

CITY OF ALBANY

Zoning Board of Appeals Case File Report

Applicant: Stewart's Ice Cream Co., Inc. Case file #: 09-84,039
Property location: 875 New Scotland Ave. Request: Use Variance
Date received: 9/21/84 Date of hearing: 10/22/84
Date of decision: _____ Decision: _____

The case of Stewart's Ice Cream Co., Inc. regarding the premises located at 875 New Scotland Ave. requesting a use variance to allow the existing service station to be expanded and renovated as a Stewart's Bread n' Butter shop, a non permitted use in this "R-1" Single family residential zoning district.

Relevant Considerations:

In the recent past this property has been the subject of a rezoning request and then a use variance request to allow the same use now being requested. Both request were denied for different reasons. The rezoning would have allowed a wide range of undesirable uses at this location while the use variance request was simply prepared poorly with no substantiation of hardship.

Neighbors in the vicinity raised a number of concerns regarding hours of operation, litter, fencing/screening, glare from lighting etc. All of these concerns could be adequately addresses through conditions to the variance approval. Furthermore, if approved this proposal will require site plan review which could be used to further reinforce conditions or site design elements intended to avoid land use conflicts. Applicants correspondence substantiating hardship is attached.

ATTACHMENTS:

- Application form
- SEQRA EAF
- Plot or Site Plan
- Floor Plan
- Resident statements
- Legal advertisements
- Correspondence
- _____
- _____
- _____

COMMENTS ATTACHED FROM:

- Mayor's office
- Alderman
- Historic Sites Commission
- City Planner
- ACPB
- Building Department
- _____
- _____
- _____

BOARD OF BUILDING AND ZONING APPEALS
CITY OF ALBANY STATE OF NEW YORK

In the Matter of the

Application of STEWART'S ICE CREAM
CO., INC., P.O. Box 435 Saratoga
Springs, New York, concerning
property at 875 New Scotland Avenue,
Albany, New York.

DECISION

APPEARANCES:

DONALD N. WALLACE,
Chairman
JAMES A. BRUNET
BERNARD COLFELS
HARRY MAIKELS
JOHN McENENY
(ROBERT E. SWEENEY, JR.)
(PETER M. CONWAY)
(JAMES S. WAUGAMAN),
Members
VINCENT J. McARDLE, JR., Corporation Counsel
(JOHN C. EGAN, JR., Of Counsel)

PRESENT:

In Favor:

HERBERT W. BOYNTON

In Opposition:

ROBERT H. ISEMAN, ESQ.
GERALD SCALZETTO
PERRY SERAFIN
ROBERT HEALY
SHELLY JORDAN
LEON EVERHARD

This proceeding is in the nature of an application by Stewart's Ice Cream Co., Inc. for a variance from the Zoning Ordinance of the City of Albany concerning property located at No. 875 New Scotland Avenue. The property in question is located in an R-1 zone and is presently improved with an automobile service station with gasoline islands installed prior to the effective date of the Zoning Ordinance. As such, it is a prior non-conforming use and Article 7 of the Zoning Ordinance applies. According to the application and architects' drawings submitted by Stewart's, it is proposed that a 22' x 30' addition be constructed at the south side of the existing service station. The structure would then be renovated to house a Stewart's Bread 'N Butter Shop dealing in dairy products, soda, take-out beer, bakery and groceries and self-service gasoline.

The public hearing on this application was held on May 21, 1984 and at that time Robert H. Iseman, Esq., representing the New Scotland Avenue Neighborhood Association submitted a memorandum of law to the Board. The applicant, Stewart's Ice Cream Co., Inc. was allowed a period of two weeks from the hearing to prepare and submit a reply memorandum but did not avail itself of this opportunity until July 25, 1985, at which time it submitted an affidavit of Mr. Herbert W. Boynton and a memorandum of law. The applicant has submitted a petition signed by 180 individuals in support of the variance and Mr. Iseman a petition signed by 555 individuals in opposition thereto.

Sections 7.100 and 7.120 of the Zoning Ordinance provide:

7.100 REGULATION OF NONCONFORMING USES

A legal nonconforming building or use may be continued, repaired, maintained and improved only as provided below:

7.120 REPAIRS

Normal maintenance repairs and incidental alteration of a building or other structure containing a nonconforming use is permitted, provided it does not extend the area or volume of space occupied by the nonconforming use or which would increase the number of nonconforming dwelling units.

Pursuant to Sections 8.400 and 8.420, the Board may vary the application of the area or height requirements of the Zoning Ordinance whenever unique conditions of the property would otherwise result in an unnecessary hardship. As a prerequisite to the granting of a variance, the Board must make the following findings:

- a. That there are special circumstances or conditions, fully described in the findings, applying to the land or buildings that do not generally apply to the land or buildings in the neighborhood.
- b. That the circumstances or conditions are such that the strict application of the provisions of the Ordinance would deprive the applicant of the reasonable use of the land or building.
- c. That for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance is the minimum that will accomplish this purpose.
- d. That the granting of such variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity.

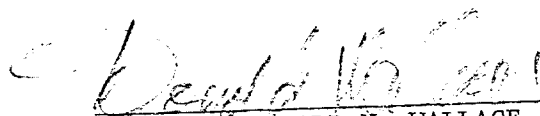
A review of the application and the transcript of testimony of the Board reveals a lack of information to enable the Board to address those

factors it must consider in order to grant a variance. The service station in question is apparently still in day to day operation. The thrust of this application consist of testimony concerning the proposed operation of the bread 'n butter shop and its impact on the neighborhood. There has been no showing of special circumstances applying to this property which do not apply to other parcels in the neighborhood. There has been no showing that a denial of the variance would deprive the applicant of a reasonable use of the property. There has been no showing that a variance is necessary for the reasonable use of the land. In short, the applicant has failed to address the factors set forth in §8.420 and the Board finds insufficient evidence to determine whether a variance is, in fact, appropriate. The Board has reviewed and considered the affidavit and memorandum of law submitted by the attorneys for the applicant and finds that they also fail to address the criteria set forth in the Zoning Ordinance.

Accordingly, the application is disapproved and the variance denied.

DATED:

8/6/84



DONALD N. WALLACE
Chairman

CONCUR: F

DISSENT: 0