



November 12, 2021

Richard Berkley, Chair  
Board of Zoning Appeals  
City of Albany  
24 Eagle St., City Hall  
Albany, NY 12207

Re: Stewart's Shop – 875 New Scotland Ave., Albany, NY 12209  
Request for change in hours of operation

Dear Chairman Berkley:

With respect to our store located at 875 New Scotland Ave., we are requesting that the hours of operation be changed from 6 am - 10 pm to 5 am - 11 pm. This proposed change is in response to customer feedback which would allow us to better meet the needs of the Albany community. Specifically, customers have been asking for the store to open earlier in the morning to accommodate their work hours, including contractors, government employees and health-care related personnel. As a local and employee-owned business, we value our customer suggestions and strive to respond to them whenever possible.

As background, our store in question was granted a Use Variance to operate back in 1984, which included setting the hours of operation at 7 am - 10 pm. In 1988, we applied for a modification of the 1984 Use Variance, which was approved in part and changed the hours of operation to 6 am - 10 pm (copy attached herein). For reference, the hours of operation allowed in this MU-NE zone are currently 6 am - 11 pm. As stated above, our primary objective is to open one hour earlier for our customers.

It is our understanding that the mechanism to modify an existing Use Variance is for the Board to administratively review our application for approval. For the Board's information, per caselaw on this issue, a modification to a Use Variance does not require the same standard as the original Use Variance approval. Specifically, the demonstration of hardship is not required when requesting a modification of a Use Variance, and a "common sense" approach for such changes should be utilized by the ZBA (Miller v. ZBA of Saratoga Springs, 671 NYS2d 954). Such an approach was used by your BZA when this store's hours of operation were changed back in 1988.

Our application is submitted herein for your review. If you need any further documentation, please contact me. Thank you for your consideration in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tyler Fronte', written in a cursive style.

Tyler Fronte  
Phone 518-581-1201 x 4440

**NOTIFICATION OF LOCAL ACTION**  
**DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS**

ADDRESS OF SUBJECT PROPERTY: 875 New Scotland Avenue

IN THE MATTER OF: Extension of the hours of operation from 7 a.m. to 10 p.m. to  
6 a.m. to 11 p.m.

APPLICANT: Stewart's Ice Cream - Walter Warren

ADDRESS: P.O. Box 435, Saratoga Springs, New York 12866

CASE NUMBER: # 4-88,495 DATE APPLICATION RECEIVED: 4 / 15 / 88

DATE OF HEARING: 5 / 19 / 88 DATE OF DECISION: 5 / 23 / 88

The above referenced application is hereby:

- Approved
- Approved subject to the conditions listed below
- Disapproved for the following reasons

Vote:	
For	<u>6</u>
Against	<u>0</u>
Abstain	<u>0</u>

**FINDINGS:**

On 2/11/85 the Board of Zoning Appeals granted a variance to convert the site of a former gas station to a Stewart's shop. As a condition of original approval the Board limited the hours of operation to 7 a.m. to 10 p.m. The applicants are now requesting that the hours be expanded to 6 a.m. to 11 p.m.

The Board concludes that allowing the store to open for business at 6:00 a.m. would not negatively impact on the neighborhood or change the neighborhood's basic character while at the same time it would provide expanded hours of service to its early morning customers.

The Board unanimously concurs however that the best interests of the neighborhood would be protected and served by continuing to require that the store close at 10:00 a.m.

**CONDITIONS:**

That the hours of operations be expanded to allow the store to open at 6:00 a.m. but continue to close at 10:00 p.m.

**ADVISORY NOTE:**

~~The dead and dying pine trees that were required to be planted on the north side of the site be replaced within thirty (30) days of the date of this decision.~~

I, Joseph Dolan representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board of Zoning and Appeals made at a meeting thereof duly called and held on the 23rd day of May, 1988.

Date: 5/25/88 Signature: 

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This is not a building permit. All building permits must be approved and issued by the Building Department prior to the start of any construction.  
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Unless otherwise specified by the Board, this decision shall expire and become null and void if the applicant fails to obtain any necessary zoning, building or other permits or comply with the conditions of such decision within six (6) months of the date of authorization.  
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