TOWN OF NORTH EAST ZONING BOARD OF APPEALS MINUTES

August 27, 2015

The regular monthly meeting of the Town of North East Zoning Board of Appeals ("ZBA") took place on Thursday August 27, 2015 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Patti Lynch-VandeBogart, Carl Stahovec and Jon Arnason. Also present were Hilarie Thomas, attorney representing Applicant Irving Farms Coffee Roasters, Christine Bates, Peter Greenough, Ralph Fedele, Rob Cooper, John Allee and Philip Ghi.

Applications of Irving Farm Coffee Roasters for an interpretation and/or a variance regarding signage
6044 Route 22 in the HB-III Zoning District of the Town of North East
Tax Parcel #: 7271-09-131558

Chairman Schroeder opened the public hearing by reading the notice of public hearing into the record.

Irving Farm Coffee Roasters recently completed construction of a 7,600 sq. ft. coffee roasting facility at 6044 County Route 22. The structure was to have been built according to a site plan agreed upon on March 9, 2011 by the owners of the coffee roasting facility and the Town of North East Planning Board. The original square footage of the façade sign is listed on this site plan as 20 sq. ft., the maximum allowed by the Town of North East Zoning Code § 98-45 F (2) (c) [3]. Ken McLaughlin, Zoning Enforcement Officer for the Town of North East, has made the determination that the signage currently in place on the building exceeds the permitted amount.

Thomas, counsel at Downey Haab & Murphy, appeared before the ZBA on behalf of the owners of Irving Farm Coffee Roasters. Thomas stated that Irving Farm has constructed a 7,600 square foot building with the Planning Board's approval. When determining the size of the sign there are two things to be taken into consideration. First, the method used to measure the size of the sign. Second, according to New York case law the provisions of the entire code must be

considered rather than an individual clause or provision. Thomas stated that the reason laws governing signage were amended was in an effort to reasonably control the physical characteristics of the signs to regulate size, height and so forth to protect the health and safety of the community, promote an attractive business environment, maintain the rural character and encourage the installation of a signs which would harmonize with the surrounding area. Currently the North East Town Code section governing the commercial uses separate these into three categories, (a) Shopping Centers", (b) "Gas Stations and Convenience Stores" and (c) "Businesses in the Boulevard District and Highway Business Districts which are not gas stations/convenience stores or are not within a shopping center. Thomas argued that these signage restrictions don't take into account the actual size of the buildings and while a 20 sf. Ft. sign is reasonable on a 20 x 20 building, a 20 sq. ft. sign on a 7,600 sq. ft. building looks incongruous. Thomas further stated that although code sections governing (a) "Shopping Centers" and (b) "Gas Stations and Convenience Stores" are very detailed, section (c) is not and therefore should be considered more ambiguous and open to interpretation.

Thomas then addressed § 98-45 C (3) (b) the definition of how the area of a sign shall be measured and stated that polygon means many-sided not simply a four-sided figure. She then called upon Philip Ghi, designer of the Irving Farm sign, to explain to the ZBA members how he calculated the measurements for the sign. Ghi demonstrated to the ZBA that that he could draw a polygon by attaching each letter individually and by using this method the existing sign measures less than 20 sq. ft.

Arnason asked if it was Thomas' argument that since zoning laws are construed in favor of the landowner and if Irving Farm could demonstrate that a polygon that encompasses the letters and is less than 20 sq. ft. and we disregard what the polygon looks like the owner wins. Thomas stated that since there is no background to this sign she believed that the sign did not exceed 20 sq. ft.

Chair Schroeder remarked that the HB III district is intended for low volume uses, not typical retail stores; therefore buildings within this district do not require large signs. Signage is only used in those areas for delivery purposes.

Thomas stated that the company branding changed after site plan was approved which accounts for deviation from the originally agreed upon signage. ZBA members viewed both the approved site plan and the current sign in order to compare the differences.

Chair Schroeder requested a motion to close the hearing for an interpretation. The motion was made by Arnason, seconded by Lynch-VandeBogart and passed unanimously.

The Board members felt that a sign is comprised of individual words and not of each individual letter regardless of the background and that the intent of the regulation was to create the smallest and simplest polygon enclosing the words.

Chair Schroeder asked for a motion stating that it was the determination of the ZBA that the smallest polygon or circle enclosing the sign means the smallest circle or area which will enclose all the words of the sign and which is also geometrically the simplest. The motion was made by Arnason, seconded by Greenwood and passed unanimously.

Chair Schroeder stated that the ZBA would now consider granting a dimensional variance to Irving Farm Coffee Roasters, Inc. ZBA members determined that the existing sign measures 49.5 sq. ft. Chair Schroeder requested that Thomas give a quick recap explaining why a dimensional variance should be granted. Thomas spoke to the five factors that the ZBA members must address when determining if a dimensional variance may be granted and added that they were not seeking additional signage of any type. In her presentation she cited the nonconforming signs in the HB-III Zoning District including that of NAPA, Dutchess County Diesel and the Old Mill and that the proposed sign would therefore not have a negative effect on the area.

Citing Section 98-62-C of the Town of North East zoning code Chairman Schroeder then went through the state mandated criteria needed to grant a dimensional variance. In considering standard (a) Greenwood stated that aesthetically the size of the sign in relation to the size of the building did not create an undesirable change in the neighborhood and nor serve as a detriment to nearby properties especially if no other signage was permitted. In examining standard (b) whether the benefit sought by the applicant can be achieved by any other means than the requested variance board members agreed that it could not be. Standard (c) asks if the requested area variance is substantial which it is as it seeks over 100%. The fourth standard of concern (e)

was whether the alleged difficulty was self-created. ZBA members agreed that the difficulty was clearly self-created. Schroeder then read Section 98-62 C (3) which states the ZBA should grant the minimum variance deemed necessary.

Chair Schroeder requested a motion to close the public hearing. The motion was made by Arnason, seconded by Greenwood and passed unanimously.

Chair Schroder reopened the meeting. The response of the Dutchess County Department of Planning and Development to the referral of this matter was read into the record wherein it is stated that a larger sign may be warranted on account of the proportion and size of the building, but that the Board should rely on its own study of the facts in the matter in coming to a decision.

Greenwood stated it was her belief that allowing the proposed sign will not create an undesirable change in the neighborhood and the size is warranted by the proportions and size of the building especially as there no additional company signage on the site. Board members were in agreement that the sign only added to the aesthetics and architectural nicety of the building as and the size and solid black facade of the building handled the size very well. A smaller sign would be out of proportion to the size of the building and not as pleasing architecturally.

Chair Schroeder reviewed the short form EAF and based upon the information submitted members determined that the proposed project is a Type II action and therefore exempt from further review, as the application is for the construction of an accessory nonresidential structure involving less than 4000 square feet.

A motion was made by Arnason and seconded by Lynch-VandeBogart to grant a variance as applied for to Irving Farms Coffee Roasters allowing a 49.5 square foot sign as it currently exists subject to the condition that there be no other business signage on the parcel. The motion was passed unanimously.

A motion was made by Stahovec, seconded by Lynch-VandeBogart and passed to approve the minutes of July 16, 2015.

A motion to adjourn as made by Arnason, seconded by Greenwood and passed at 9:31 PM.

Respectfully submitted,

approved 2/18/16
(1) Glenwood
(2) Lynch - VandeBoguet

Claudia Stevens

Secretary of the Town of North East Zoning Board of Appeals