlay Districts; and

WHEREAS, on June 20, 2014, the Town of Amenia Planning Board (the "Planning Board") granted a Special Use Permit and site plan approval for the development of a drive-in theatre on the Property; and

WHEREAS, the Applicant subsequently constructed the drive-in theatre differently than shown on the approved site plan and without proper permits, including the addition of numerous signs not depicted in the site plan and in violation of the Town of Amenia Zoning Code ("Zoning Code"); and

WHEREAS, the Applicant has installed approximately 100 signs on the Property. Approximately 53 signs comply with the Zoning Code (or are exempt from the Code), approximately 28 signs do not comply with the Code and require area variances from the ZBA and the Applicant has agreed to remove approximately 19 signs from the Property; and

WHEREAS, to correct the violations of the Zoning Code, the Applicant submitted an application to the ZBA seeking, among other things, area and height variances and relief from Section 121-39 (Signs) of the Zoning Code in connection with twenty-eight signs located on the Property. The Applicant requested these sign variances to facilitate the development of a 1950s themed drive-in movie theatre. Specifically, the Applicant is requesting sign variances from the following sections of the Town's Zoning Code (the "Project"):

<u>Code Section</u>	<u>Number of Sign Variances Requested</u>
121-39.C(2) (internal illumination)	21
121-39.D(3)(a) (sign area)	1
121-39.D(3)(a) (sign height)	4

121-39.D(3)(c) (roof-mounted)	8
121-39.D(3)(e) (awning height)	1
121-39.D(3)(f) (height eligibility for sign area bonus)	2
121-39.D(3)(g) (cumulative sign area for parcel)	1

WHEREAS, the documents submitted to the ZBA by the Applicant consisted of, among other things: (1) a Sign Variance Application; (2) a Short Environmental Assessment Form (“SEAF”); (3) a signage site plan; (4) photographs of the signs; (5) a sign chart prepared by the Town Engineer and other documents (together, the “Application”); and

WHEREAS, pursuant to Section 121-39(C)(2) of the Zoning Code, “no exterior sign shall be illuminated internally”; and

WHEREAS, Section 121-39(D)(3)(a) of the Zoning Code provides, in relevant part, “individual freestanding signs shall not exceed ... 10 feet in height. Freestanding signs that are grouped together on one sign structure shall not exceed a cumulative total of 50 square feet per structure, and the individual components of such groupings shall be large enough to be read safely by passing motorists traveling at the speed limit”; and

WHEREAS, pursuant to Section 121-39(D)(3)(c) of the Zoning Code, wall-mounted signs shall not be placed on the roof of a structure; and

WHEREAS, Section 121-39(D)(3)(e) of the Zoning Code provides, in relevant part, “the bottom of the awning [sign] shall be at least eight feet above the finished grade”; and

WHEREAS, in accordance with Section 121-39(D)(3)(f) of the Zoning Code, sign bonuses allow for the maximum size of individual signs to be increased provided that specific criteria are satisfied. However, sign bonuses shall not generally apply to freestanding signs that exceed six feet in height; and

WHEREAS, pursuant to Section 121-39(D)(3)(g) of the Zoning Code, “the maximum amount of total sign area per lot shall be one square foot of total sign area for every two linear feet of lot frontage on a public street”; and

WHEREAS, Section 121-39(D)(3)(h) of the Zoning Code also provides that “notwithstanding any provision of [Section 121-39] to the contrary, no sign or grouping of signs shall be greater than 100 square feet in size”; and

WHEREAS, pursuant to Section 121-59(D)(1) of the Zoning Code, “[w]here a proposed special permit or site plan application contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance without a decision or determination by the Code Enforcement Official”. The Applicant has applied directly to the ZBA under this provision of the Zoning Code; and

WHEREAS, the ZBA, with the assistance of its technical and legal consultants, engaged in a detailed review of the Application materials and prepared a sign chart, dated December 22, 2014, last revised January _____, 12, 2015, (attached hereto) as a tool to help assess the current and proposed signage on the Property (the "Sign Chart"). The Sign Chart is broken down into five categories (Category A through E). In particular, Category B describes signs not in compliance with the Zoning Code and identifies the specific variances requested and the justifications for the approval of such variances; and

WHEREAS, on January 12, 2015, the ZBA deemed the variance Application to be complete for purposes of referring the Application to the Dutchess County Department of Planning and Development ("County Planning Department") as required by Section 239-m of the NYS General Municipal Law and thereafter caused the necessary referral to be made to the County Planning Department; and

WHEREAS, the County Planning Department reviewed the Project for countywide and intermunicipal impacts and issued a report dated February _____, 10, 2015 stating that the Project was _____; a matter of local concern; and

WHEREAS, on February 16, 2015, a properly noticed public hearing was held to gather comments on the Project and the ZBA considered the verbal and written comments submitted by the public, if any. The hearing was closed the same day; and

WHEREAS, following the public hearing, the Planning Board adopted a SEQRA Negative Declaration concluding that the Project will have no significant adverse environmental impacts and that a draft environmental impact statement will not be prepared; and

WHEREAS, the Applicant worked with the ZBA to significantly reduce the number of non-conforming signs on the Property and to bring the Project more into compliance with the Zoning Code. For example, the Applicant agreed to remove a number of non-conforming signs from the Property, alter a number of signs to bring them closer to compliance with the Code, and to move internally lit signs away from Route 22; and

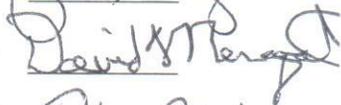
WHEREAS, in accordance with Section 121-59(D) of the Zoning Code, the ZBA has considered the benefit to the Applicant if the variances are granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. For the reasons set forth in the attached findings, the ZBA has determined that granting the variances will not detrimentally affect the health, safety, and welfare of the neighborhood or community.

NOW, THEREFORE, BE IT RESOLVED as follows:

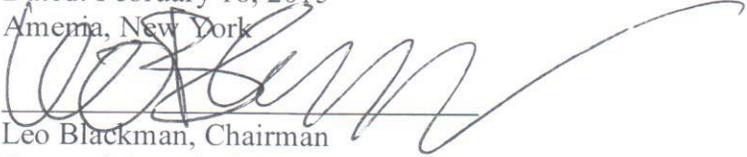
1. The ZBA hereby grants the area, height and other variances for the signs set forth in Category B and elsewhere in the attached Sign Chart for the reasons set forth therein, subject to the following conditions:
 - a. All internally illuminated signs shall be turned off when the drive-in theatre is not in use;

- b. The Applicant shall remove the signs identified in Category D of the Sign Chart, as agreed upon. Simply covering these signs is not permitted;
 - c. All signs shall be added to the amended site plan for the Planning Board's approval;
 - d. ~~No~~ Except as noted below, no new signs will be added to the Property without prior approval of the ZBA. Any changes to the signage may change the overall square footage of signage on the Property thereby necessitating new area variances; On sign P-01, the Applicant may change the names of the movies being shown at the theatre without any further approval from the ZBA provided the overall square footage of the sign is not increased;
 - e. All sign changes to be undertaken by the Applicant and identified in the attached Sign Chart must be done and completed prior to the grant of the Certificate of Occupancy for the drive-in and verified by the Town Engineer;
 - f. Before the issuance of a Certificate of Occupancy for the drive-in, the Applicant shall pay the outstanding fees for the ZBA's consultants incurred in connection with this Application; and
 - g. All signs related to the drive-in theatre shall be removed from the Property if the drive-in theatre has ceased to operate for more than a year or if the Planning Board fails to approve an amended site plan for the drive-in theatre.
2. The ZBA further grants the height variances for two signs identified and discussed in the attached Sign Chart by Sign Ref Nos. A-02 and P-01, subject to the Planning Board's approval of sign bonuses under Section 121-39(D)(3)(f) of the Zoning Code and the conditions listed in Paragraph 1, above; and
 3. In support of its approval of the variances, the ZBA issues the findings noted above as well as those findings attached hereto to demonstrate how the variances will not detrimentally affect the health, safety, and welfare of the neighborhood or community; and
 4. The sign variances granted by the resolution were issued to facilitate the development of a themed 1950's drive-in theatre and are strictly limited to the facts of this application. As a result, these variances shall not be ~~constructed~~ construed as creating a precedent to allow similar signs on any property in the Town; and
 5. In accordance with Section 121-68(E) of the Zoning Code, these variances shall expire if the Applicant fails to obtain an amended site plan approval for the drive-in from the Planning Board within 18-months of the date of this resolution; and
 6. As required by Section 121-59(I) of the Zoning Code, a copy of this resolution shall be filed in the Town's Clerk's office and mailed to the Applicant within five business days after this resolution is adopted.

The foregoing resolution was voted upon with all members of the ZBA voting and signing as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>	<u>Signature</u>
Leo Blackman, Chairman	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u></u>
Terry Metcalfe	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>✓</u>	<u>_____</u>
Paula Pelosi	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u></u>
Dave Menegat	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u></u>
Kevin Cassone	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u></u>

Dated: February 16, 2015
Amenia, New York


Leo Blackman, Chairman
Town of Amenia Zoning Board of Appeals

FINDINGS IN SUPPORT OF VARIANCE APPROVAL

Pursuant to Section 121-59(D)(2) of the Town of Amenia Zoning Code, the ZBA considered the benefit to the Applicant if the variances are granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. For the following reasons the Project will not detrimentally affect the health, safety, and welfare of the neighborhood or community:

(a) 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 variances;

No undesirable change or detriment will be produced in the character of the neighborhood or to nearby neighbors from the grant of the area, height and other sign variances. Newer signs were installed over a year ago, with older signs along Route 22 dating back many years. These signs are already part of the community character. The vast majority of signs at the drive-in theatre are set back significantly from Route 22 and will not be visible from the road or from surrounding property and therefore will not adversely affect community character. All internally lit signs will be turned off when the drive-in is not in use and the drive-in will be operated only six months out of the year. The lit signs will use low wattage bulbs and where appropriate, internally lit letters will face downward to avoid glare. Moreover, the drive-in theatre is a permitted recreational use under the Zoning Code subject to a special use permit granted by the Planning Board. For these reasons, the drive-in will not create an undesirable change to the character of the neighborhood.

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

In general, many of the signs are not used to advertise the business directly. The Amenia Drive-In is a 1950's themed business with the custom signs contributing to the overall theme and atmosphere of a drive-in theatre. There is no other method to achieve this purpose other than the variances.

(c) Whether the requested area variance is substantial;

Section 121-39(D)(3)(g) of the Town's Zoning Code provides that "the maximum amount of total sign area per lot shall be one square foot of total sign area for every two linear feet of lot frontage on a public street." The lot frontage at the Property is measured 345 feet. This equates to a maximum allowable sign area of 172 feet under the Zoning Code. The total square footage of conforming and non-conforming signs on the Property is 343 sq. ft., nearly double the maximum allowable sign area for the Property. While this is significantly greater than the maximum area allowed under the Zoning Code, there are a number of mitigating factors that outweigh the detriment to the community from granting a variance this substantial. In addition to the reasons stated in these Findings and the Sign Chart, of the 100 total number of signs, 81 signs are located more than 125 feet from road frontage. These signs are not visible from the road or surrounding property and therefore will not have any adverse impacts on the community. Moreover, the number of signs is critical to creating the overall theme and atmosphere of a 1950's drive-in.

The height variances, particularly for the two signs (Sign Ref Nos. A-02 and P-01) requiring Planning Board approval of sign bonuses under Section 121-39(D)(3)(f) of the Zoning Code, allows (1) Sign Ref No. A-02 to be 2.75 feet greater than the 6 feet maximum height permitted for a freestanding sign under Section 121-39(D)(3)(f) and (2) Sign Ref. No. P-01 to be 6 inches greater than the 6 feet maximum height permitted for a freestanding sign under Section 121-39(D)(3)(f). Therefore, the height variances allowing for an additional 3.35 feet is not substantial.

(d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

The area and height variances for the signs will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As mentioned above, most of the existing signs located along Route 22 are already part of the community character. The vast majority of new signs at the drive-in theatre will not be visible from the road or from surrounding property and therefore will not adversely affect the surrounding community.

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

Older signs have been on-premises since 2005 when the existing ice cream and concessions stand opened. In addition, as stated above, most of the existing signs located on Route 22 have been in existence for many years. Section 121-39 (Signs) was adopted in July 2007, providing stricter area and height restrictions. Some newer non-compliant signs have been installed over the past year. However, the Applicant has agreed to remove approximately nineteen (19) non-compliant signs as indicated in Category D of the Sign Chart.