

**Zoning Board of Appeals
June 19, 2008**

Present

Chairman John Dole
Michael Flavin
Mark Unvericht
Barbara Strine
Joyce Lobene

Absent

Trustee Theodore Rauber/Liaison Village Board
Attorney Richard Olson
Code Enforcement Officer, Kevin Kelly

Lori Stone
Jon Penna
Lou Terragnoli
Dan Wegman
Barbara Masseur
Patricia McNamara
Joan Quigley
Jean Black

At this time Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of Fisher Associates, 135 Calkins Road, Rochester NY 14623 as agent for Tim Horton's Restaurant, for a sit down and carry out restaurant including, as an accessory use, drive through or drive up service at property located at 403 S Union Street, Spencerport NY 14559.

Whereas, this is a permitted use in a B-3 District subject to the granting of a special permit by the Zoning Board of Appeals after a public hearing as provided in Article VI, pursuant to Chapter 140-21.1B (1) in a B-3 District.

Lou Terragnoli: I am the director of Real Estate for Tim Hortons I am here tonight along with Tim Gawenus from Fisher Associates we are here tonight asking for a special use permit for the Tim Horton's we have planned in Spencerport.

Just to give you a little bit of background, we came in front of the Planning Board on May 6th and we were given comments that we need to address some of those have already been addressed. One of the things that did meet their approval was the look of the building. Since that meeting I have also met with the neighbor immediately to the north that is also here tonight. In general what we are proposing is a Tim Horton's coffee restaurant which will be 1750 sq. feet this style building will look and fit into a village type setting. If you would like to see this building you can travel to the east side of Rochester in Bushnell's Basin we have the same style building up and operating.

The special use permit is for the drive through window, we have 27 stores throughout the Rochester area and each store has a drive through window they are all operated very safely and efficiently there is also seating available inside.

Mr. Terragnoli spoke to the advantages on the site plan:

Speaker is facing to the south and that commercial neighbor has no objections to this proposal. As far as the neighbor to the north whom I met with and would like to convey again to her today is the fact this is facing south so it is not a noise concern for the neighbor to the north.

Another thing that we are attempting to do to be a good neighbor in the area and based on our meeting with the neighbor to the north there are a couple of trees that have been requested to be removed and we have agreed to remove those trees along with a lot of other landscaping on this site. We have also agreed to install a 6 ft. board on board fence which will run from just past the first parking spot to just past the neighbors building behind their home and they would like to make sure that our customers couldn't look into that garage door if it were open.

This will be Spencerport's Tim Horton's and what I mean by that is we are not a destination we will not be bringing people in from other areas we have stores already in Gates and Brockport we will really only be servicing the people of Spencerport.

Jean Black: What is the setback?

Lou Terragnoli: The setback will be 71 ft. the code requires a minimum setback of 50 ft.

Jean Black: Has a traffic study been done?

Lou Terragnoli: We have not done one yet but will submit a trip generation for the project with our preliminary plans to the Planning Board. Trip generation is the number of expected trips to the store.

Jean Black: How many parking spots will there be?

Lou Terragnoli: 26

Joan Quigley: Have you solved the problem with deliveries by a semi and having to back out into Union Street.

Lou Terragnoli: Yes, there is one way in and one way out, the trucks will have to back in and pull out. We do have control over delivery times and we are strongly going to suggest that deliveries take place after 7:00 p.m.

Jean Black: What are the store hours?

Lou Terragnoli: Most of our other stores are 24 hours.

Lori Stone stated that it seems that it would be a little premature for the board to be able to make a determination until more information is obtained in regards to traffic.

Lou Terragnoli: The only thing I would add as I have already stated is this store would not add any new traffic.

Lori Stone: Living on Union Street I know this is already a very congested street and left turns are problematic it seem to me that a traffic study first would be helpful in making any decisions.

Chairman Dole: It is unusual that you are at the Zoning Board before you have had a public hearing before the Planning Board.

Lou Terragnoli: We have been to the Planning Board for conceptual review and asked the DOT for their input. We are now focusing on the drive thru.

Attorney Olson: Chapter 140-39-F of our Code is what we are looking at here; a special permit and F in section of the code is whether the proposed use will create hazard or danger to the public or to persons in vicinity from fire, explosion, electricity, radiation, traffic, traffic congestion, crowds, parking or automobiles or other causes.

As far as that goes the traffic and traffic congestion is what we are hearing, and I know you are going to do a traffic study or in the process of doing a traffic study. I am pretty sure this being a NYS highway they are going to want one done. And I think we want to see one too it wouldn't make sense for this board at least in my opinion to grant this special permit without knowing what a traffic study showed.

Lou Terragnoli: I think that is fair and we could provide a traffic study.

Attorney Olson: Another question is the hours of operation.

Lou Terragnoli: We ask for 24/7 but we work with the community to see what they are comfortable with. We try to standardize the hours.

Barb Strine: Are the Brockport and N Chili stores open 24 hours?

Lou Terragnoli: Yes, there are other stores that close the inside and just have the drive thru open and there are a couple other stores that close overnight.

Chairman Dole: We will leave this public hearing open pending a traffic study.

Attorney Olson: In this case because we are leaving the public hearing open we will re-advertise.

Discussion ensued regarding hours of operation.

At this time the following resolution was offered:

June 19, 2008

Resolution No. 181

Resolved that the Village of Spencerport Zoning Board of Appeals hereby has tabled the application of Fisher Associates, 135 Calkins Road, Rochester NY 14623 as agent for Tim Horton's Restaurant for a sit-down and carry-out restaurant including as an accessory use, drive-through or drive-up service at property located at 403 S Union Street, Spencerport, NY pending a traffic study and preliminary approval from the Planning Board.

Ayes: Dole, Flavin, Unvericht, Strine, Lobene

Nays: none

Next on the agenda is the tabled application of Jonathan Penna and Lori Stone, 290 S Union Street, Spencerport NY for an area variance to erect a 5' high closed construction fence 67 linear feet in length on the side yard of a corner lot and also a 6ft high closed construction fence 23 linear feet in length on property located at the same. Whereas the maximum height allowed is 4' pursuant to Chapter 140-31.A (3) and Chapter 140-31.A (1) respectfully in a Residential R-1 District.

Jonathan Penna: My wife was here last month and I think there may have been some confusion about the location and scope of the fence. We submitted a letter (filed) dated June 16, 2008 which I hope you have had a chance to read, attached to the letter is a diagram showing exactly where the proposed fence will be located.

In case anyone is thinking the fence will be running down the entire side of Maplewood Ave it is not. There is a hedgerow and all we looking to do is add some protection and privacy along the Maplewood side.

There are dozens of privacy fences on other properties which exceed the height that we are looking for. This fence fits the character of the neighborhood and the village at large.

From an aesthetic standpoint it is going to be a beautiful fence.

I can not emphasize enough that this is a minor variance request this is going to be a fence with a concave design less than 5' on the Maplewood side.

Functionally this fence will serve 2 purposes privacy and protection for our 21/2 year old and with other families in the Maplewood area all of whom support this application. As some of us know speed and traffic on Union Street is heavy. We have witnessed 2 accidents on our corner. The fence will provide protection.

At this time Mr. Penna submitted a petition from neighbors who fully support this application.

Attorney Olson: 140-37 of our code says that on a corner lot in any residential district no fence, wall, hedge or other structural planning more than three feet in height shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line between such street lines at a point which is 35 feet distant from the point of intersection measured along said street lines at the curb.

Jonathan Penna: I am very glad you brought that up because that is not something that was brought up at the last meeting. One of the biggest concerns that I feel the board should have is what impact the fence will have in obstructing the visibility of traffic running in either direction as you approach the intersection. Our fence is well setback from the 35 foot that is required in that code.

Attorney Olson: Looking at this survey map I don't see the 35 ft setback do you have a map that shows that?

Jonathan Penna: No, I don't.
Discussion ensued regarding setbacks.

Chairman Dole: Putting a privacy fence on a corner lot is much different than putting a fence along the back lot line of your property.

Jonathan Penna: I think the purpose of all of this is so that visibility of oncoming traffic is not obstructed and there is no issue with that and secondly the fence will not be encroaching on the sidewalk. The fence will be setback more than 3 feet from the sidewalk.

Chairman Dole: I have a question; in the letter you sent in what do you mean by commercial and transient.

Jonathan Penna: With respect to the group home across the street it houses a population that moves in and out and no one has any control over when they move in and out. That is a concern from our standpoint and other young families who live on Maplewood. This is a measure that we are taking to protect ourselves it is a measure fully supported by neighbors. We are asking for a minor deviation from the code.

Chairman Dole stated that the group home had been there since 1985.

Lori Stone: They use the property more than they used to , they use the front entrance more than they use to they permit both staff and residents to sit out front a great deal more than they used to. It may have been

there since 1985 but the way they are using the property has certainly changed and we realize there is nothing that we can do about that except to make some modifications on our own property.

Attorney Olson: Are you suggesting that if we approve this we are going to get another group of people coming in looking for fences all up and down Maplewood.

Jonathan Penna: This is unique in that we face that property and that property has a plain view into our backyard and driveway. We will never know the residents of the group home like we know our other neighbors.

Discussion ensued regarding interpretation of privacy fences.

The board suggested other areas of the yard to use as a play area for their child.

Jonathan Penna stated that they would be willing to have an open construction fence along Maplewood if that is what the board prefers we would certainly consider that.

Lori Stone stated that the fence will be custom made photos were circulated amongst the board for their review.

The fence will be constructed out of premium grade lumber and stained cedar.

After further board discussion the following resolution was offered.

Resolution No. 182
June 19, 2008

Introduced by Chairman Dole
Seconded by Barbara Strine

Resolved that the application of Jonathan Penna and Lori Stone, 290 S Union Street, Spencerport for an area variance to erect a 5' high closed construction fence 67 linear feet in length on the side yard of a corner lot and also a 6 ft. high closed construction fence 23 linear feet in length on property located at the same. Whereas, the maximum height allowed is 4' pursuant to Chapter 140-31. A (3) and Chapter 140-31.A (1) be approved.

Such approval is based on the following and with the following conditions:

- The Board finds that the fence on the south side of the dwelling is a privacy fence. Such 6' high privacy fence will adjoin the existing fence located on the property to the south.
- The proposed fence to the north of the dwelling will be no higher than 5' and will be of open construction.

The Zoning Board of Appeals in making this determination has taken 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 neighborhood or community by such grant.

Specifically the Board has determined that the privacy fence to the south side of the dwelling will be adjoining the existing neighbor's fence to the south with the same height and style of such existing fence.

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The fence on the north side of the dwelling will be of open construction therefore such variances will not produce an undesirable change in the neighborhood nor will such variances create any detriment to the nearby properties.

Furthermore such area variance is a Type 2 Action and no further environmental review is required.

Ayes: Dole, Flavin, Unvericht, Strine, Lobene
Nays: none

Approval of Minutes

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously to approve the May 15, 2008 minutes as written.

Adjournment

Motion made by Chairman Dole and seconded by Barb Strine to adjourn the meeting at 8:05 p.m.