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September 20, 2023

Wappingers Zoning Board of Appeals
c/o Thomas F. Wood, Esq.
20 Christine Court
Stormville, New York 12582

Via email: tfwesq@aol.com

Re: Gasland Petroleum application (the “Application”)

Dear Tom:

This firm represents Franca Petrillo and Ronald Evangelita with respect to the Application. I submit this on behalf of my clients and in response to the Court’s Decision and Order, dated August 9, 2023 (NYSCEF Doc. No. 50) (the “Decision”). On remand, the Wappingers Zoning Board of Appeals (the “ZBA”) has been tasked with analyzing *two* discrete questions.

First, the ZBA must examine and interpret whether the retail sale of “convenience items” as an accessory use (i.e., at a gasoline filling station) is confined to specific goods to be sold, or whether it is subject to a more expansive interpretation. Decision at 24-25. In doing so, the Court cautioned the “ZBA must provide enough information concerning that decision to permit intelligent judicial review of the factual and legal basis for that determination.” *Id.* at 25.

The ZBA is thus required to examine the facts of this application and apply them to the Code as it is written without resorting to speculation or relying on business projections and figures Gas Land has previously supplied in connection with its other operations. Those are irrelevant. While the plain text of your Code does not encompass every possible definition and term relating to the proposed uses, the ZBA can identify the practical limits of the Code and its defined terms in applying them to Gas Land’s application and proposed uses. Any word constructions or interpretations that could flex these definitions beyond their plain English meanings or require you to “read in” definitions or meaning that does not otherwise exist should be avoided.

Where the Code is silent on certain definitions and what constitutes “convenience items”, the ZBA should not strain to perform a “shelf-by-shelf inventory” to identify every plausible item that could be deemed “convenience items,” Decision at 24. Nor can the ZBA write in new definitions and terms, which is a purely legislative function. Instead, the ZBA should refer to more comprehensively drafted codes in nearby locales for guidance and support on how to interpret these undefined terms and how best to contextualize them. For example, like your Code, the Town of Lagrange Code is lacking a comprehensive definition for “convenience items.” But the lack of

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enumerated “convenience items” is handled differently. Lagrange defines the term “Convenience Store” such that it conforms to the limited nature of the use without being overly exhaustive:

A retail business offering common grocery products, such as but not limited to beer, milk, beverages, limited household items, candy and snack foods, self-serve coffee, newspapers and magazines, sandwiches and other prepared foods, to patrons purchasing relatively few items on a convenience basis generally for off-site consumption. Where any component of the convenience store proposes to include a food service business or a fast-food restaurant as defined in this chapter, then each of the combined uses shall be treated as a separate and independent use to the effect that each use, e.g., convenience store and a fast-food restaurant component, must satisfy the provisions of this chapter which regulate that use. Emphasis supplied.

Excerpts from the Town of Lagrange Code and others are annexed hereto as **Exhibit “1”**. The Lagrange Code specifically excludes “a food service business or a fast-food restaurant” from this definition to avoid the risk of assigning an overly expansive list of definitions to these convenience uses. Here, while the ZBA cannot write-in similar definitions or Code provisions, it can interpret the Code as *not including* the type of items that would be offered for sale at “a food service business or a fast-food restaurant.” This would exclude made-to-order foods (sandwiches, et al), a delicatessen, and similar non-convenience items that my clients believe are well beyond the scope of the Code in this case.

I urge the ZBA to consider an interpretation of “convenience items” that does not expand to encompass “pay-before-consumption expedited meals” from a “counter-type installation” that Lagrange defines as part of a “Fast-Food Restaurant.” Your Code defines “Fast Food Establishment” with inclusive and exclusive language:

A business enterprise primarily engaged in the sale of prepared or quickly prepared food and beverages in disposable containers or wrappers, selected by patrons from a limited line of specialized items such as hamburgers, chicken, pizza, tacos, hot dogs, ice cream or yogurt for consumption either on or off the premises, in a facility in which a major portion of the sales to patrons is at a stand-up or drive-through type counter. A delicatessen or a restaurant selling food and beverages for consumption off the premises is not a fast-food establishment, provided that such sale as described above is not the principal business of the establishment. Emphasis supplied.

There is no reason to interpret “convenience items” as including any of the above items or services, which are separately defined in the Code and tailored to altogether different uses. Your Code does not define “Convenience Store.” Thus, your Code does not support expanding the definition of “convenience items” (referenced in “Gasoline Filling Station” definition) beyond that of off-the-

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shelf type products of a very limited scope incidental to a gasoline filling station. If you expand your interpretation of “convenience items” too much it drives precariously close to the definition of a “restaurant”, which is a fundamentally different and more intensive use.

Secondly, the ZBA is required to examine and interpret whether operating a convenience store exceeds the scope of a limited accessory use. Decision at 25. On this point, the Court was explicit that the two criterion the ZBA previously applied in reaching its decision (i.e., interior square footage and number of parking spaces) are “by no means determinative” though relevant to this analysis. *Id.*

On remand, the ZBA must analyze beyond mere numerical factors and interpret whether the scope and character of this independent use is, in fact, incidental and subordinate to a gasoline filing station use, which is the principal use on the subject premises. It is not. The Court was quite clear that your previous analysis of square footage and parking spaces attributable to the convenience store, by themselves, was insufficient.

Your Code does not define “Convenience Store.” Once again, looking to the Town of Lagrange for reference, its more expansive definition in the Code for “Gas Mart” does not support that Gas Land’s enormous convenience store is incidental to the proposed gas station:

A gasoline filling station with associated retail offering of items typically found within a convenience store as defined in this chapter. ***Where any component of the gas mart proposes to include a food service business or a fast food restaurant as defined in this chapter, then each of the combined uses shall be treated as a separate and independent use to the effect that each use***, e.g., gas mart and a fast-food restaurant component, must satisfy the provisions of this chapter which regulate that use. Emphasis supplied.

By comparison, your Code defines a gasoline filling station and the sale of convenience items as “including but not limited to snacks and beverages.” Snacks and beverages are not made-to-order type food products. There is no authority in your Code or a definition that enables two principal uses (i.e., define gasoline filling station + large-scale convenience store) to coexist on a single lot. It is that simple. The ZBA cannot interpret the operation of a convenience store in any manner such that it is a standalone or principal use. Gas Land’s proposed is just that. The Code’s plain language does not support such a novel and expansive interpretation.

Very truly yours,

By: /s/ Michael V. Caruso
Michael V. Caruso

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cc: Kenneth R. Stenger, Esq. (via email)
Mary Kate Ephraim, Esq. (via email)
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