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December 7, 2020

Town of Wappinger Planning Board
Town Hall
20 Middlebush Road
Wappingers Falls, NY 12590

Re: Public Hearing: Gas Land Petroleum Inc. Route 9D Hughsonville

Dear Chairman of the Board and Planning Board Members:

As a supplement to our clients' previous statements and submissions, enclosed for your review and consideration is the report of our clients' expert, Nelson Pope & Voorhis, LLC ("NPV").

Our office has reviewed NPV's report and agrees with its conclusions that the application requires a use variance, that insufficient information has been submitted to render a SEQRA determination, and that preparation of a draft environmental impact statement is required.

The report speaks for itself as to the voluminous deficiencies in the application. This letter is intended to bring to the Board's attention certain actions now required of it because of those deficiencies.

The Public Hearing Must be Adjourned Pending A Referral for Interpretations to the Zoning Administrator

This Board should refer this application to the Zoning Administrator for interpretations of the following:

A. A Use Variance is Required: A mixed use of residential and commercial is permitted in nonresidential zoning districts. However, the permitted commercial uses are specifically delineated in the definition of Mixed Uses in the Town of Wappinger Zoning Code (hereinafter, Code) as "retail stores and shops, personal service businesses, professional or business offices and banks". See, Code, 240 Attachment 2:6, Schedule of Use Regulations, Nonresidential Districts. A gasoline station is not one of the specifically identified permitted commercial uses. Therefore, the gasoline station use is prohibited.

This application was filed on December 20, 2019. Just a few weeks prior, effective December 4, 2019, the Town Board amended Code §240-52(C) to state, “...in the Hamlet Mixed Use District, dwelling units which are separate from the gas station use may be permitted above the commercial ground floor use in the principal gas station building”. Because it permits dwelling units in conjunction with a gasoline station use, this recent amendment conflicts with the above cited Mixed Uses definition in the Code.

Code §240-15 provides that where there are conflicting standards, the “more restrictive requirement shall prevail”. The more restrictive requirement is the above cited Mixed Uses definition in the Code, which prohibits a mixed use of residential dwelling units and a gasoline station. Therefore, a use variance is required for this application.

B. Code §240-52(C) is Ambiguous and Internally Inconsistent: Again, recently amended Code §240-52(C) states that “in the Hamlet Mixed Use District, **dwelling units which are separate from the gas station use** may be permitted above the commercial ground floor use in the principal gas station building” (emphasis added). On the one hand, this provision states that dwelling units must be separate from the gas station use. On the other hand, this section states dwelling units may be permitted above the commercial ground floor use in the principal gas station building, which is not separate from the gas station use. While the application attempts to differentiate the convenience store from the gas station use, presumably to meet the requirements of this provision, the convenience store is an accessory use to the principal use as a gasoline station. The convenience store is where customers pay for their gasoline, and an accessory use includes “the retail sale of convenience items, including but not limited to snacks and beverages”, as is done in a convenience store. In the instant application, the dwelling units are not “separate from the gas station use” as required by Code §240-52(C).¹ To the extent that housing is proposed over the accessory use to the gasoline filling station, it is not permitted by this statute.

C. Code §240-21(D) is Improperly Relied Upon by the Applicant: The application relies upon this provision to achieve a smaller front yard setback, because it permits front yards less “than the required minimum depths specified in the Schedule of Dimensional Regulations **for Residential Districts...**”, where there is pronounced uniformity of alignments of the depths of front yards (emphasis added). The problem is clear. The project is in a nonresidential district. The provision only applies to residential districts. Therefore, this code section is improperly relied upon by the applicant.

¹ Notably, when amending Code §240-52(C), the Town should have also amended its Comprehensive Plan, which it did not.

This Board Should Issue a Positive Declaration

Based upon the information presently before it, this Board should issue a positive declaration, based upon its determination that the proposed project may result in a significant adverse impact, and require preparation of an environmental impact statement. A full evaluation should be made of the environmental impact of the proposed 24-hour gas station with apartments on the historic hamlet of Hughsonville, particularly for a project which is clearly contrary to the intent of the zoning district and the Comprehensive Plan, and completely out of character with other uses within the hamlet of Hughsonville.

As detailed in the report, the FEAF fails to take the requisite hard look at noise impacts, air emissions, glare/lighting, the potential for fuel spills and how they will be contained, the impact on historic resources, visual impact, the impact on Hughsonville's historic community character, and the long-term potential for this gas station to induce change in the surrounding land use pattern. Traffic has been identified as a major problem in this area through the testimony of residents at the public hearing and as evidenced by the restrictions already imposed upon the site by NYSDOT.

Other Deficiencies

In addition to being completely contrary to the Comprehensive Plan and intent of the zoning district, for all the reasons specified in the report, the application fails to comply with the mixed use special use requirements, the "gasoline filling station" special use requirements, the general special use permit standards and the Architectural Review Standards.

Conclusion

Referrals should be made to the Zoning Administrator to render an opinion as to whether a use variance is required, and to issue interpretations of the recently amended Code §240-52(C), and as to whether the applicant can properly rely upon Code §240-21(D) to decrease the front yard setback requirements for the project.

In all events, a positive declaration should issue requiring preparation of environmental impact statement. The applicant should be called upon to supply additional information and rectify the plethora of deficiencies outlined in the report. Otherwise, the application should be denied based upon its failure to meet code requirements.

The report and the testimony of residents makes clear a 24-hour gas station does not belong in a historic, primarily residential hamlet area, across the street from a Church, on what is already a highly congested highway.

Very truly yours,

STENGER, DIAMOND & GLASS, LLP

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