

11. **Waldbaum's - Spa 77, NLP, 70 Sunset Avenue, (905-12-4-20.5) Applicant requests a waiver of site plan review to install a new HVAC unit on the roof of the existing building, as provided for in Chapter 197-63.I.(1)(e)(4). The property is located in the B-1 Zoning District.**

Jaret Weber, Esq. of the Weber Law Group appeared for the applicant.

Mr. Neubauer acknowledged, for the record, the community concerns regarding this site and stated that the Planning Board was pleased to hear that applicant's representatives from New Jersey, who had appeared at a previous meeting, were receptive to the concerns expressed by this Board.

Mr. Houlihan provided a brief history of this site. This application moved through the Planning Board several years ago and received Planning Board approval almost two years ago. Shortly after gaining Planning Board approval, applicant was issued a building permit to expand the current Waldbaum's store by approximately 5,000 square feet by expanding into the adjacent National's store and to install a new façade, drainage, etc. The site plan was a great site plan. However, that site plan expired last August and the building permit expired in October. Although, Mr. Houlihan thought the Planning Board and Building Department would be willing to renew those approvals issued over a year and a half ago if the applicant wanted to do that, for some reason, the applicant decided not to move forward with the project. That is where we are right now.

Mr. Bishop explained the waiver of site plan process. The Board has the right under Section 197.63(I) of the Code to not require that an applicant submit all of the items that are set forth in a typical site plan review. Tonight's application is a waiver of site plan review to replace an air conditioning unit with another, like kind, air conditioning unit. This Board has discussed the placement of adequate screening around the air conditioning unit and this Board has agreed to the screening applicant proposes to provide. That is where tonight's application stands.

Although no one from the corporate office was present tonight on applicant's behalf, Mr. Neubauer stated, for the record, that the Board was pleased with Mr. Weber's willingness to convey the Board's concerns to corporate personnel.

Mr. Weber said he has established an open dialog with Trustee Hank Tucker and he advised the Board members that he is always reachable whether it is on weekends, middle of the night, etc. to discuss any issues that he could then relate immediately to corporate. Mr. Weber said he is in constant contact with David O'Sullivan, Director of Site Planning, and Mr. O'Sullivan has expressed his willingness to establish a hands-on approach. Mr. Weber noted that neither he nor Mr. O'Sullivan had been involved in this project during the site plan approval process. Mr. Weber said it is their goal to work with the Village and community "to get everything done properly when everything falls into place."

Mr. Bishop stated his understanding, for the record, that at this juncture applicant has no intention to renew the building permit or the approval and in fact, applicant has requested the return of the performance bond. Noting, of course, that this has no bearing on tonight's application.

Mr. Weber agreed with Mr. Bishop's statement and said he actually received the performance bond tonight with a letter.

Mr. Neubauer wanted the members of the public who were present tonight to be aware that a change of ownership took place after

the approval of the site plan they are not acting upon at this time. Applicant hasn't said they wouldn't ultimately act upon the site plan, but they also haven't told us when they would be able to do so if they do, in fact, plan to proceed.

Jackie Sprotte, a Village resident and customer of Waldbaum's, said she was under the impression from reading Dean Speir's "On the Beach" blog that a representative from Waldbaum's would be here tonight. Ms. Sprotte said she was here tonight to ask Mr. Weber to pass along a message to Waldbaum's officials that they should make an investment in our community to expand and modernize the Westhampton Beach store. Ms. Sprotte said she believes residents are boycotting this store because they are upset with the way the store has been operating.

Mr. Neubauer stated that the minutes from all of our meetings will be available on the Village's website under the Waldbaum's bullet so that residents can see what took place at the prior meeting attended by Mr. O'Sullivan and other representatives from the corporate office in New Jersey.

Monique Attar, a full-time resident of the community, said Waldbaum's has been a huge disappointment. The store is visibly dirty, which is disconcerting because it makes you wonder what is wandering through the food at night when the lights are off. Expired food items are often found on the shelves. The frozen food section has items with freezer burn on them. More than once, the egg refrigeration unit has been warm. Milk and dairy products sit out in the aisle before they finally end up in the refrigerated section. You can barely pass through several of the aisles with a single shopping cart. After many years of promises, the residents are not going there. Ms. Attar said she personally hasn't shopped there in 6 weeks and doesn't plan to do so until changes are made. Other residents who are not present tonight are doing the same thing. There is a new "Stop N Shop" in Hampton Bays that will open on Memorial Day weekend. Carpooling is available for seniors. We need a grocery store that reflects well in our community. We are a resort based store, but there are many full-time residents here too. We deserve a nice store to shop in.

Ms. Attar noted that Easthampton, Southampton and Westhampton Beach have different flyers than all the other Waldbaum's on Long Island. We don't get to use double coupons like all of the other Waldbaum's and we feel we are being discriminated against. This store is a "crappy" store to shop in. Waldbaum's has to realize that there are other options for us.

Village resident Dean Speir asked the Planning Board Chairman whether all the work the Board did 3 and 4 years ago is for naught now. Mr. Neubauer said, "That's right." All the work about getting the entire parking lot reconfigured to alleviate the flash flooding down Sunset Avenue and Main Street is all for naught now? Mr. Neubauer said, "That's right."

Mr. Speir asked who actually owns the property now.

Mr. Weber said shortly after the site plan approval process, Waldbaum's merged with A & P.

Mr. Speir said he thought Waldbaum's has always been A & P.

Mr. Weber corrected his statement and said Waldbaum's merged with Pathmark. Pathmark merged with A & P, so now A & P is the owner of record right now.

Mr. Speir asked if Staller Associates no longer owns it.

Mr. Weber responded that Staller is the owner of the property. The tenant is A & P - Waldbaum's.

Mr. Speir said he couldn't understand how all the prior work could now be negated.

Mr. Neubauer said it was applicant's choice to abandon it.

Mr. Speir wanted to know if the approvals run with the property. Is that incorrect?

Mr. Bishop said yes, Mr. Speir is incorrect. This is not a covenant. It was an approval and they chose not to go forward with that approval or the building permit. Applicant is simply here tonight seeking approval for a replacement in kind of an air conditioning unit on the roof; nothing more.

Mr. Neubauer stated that it is very irregular on a waiver application for an applicant to be here any longer than two or three meetings. The Board has made an effort and received an affirmative response from the new corporate people who will ultimately be responsible for making future decisions regarding the way this property looks. We have been able to get them to the table.

Mr. Speir asked if there is a new corporate owner of the store.

Mr. Weber said there was a merger, yes. Headquarters is still in Montvale, New Jersey. Mr. O'Sullivan came here from Montvale, New Jersey.

Mr. Speir said applicant really doesn't have a new corporate owner then.

Mr. Neubauer stated that all of the staff we dealt with during that application process and all of the phone numbers that we had to contact staff during that entire application process have now evaporated. It is a whole new game.

Trustee Joan LeVan said she understood that the applicant is only here tonight to replace an air conditioning unit and she conceded that Mr. Weber probably couldn't answer many of the questions regarding the quality of the store and how the store has treated this community like second class citizens.

Mr. Weber reiterated his statement that he was not involved in what happened before tonight's application. However, he assured everyone that he could always be reached by telephone regarding any issues anyone needs to discuss and that he has the ear of the corporation; specifically, David O'Sullivan. Mr. Weber stressed that he could not fix what happened in the past, nor does he have contact with those persons responsible for it. Mr. Weber assured everyone that Waldbaum's would do whatever they can in the short term to make the quality of the shopping experience better.

Ms. LeVan said she wasn't so sure about that. There are brochures at the Customer Service desk. About every three months, Ms. LeVan said she fills out the entire form and mails it in. There is a number on the form stating if you don't hear from us within 5 days, please call. Ms. LeVan said she's done that and has left her telephone number, but nobody ever calls back. The bottom line is the store is a disgrace. Ms. LeVan complained that you can't get a buggy through some of the aisles. There are comforters and bedding blocking the aisles. Nobody seems concerned with what the customers want. Ms. LeVan said at one point she insisted on being provided with the telephone number of the President of the store and ended up with the District Manager, Leo Zwill. Ms. LeVan said she's called Leo once a week.

Ms. LeVan suggested forming a focus group from the community to tell Waldbaum's what we think is necessary to run a reputable, clean store to meet the needs of this community. Ms. LeVan concluded that Waldbaum's does not care. We, as residents of Westhampton Beach, know that on May 1st every single price in this store will be raised because it is summertime. If you show them the Waldbaum's flyer from the Riverhead store, they will meet that price, but who wants to do that? We'll just shop in Riverhead. This Board has gone through so much to help Waldbaum's through the process and nothing happens. The store is a complete eyesore.

Ms. LeVan stressed that if they aren't going to expand into the National's store, they should at least improve what is there to meet the needs of this community.

Mr. Bishop asked Mr. Weber what Mr. O'Sullivan's position with the corporation is.

Mr. Weber explained that David O'Sullivan is the Director for Northeast Site Planning. Mr. O'Sullivan took over for the representative who appeared back in 2005. Mr. O'Sullivan will be responsible for re-designing the site. Will regard to service and operation, Mr. Weber said he is the direct line to the company.

Mr. Neubauer asked Mr. Weber to provide the Board with Mr. O'Sullivan's address so that he could be contacted directly.

Mr. Bishop mentioned that Mr. O'Sullivan probably wouldn't be responsible for deciding what work is to be done, is he?

Mr. Weber explained that he is, but it is also a corporation in terms of the money that is allocated and available. It is not solely his decision, but is based upon the factors involved with the funds available.

Mr. Bishop asked, "Who gives him the authority to make improvements to the site, to the supermarket?" If it is an individual tell me it's an individual; if it's a board, tell me it's a board.

Mr. Weber said he didn't have that answer and would not want to speak and be incorrect. Mr. Weber offered to get the information to Mr. Bishop by tomorrow.

Mr. Neubauer clarified that the Board wants to know who David O'Sullivan reports to.

Ms. LeVan asked if it were possible to get the name and telephone number of the CEO of Waldbaum's so that we could deal with him directly. How do we get right to the person who is going to help this community have the store we deserve?

Mr. Weber said he is available by telephone or e-mail 24 hours a day, 7 days a week. Mr. Weber said he is the contact person and would pass along all information.

Mr. Bishop asked specifically who Mr. Weber relates those messages to.

Mr. Weber said he relates them to Mr. O'Sullivan.

Ms. Sheiffer said she is familiar with the industry and the chain of command. There is a Regional Sales Vice President or someone responsible for the store to whom the manager reports. That is the person who oversees the manager and talks about cleanliness and the whole product expiration situation. Mr. O'Sullivan has nothing to do with the day to day operation of the store. The

CEO is the person who signs off on monies to be spent for this project. Ms. Sheiffer agreed with Ms. LeVan that we should have access to the CEO and the Regional Sales person as well. Mr. Sheiffer requested that the store manager be the person responsible to replace the window coverings on the National's store if it should become torn. Ms. Sheiffer also mentioned that the employees should cease smoking and eating in front of the doors as you walk in.

Ms. DiBenedetto echoed Ms. Sheiffer's statements and added that the smoking and eating should also cease behind the deli counter. Ms. DiBenedetto offered to take Mr. Weber on a walking tour of Waldbaum's after the meeting to show him the expired produce and dairy as well as meat in the deli department that is brown because it isn't wrapped well, chicken that has been re-wrapped after it has been defrosted and bugs floating around avocados and tomatoes as well as expired bottles of salad dressing.

Mr. Weber said he would speak to corporate officials to try to remedy the situation. Mr. Weber said he didn't know the individual's name or what parameters he has, and Weber said he has no answers for the Board tonight.

Mr. Bishop asked Mr. Weber if he would be able to provide the Board with the name of the CEO, the name of the Vice President and the name of the individual who authorizes Mr. O'Sullivan to perform the work that needs to be performed.

Mr. Weber said he could not answer that right now, however he would try to find answers to those questions tomorrow. Specific instructions have been given that the adjacent store is to remain clean and the paper covering the windows is to remain intact and in good condition. Mr. Weber said this was taken care of immediately after the last meeting.

Mr. Bishop asked Mr. Weber if the names and addresses the Board is requesting is a secret. Why are you avoiding the question? Why can't you say, yes, I can get the name of these individuals and I will furnish them to you? Do they hide somewhere?

Mr. Weber said he didn't know that information and would bring this issue up with Waldbaum's tomorrow. As an attorney, Mr. Weber said he didn't want to speak out of turn and provide misinformation. Mr. Weber said he didn't know if he could provide the Board with the CEO's name and number.

Mr. Bishop summarized that Mr. Weber is saying he is unable to make a representation as to who the person is because he doesn't have the authority to give us the name of the individual who would be responsible for authorizing this work. But you just told us tonight that you have the ear of the corporation.

Mr. Weber kept insisting that Mr. O'Sullivan is his contact person. As of right now, Mr. Weber said he couldn't provide the name of the person above him.

Mr. Reilly asked specifically whether Mr. Weber knew who Mr. O'Sullivan's boss is or who anybody above him is. Is it possible for you to look in your rolodex and tell us who that is? We are going round and round. If you don't know, just tell us you don't know.

Mr. Weber said at this point, he didn't know.

Mr. Speir asked Mr. Weber if he is in-house counsel or outside counsel.

Mr. Weber said he is outside counsel and that he was retained when a building permit application was submitted in November 2008 for the HVAC replacement.

Mr. Speir asked Mr. Weber exactly what authority he is representing here tonight.

Mr. Weber responded that in terms of this application he has authority to speak for the company regarding the HVAC replacement.

Mr. Speir asked why the Board was putting Mr. Weber through this type of questioning when he doesn't have the authority and is only here tonight to talk about that thing on the roof, not the freezer burn.

Mr. Neubauer responded that we'd like it in the record and we are going to make the record available to give the public an opportunity to speak on it.

Mr. Neubauer read the waiver resolution into the record, and made a motion to accept the resolution, as printed. Mr. Lawrence seconded the motion and it was unanimously carried - 5 ayes 0 nays.

RESOLUTION:

WHEREAS, SPA 77, N.L.P. (hereinafter referred to as "applicant") has applied to the Planning Board of the Village of Westhampton Beach (hereinafter referred to as "Board") for a waiver of site plan, pursuant to §197-63(I) of the Westhampton Beach Village Code, to install a new Munters HVAC unit and steel dunnage support onto the above premises; and

WHEREAS, this Board has reviewed the application and held a public hearing at which it reviewed the proposed plan of Rosenbaum Design Group, Architecture, Engineering, dated and date stamped received by the Village of Westhampton Beach on February 12, 2009.

IT IS THEREFORE RESOLVED, that this action is subject to Article VIII of the Environmental Conservation Law (SEQRA), that the Board has resolved itself lead agency, that it has reviewed applicant's EAF, and determines that this action is a Type II action requiring no further environmental review; and

IT IS FURTHER RESOLVED, that the waiver of site plan is approved, subject to applicant screening the above improvements with the "Envisor" screen with cornice trim in accordance with the plan above described.
