

**Zoning Board of Appeals
September 18, 2008**

Present

Chairman John Dole
Michael Flavin
Mark Unvericht
Barbara Strine
Joyce Lobene

Absent

Others Present

Trustee Rauber, Village Board Liaison
Jack Crooks, Building Inspector

Lou Terragnoli/Tim Horton's
Dan Wilson
Barbara Masseur
Patricia McNamara
Jon Penna
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 the following:

1. 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. 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 V1, pursuant to Chapter 140-21.1B(1) in a B-3 District.
2. An area variance for a 6' high fence located nearer to the street than the front setback, whereas the maximum height allowed is 3' nearer the street than the front setback and 4' in height if erected elsewhere on the lot. This fence is proposed to be 200' in length for the purpose of screening. This is pursuant to Chapter 140-31 (B) (3) and Chapter 140-31 (A). The property is located at 403 S. Union Street, Spencerport.

Lou Terrigno and Tim Gawenus will be presenting Tim Horton's application.

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Lou Terrigno: We are not asking for any variances for the building or parking we are here tonight specifically asking for a special permit for a drive thru window. Also, in consulting with our neighbor a six foot fence has been requested along the property line which we are agreeable to but the fence will need a variance.

The proposed building will be identical to the Tim Horton's in Bushnell's Basin it will look as much like a residential building as any commercial building can.

We have designed the building with an ingress and egress in the front and concurred with the DOT that is the best way to have access. Fisher Associates has worked very hard on this aspect and Tim Gawenus can answer any questions you might have.

Dan Wilson of 402 S Union Street asked what kind of protective screening they are referring to.

Tim Gawenus: The fence would be on the northern property line this was in direct response to our neighbors request for some screening. It would be a 6 ft. high board on board fence along the property line stopping 20 ft from the front property line and the purpose for that is to provide enough screening for the neighbor's home but to allow visibility for cars turning in and out.

Dan Wilson: I am concerned about any lights shining into my house.

Time Gawenus: We have done a lighting plan, the poles are 20 'high and the lights shine down, lighting is contained on site. I have a lighting plan that I can share with you.

Dan Wilson: What about traffic?

Time Gawenus: There was a traffic study done.

Building Inspector Jack Crooks: The traffic study came back and basically shows C & D traffic which is consistent with that type of road. Typically these types of facilities don't bring additional traffic into the area but the majority of the traffic is pass-through traffic vs. a sit-down restaurant which adds traffic to the area from people getting there.

If there are 1000 cars a morning going by there you might get 1010 with the 10 additional cars coming in for that area but that is not a significant change in traffic flow.

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Lou Terragnoli: If I could just take that in a different direction we are not a destination we are strictly a convenience for people in that area. I offer to support that we have a store in Brockport and another one on Elmgrove and Gates, people do not have to drive much out of there way to get there. At the end of this year we will have 29 locations open in Rochester.

Dan Wilson: Do you have any pictures of what the building will look like.

Lou Terragnoli: No, I don't have any drawings but as I mentioned before the building will be identical to the one in Bushnell's Basin.

Dan Wilson: Can you make the counters a little bit wider?

Lou Terragnoli: I will take that suggestion to operations.

Jon Penna: I live on Union Street I have some issues with the traffic study with all due respect the comment that Tim Horton's will not generate any additional traffic or stealing from another market, I think we need to be careful in that respect because we do have a McDonalds on 31 and I think we are kidding ourselves if folks aren't going to change their route and head north on Union Street to Tim Horton's.

The traffic study assumes that 50 % of the trips to the store will be new trips generated off on Union Street. I am concerned about the destruction that the drive thru will cause to the traffic flow. I do think there are deficiencies that are overlooked, the DOT says that the northbound left turn is marginally met and that a left hand turn lane onto Rt. 259 is not required or necessary and their rationale is not because it isn't required it is because it is not possible. I think we are asking for a lot of trouble also an irreversible situation in terms of traffic flow if we don't take a real hard look at the impact the drive thru will have on the flow of traffic on Union Street.

Jon Penna continued questioning the traffic study and went on to ask if anyone from the engineering group who reviewed the traffic study from FRA is a licensed traffic engineer.

Jack Crooks: Scott Dehollander is a licensed engineer.

Jon Penna: Is he a traffic specialist?

Jack Crooks: I am sure it is part of his training; is that a specialty in his field I would say no. I disagree with your point about what NYS said in regards to that left turn lane it further said there wasn't room enough so I don't think they were ignoring the idea of a left turn lane.

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Jon Penna stated that they were just excuses not reasons.

Jon Penna stated that there are not sidewalks and that deserves some attention regarding pedestrian safety.

Jon Penna stated that a permanent decision should not be made based on the traffic study and other related information submitted.

Tim Gawenus: The reason for the term marginally met is that typically left hand lane turns are not done on 30 mph highways.

Jon Penna continued to voice his concerns in regards to traffic and the traffic study submitted.

Jean Black asked if this site would be open 24/7.

Lou Terrigno: Not sure.

Jack Crooks stated that would be up to the discretion of the Planning Board.

Discussion ensued regarding findings of traffic study. (file)

Jon Penna: What is the potential for cars backed up in drive-thru?

Lou Terrigno: 11 cars

Michael Flavin stated that he understands Mr. Penna's concerns and appreciates input from the community.

Barbara Strine also stated that she appreciates input from the community. She feels that traffic flows could be worse during the summer.

Jon Penna stated it will be difficult leaving on to Union Street.

Lou Terrigno: Turning right should not be a problem.

Jack Crooks stated that the majority of people will be heading south.

Joyce Lobene: What are the materials for the fence?

Lou Terrigno: Board on board cedar.

Tim Gawenus stated that the 6 Ft. fence will be placed two (2) feet off lot line. The owner of the store will maintain any debris that gets caught along fence.

After further board discussion the following resolution was offered:

Resolution No. 186
September 18, 2008

Introduced by Michael Flavin
Seconded by Barbara Strine

Resolved that the application of Fisher Associates, 135 Calkins Road, Rochester NY 14623 as agent for Tim Horton's for the following proposed special permit and variance be approved subject to Planning Board Approval:

1. 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. Whereas, this is a permitted use in a B-3 District subject to granting of a special permit by the Zoning Board of Appeals after a public hearing as provided in Article V1, pursuant to Chapter 140-21.1B (1) in a B-3 District.
2. An area variance for a 6' high fence located nearer to the street than the front setback. Whereas, the maximum height allowed is 3' nearer than the street than the front setback and 4' in height if erected elsewhere on the lot. Such fence to be 200' in length with a 2' setback for the purpose of screening only. Variance pursuant to Chapter 140-31 (B) (3) and Chapter 140-31-(A).

Furthermore such application is a Type 2 action and no further environmental review is required.

Ayes: Dole, Flavin, Strine, Unvericht, Lobene

Nays: none

New Business

Maryanne Spennacchio's request to continue to operate a dog grooming service known as Aces Place Doggie Salon located at 337 Village Walk Circle.

Building Inspector Jack Crooks did a follow up inspection and recommended that the Zoning Board of Appeals extend Ms. Spennachios Home Occupation permit for a period of not more than five (5) years. (letter filed)

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Motion made by Chairman Dole seconded by Barbara Strine and carried unanimously to extend the Home Occupation Permit for Aces Place Doggie Salon for a period of no longer than five years. Such approval granted based on no complaints and recommendation from Building Inspector Jack Crooks.

Ayes: Dole, Flavin, Unvericht, Strine, Lobene

Nays: none

Approval of Minutes

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously that the minutes of August 21, 2008 be approved as written.

Adjournment

Motion made by Chairman Dole seconded by Michael Flavin and carried unanimously to adjourn the meeting at 8: 10 p.m.