

Village of Altamont Zoning Board of Appeals
Special Meeting - Remote
March 31, 2020

Maurice McCormick, Chairman
Danny Ramirez, Member
Kathryn Provencher, Member
Tresa Matulewicz, Member
Sal Tassone, Member

Lance Moore, Building Inspector/Code Enforcer
Dean Whalen, Board Liaison
Allyson Phillips, Village Attorney
Ginger Hannah, Secretary

Applicant: Chuck Marshall, Stewart's Shops
Leah Everhart, Stewart's Shops

Guests: 36

Chairman McCormick opened the meeting at 7:00 p.m. and introduced the Zoning Board Members as follows: Danny Ramirez, Tresa Matulewicz, Sal Tassone, Kate Provencher; as well as: Ginger Hannah, Zoning Board of Appeals Secretary; Allyson Phillips, Village Attorney; and Lance Moore, Building Inspector. Due to Covid-19, this meeting is being held remotely using Zoom video communication and all audio and video portions of this meeting are being recorded. Chairman McCormick welcomed everyone to the meeting and stated that he wanted to make everyone aware that this is a remote meeting and links have been provided through the Village website and through various postings and legal notice. He stated that this is a discussion with the Board, a continuation of the variance request from Stewart's discussed at the last meeting. It is not a Public Hearing, so there is no public comment at this time. He asked that everyone mute their microphones when they are not talking to prevent feedback.

He said let's continue our discussion from the last meeting when we were talking about the three variances and Village Attorney Phillips drew up drafts of the conversation and where she thought the Board was going. Everyone should have gotten those by now. He asked the Board Members individually if there was any discussion or questions on those drafts or the conversation they had. Board Members Ramirez, Matulewicz, and Tassone said there were not; they were all set. He asked Board Member Provencher if she had anything to say. She said that at the last meeting a lot of the discussion was about granting the variances. She said that her focus at that meeting was on the reasons why she doesn't support granting the variances. But since then, she has been thinking that because several members of the Board are in favor of the variances, there are some conditions that she thinks should be considered as part of variance request number one (to locate proposed Stewart's Shop Building 20 feet from the adjoining residential lot) These include:

- A landscape plan developed or signed off on by a Registered Landscape Architect. That the applicant obtain expert recommendations for the plantings in the buffer, an expert opinion outside of Stewart's professional. She said that plantings used in the buffer will be crucial both in terms of offering demarcation of the neighborhood and also in terms of putting in plantings that will grow fairly quickly and will last, as well as the spacing and size of the plantings that can go in and that will provide screening most quickly.

Attorney Phillips said the Planning Board has the jurisdiction to review the land use plan; it is within their purview to designate an expert or a professional consultant that they would want to review the landscape plan. Board Member Provencher and Chairman McCormick thought that the Zoning Board should also be able to weigh in on it. Attorney Phillips said there is difficulty in crafting Zoning Board approval with a condition that gives it some kind of authority to approve the final landscaping plan. However, she said we could include a condition on that variance if the Board Members are agreeable that the applicant provide a professional opinion to the Planning Board by a professional who is qualified to opine on the most suitable species of tree to be planted in the buffer area that provides screening, and also give its recommendations as to proper spacing of those trees and the maturity of the tree that would be suitable for the location to provide the maximum amount of screening.

- Limiting deliveries and dumpster pickup to 7 a.m. and 7 p.m. Further discussions added that these would be the hours on weekdays and 9:00 a.m. to 7:00 p.m. on Saturdays and Sundays.

Other topics discussed during the meeting:

- Placement of the dumpster
- Building design, placement and size
- The balancing test to balance the benefit to the applicant if the area variance is granted as weighed against the detriment to the health, safety, welfare of the neighborhood or the community by granting the variance
- The comprehensive plan and valuing the uniqueness and character of our community, which includes the architecture, the physical space, and the sense of neighborhood and community.

Attorney Phillips then said we can go through each of the resolutions one at a time starting with the resolution for variance number one, which is the 20 foot setback. She noted these drafts were prepared based on the findings that were articulated by a majority of the Board Members during their public deliberations at the last Zoning Board meeting. The Zoning Board then directed her to prepare draft resolutions with findings to put in writing what had been discussed at that meeting. The Board Members received these drafts last week. She received some feedback on them. Copies of these were posted to the Village website and made publicly available. Everyone's had a chance to review them. She noted that the resolution for variance number one would also have the two added conditions discussed during this meeting incorporated into this approval to have the requirement that the applicant provide an opinion by a qualified professional to the Planning Board giving their opinion as to the best species of tree to provide the most screening at the site, taking into account the rate of growth, spacing and tree species. It would also include a second condition, which would be to limit deliveries and dumpster pickup to 7:00 AM to 7:00 PM on weekdays and then 9:00 AM to 7:00 PM on Saturdays and Sundays.

Motions made during this meeting:

Board Member Tassone made a motion to approve the resolution granting variance request number one (to locate proposed Stewart's Shop Building 20 feet from the adjoining residential lot) with the two conditions that were discussed. Those conditions are: (1) the requirement that the applicant provide an opinion by a qualified professional to the Planning Board giving their opinion as to the best species of trees to provide the most screening at the site, taking into account the rate of growth, spacing and the tree species. (2) Limit deliveries and dumpster pickup to 7:00 AM to 7:00 PM on weekdays and 9:00 AM to 7:00 PM on Saturdays and Sundays. Seconded by Board Member Matulewicz. **Roll Call: Chairman McCormick: not in favor.**

Board Member Provencher - I am not in favor. I believe that there is a very clear detriment to the neighborhood and that it causes a decrease in the property value of the properties in the residential neighborhood. It moves this much farther into the residential neighborhood. It's irreversible. It doesn't truly provide for a 20 foot buffer. There has not been any support from any of the neighbors in the neighborhood for this. It's substantial physically and also in terms of setting a precedent that you can purchase a property knowing that it won't meet the zoning code and still go ahead. I think it affects our sense of community and connection. It clearly has a physical effect on the neighborhood, and we've already agreed that it's substantial and self-created.

Board Member Ramirez: in favor. Even though it's a major impact, I can't see any way around it.

Board Member Matulewicz: in favor.

Board Member Tassone: in favor.

Board Member Ramirez made a motion to approve the resolution with findings on variance number two. This is the variance for the 40,000 square foot minimum. Seconded by Board Member Tassone. **Roll Call: Chairman McCormick: in favor. Board Member Provencher: not in favor. Board Member Ramirez: in favor. Board Member Matulewicz: in favor. Board Member Tassone: in favor.**

Board Member Ramirez made a motion to approve the resolution granting variance request number three. This is the variance for the 104 foot setback from Altamont Blvd. Seconded by Board Member Matulewicz. **Roll Call: Chairman McCormick: in favor. Board Member Provencher: not in favor. Board Member Ramirez: in favor. Board Member Matulewicz: in favor. Board Member Tassone: in favor.**

Village Attorney Phillips stated that all three resolutions carried. All three variances are granted. She will incorporate the two conditions that were approved into the resolution and findings approving variance number one, and the resolutions will be filed with the Zoning Board of Appeals Secretary and the Village Clerk as soon as possible.

Copy of "Resolution, Findings, and Decision on Request for Area Variance" is attached to these minutes along with a copy of the Albany County Planning Board Recommendation dated February 25, 2020.

Chairman McCormick stated that Stewart's has a year to use their variance. If they don't start their project before then or use their variance, they would have to come back before us. He asked if there was anything else on the table for tonight.

Board Member Provencher inquired about an e-mail to Mr. Moore about following up on properties with fences. Chairman McCormick confirmed that the e-mail had been sent and Mr. Moore had confirmed that he received it.

Board Member Matulewicz asked a question with regard to Stewart's having a year to use their variances. She stated that with the pandemic COVID, non-essential construction has been put on hold. Is this considered essential or not essential?

Applicant Chuck Marshall said he thought that maintenance to the existing facility would be deemed essential; but construction of a new facility would not.

Board Member Matulewicz then asked if that affected the variance timeline.

Village Attorney Phillips said I don't think it necessarily holds that time period. I have to go back and look at the exact provision in the Village code. I would submit that if the applicant is prevented from moving forward with construction due to executive orders that are in place because of the COVID 19 response, that's certainly something that's beyond the applicant's control. If there is the ability in the code to extend those timeframes upon request by the applicant, certainly it would be reasonable for the Zoning Board of Appeals to grant an extension in that case, if this is an ongoing situation that does prevent them from commencing construction. Whatever the language is - I don't know if they have to commence or it has to be substantially underway, whatever the standard is - if they've been prevented from moving forward through no fault of their own because of these executive orders that are in place and the

Board has the ability to grant extensions under that term, then that would certainly be a reasonable basis to grant that extension.

Chairman McCormick asked Chuck if he wanted to comment. Applicant Chuck Marshall said, no, I think that we're going to be able to comply. If not, I will certainly make sure that if I need to renew them, I'll come back. Thank you.

Chairman McCormick said if there's nothing else, I would just like to take this time to let my fellow Board members and the Village, people that we've been working with through the years, to thank them for working with me and allowing me to be on the Zoning Board for over 20 years. I am not going to be reappointed to the Zoning Board and my term expires tonight. That's why I didn't want to make any motions or second anything. I wanted to let you guys start doing that. This is my last meeting and thank you very much. It's been very enjoyable and hopefully the Village residents appreciated what we did and approved of what we did over the last 20 some years. Thank you.

Board Member Ramirez said thank you for your leadership, Maurice. Board Member Provencher said it has been a pleasure to work with you, Maurice. I will miss your presence and your leadership on the Board and your experience.

Chairman McCormick said thank you, Kate. I appreciate that. I've been on various homeowners' association boards, vice-president and treasurer of stuff like that; first vice president of a law enforcement union representing over a hundred guys. I also negotiate contracts with the County. So I do a lot and I liked bringing some of that experience to the Board when I could. Do we have anything else then? I don't think we can approve any more minutes - we won't be able to do that tonight. Is there any new business that anyone knows of that we should be talking about? Board Member Ramirez said I don't know of any.

Applicant Chuck Marshall said I just want to say thank you. I know it was difficult, but I do think that we worked toward the best resolution possible, so thanks on behalf of Stewart's.


Board Secretary Hannah said Maurice, thank you for your leadership. It's been a pleasure.

Chairman McCormick said then I will make a motion to adjourn. Seconded by Board Member Ramirez. **Roll Call: All in favor.** Meeting was adjourned at 8:17 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ginger Hannah".

Ginger Hannah, Secretary to the Zoning Board of Appeals

	ALBANY COUNTY PLANNING BOARD <u>NOTIFICATION</u> RECOMMENDATION DATE: February, 25 2020
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Case #: 02-200203406
Applicant: Stewart's Shop Redevelopment
Project Location: 1001 Altamont Blvd. / 109 Helderberg Ave.
Tax Map Number: 48.06-2-3, 48.06-2-2
Referring Agency: Village of Altamont Zoning Board of Appeals
Considerations: Three area variances to enable the redevelopment of a Stewart's. The property owner seeks a variance to enable encroachment within a front yard setback, rear setback, and to exceed a minimum lot size.

ACPB Recommendation: Modify local approval to include:

1. The Zoning Board of Appeals should adhere to state statute and balance the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood or community when considering whether to grant the area variances. The balancing test requires the ZBA to consider five factors:
 - a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
 - b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
 - c) Whether the requested area variance is substantial.
 - d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - e) Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

- Advisory:**
1. Prior to site plan review, the applicant should contact the New York State Department of Environmental Conservation's Division of Environmental Permits (Region 4 Office) to determine whether permits or additional review will be required due to the presence of a regulated waterbody, designated floodway, and proposed bulk petroleum storage on the subject parcels.
 2. Any wetlands disturbance will require notification to and review by the U.S. Army Corps of Engineers for permits under Section 404 of the Clean Water Act.
 3. Prior to site plan review the applicant should also seek review and any necessary permits from New York State Department of Transportation for any improvements within the State Route 156 right-of-way.

4. The new Stewart's will require review by the Albany County Department of Health for food service and other required permits.

Laura Trivison

Laura Trivison, Senior Planner
Albany County Planning Board

NOTE:

- This recommendation is rendered in compliance with applicable requirements of Section 239 of New York State General Municipal Law. Final determination on this matter rests with the appropriate municipal body.
- A recommendation of "APPROVE" or "MODIFY LOCAL APPROVAL" should not be interpreted as a recommendation by this body that the referring agency approve the matter referred. Such recommendation does not indicate that this body has reviewed all local concerns; rather the referral has met certain countywide considerations. Evaluation of local criteria is the responsibility of the referring agency.
- General Municipal Law Section 239 requires that the local agency notify the county within thirty days of its final action. Please use the OFFICIAL NOTICE OF LOCAL ACTION form that is attached for this purpose.
- General Municipal Law Section 239 sets forth the procedural requirements for taking local action contrary to the County Planning Board's recommendation of objection or conditional approval.
- Albany County is required to submit a Municipal Separate Storm Sewer System Permit (MS4) (No. GP-0-10-002) Notice of Intent (NOI) to comply with the NYS DEC permit for the control of wastewater and stormwater discharges in accordance with the Clean Water Act. Construction Activity Permit No. GP-0-1-001 issued by NYSDEC is also required for activity with soil disturbances of one acre or more. The law is required by the Clean Water Act to control point source discharges to ground water as well as surface waters.

449 New Salem Road, Voorheesville, NY 12186
TELEPHONE: (518) 655-7932 FAX: (518) 765-3459

In compliance with Article 12-B, Section 239 of New York State General Municipal Law, this serves as official notification to the Albany County Planning Board of the action taken on the application described above.

LOCAL ACTION ON ACPB RECOMMENDATION:

- AGREED WITH COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE
 OVER-RULED COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE

LOCAL DECISION ON PROJECT:

- PROJECT APPROVED
 PROJECT DISAPPROVED

- Resolution to Approve Variance #1: 3-2 vote
- Resolution to Approve Variance #2: 4-1 vote
- Resolution to Approve Variance #3: 4-1 vote

VOTE RECORDED: _____ DATE OF LOCAL ACTION: 3/31/20

Set forth the reasons for any action contrary to the ACPB recommendations (use additional sheets if needed):

SIGNED: *Ginger Hannah* TITLE: *ZBA Secretary*

RESOLUTION
ALTAMONT ZONING BOARD OF APPEALS

VILLAGE OF ALTAMONT

RESOLUTION, FINDINGS, AND DECISION ON
REQUEST FOR AREA VARIANCE

Stewart's Shops Corp Variance Request #1: Area Variance from Zoning Law §355-38(E)(4) to Locate Proposed Stewart's Shop Building 20 feet from the Adjoining Residential Lot

WHEREAS, the Zoning Board of Appeals for the Village of Altamont ("ZBA") has received an application from Stewart's Shops Corp (Stewart's) for three (3) area variances necessary to redevelop its existing store and gasoline filling station on property it owns located at 1001 Altamont Blvd/ 107 Helderberg Ave and 109 Helderberg Ave (the "Project"); and

WHEREAS, Stewart's has been operating at its existing location at 1001 Altamont Blvd/ 107 Helderberg Ave since 1980 and is a lawful, non-conforming property under the Village of Altamont Zoning Law ("Zoning Law"); and

WHEREAS, in 2018, Stewart's applied to the Village of Altamont Board of Trustees ("Village Board") to change the zoning on an adjacent piece of property located at 109 Helderberg Avenue from Residential-10 (R-10) to Central Business District (CBD) so that the two lots could be merged and redeveloped with a new Stewart's store and gasoline filling station; and

WHEREAS, on or about December 12, 2018 the Village Board, acting as Lead Agency under the State Environmental Quality Review Act ("SEQRA"), adopted a Negative Declaration and thereafter, adopted Local Law No. 1 of 2018 which rezoned 109 Helderberg to CBD; and

WHEREAS, the Village Zoning Officer had previously determined that the Project qualified as a "Convenience Store" under the Zoning Law; this determination was appealed to the ZBA, and by decision dated May 28, 2019, the ZBA held the Project qualified as a "Gasoline Service Station" under the Zoning Law; and

WHEREAS, in the Spring of 2019, the Village Board's zoning determination was challenged in a legal proceeding in Albany County Supreme Court; and

WHEREAS, thereafter, the Village Board undertook a second coordinated review for the Project under SEQRA that included the ZBA as an involved agency; and

WHEREAS, the Village Board issued a Negative Declaration for the Project on November 19, 2019 and thereafter adopted Local Law No. 2 of 2019 reaffirming its rezoning of 109 Helderberg to CBD; and

WHEREAS, Stewart's submitted an application for area variances for the Project to the ZBA on November 25, 2019 (the "Application"); and

WHEREAS, the Application requests the following three (3) area variances: 1) A variance from Zoning Law §355-38(E)(4); No building or other structure, except a fence, shall be closer than 50 feet to any lot in a residential district or any other lot used for residential purposes; 2)

Zoning Law §355-38(E)(11): Gasoline service stations shall be permitted only on lots of 40,000 square feet or more, with 150 feet minimum frontage, and on corner lots a minimum of 100 feet of frontage on each street or highway; and 3) Zoning Law §355: Attachment 2 – Maximum Front Yard Setback of 10 feet; and

WHEREAS, the ZBA has reviewed the application, including additional detailed submissions on the Project submitted by Stewart's in support of the application; and

WHEREAS, the ZBA duly noticed and held a public hearing on the application on February 11, 2020 at which time all members of the public wishing to speak were heard and kept the public hearing open for an additional ten (10) day period to receive written comments; and

WHEREAS, the ZBA referred the Application to the Albany County Planning Board pursuant to N.Y. General Municipal Law §239-m; and

WHEREAS, the ZBA has reviewed and considered all public hearing comments that were received on the application and the Applicant's responses thereto and the Albany County Planning Board's response to the N.Y. GML §239 referral; and

WHEREAS, the ZBA has publicly deliberated on this matter and directed that a draft Resolution and Decision with findings be prepared by its attorney; and

WHEREAS, the ZBA has duly considered all of the materials before it and a draft Resolution and Decision with Findings for each variance request has been prepared by its attorney.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE ZONING BOARD OF APPEALS OF THE VILLAGE OF ALTAMONT, ALBANY COUNTY, NEW YORK:

- 1) **Variance Request No. 1 - Area Variance from Zoning Law §355-38(E)(4) - No building or other structure, except a fence, shall be closer than 50 feet to any lot in a residential district or any other lot used for residential purposes. Stewart's requests an area variance to locate its proposed Stewart's Shop building 20 feet from the adjoining residential lot.**

The ZBA has balanced the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and hereby adopts the following Findings:

- i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The ZBA finds that the requested variance will not result in an undesirable change in the neighborhood or create a detriment to nearby properties if the area variance is granted. Stewart's has operated the existing Stewart's Shop and gas filling operation on the property at 1001 Altamont Blvd since on or around 1980. The surrounding neighborhood includes commercial and residential uses. While the requested variance will allow for the proposed new building to be located 20 feet from the adjacent residential property line (rather than the required 50 feet), the

placement of the building in the proposed location in between the adjacent residential property and gas island will work to mitigate the impacts of Stewart's commercial operations and light intrusion by creating a physical barrier between those operations and the adjacent residential property and neighborhood. It will also eliminate a travel lane or pass through and related traffic that now exists between the Stewart's Shop and the adjacent residential property and enhance walkability in the area. The visual appearance and architecture of the new building also accords with the community character and design envisioned in the Village of Altamont Comprehensive Plan and is an improvement when compared to the visual appearance and architecture of the existing building. The use of shielded LED light fixtures, a retaining wall around the condenser units, and other design features that have been incorporated in the building design will further mitigate any impact on nearby residential properties.

- ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The ZBA finds that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Stewart's has requested the area variances to enable it to redevelop its property to include a larger store and more modern Stewart's Shop, site its gas island in a location that is compliant with the Village Zoning Law, increase the separation distance between the gas island and parking at the front of the store, and allow for better overall site circulation. The ZBA has reviewed and considered whether Stewart's can achieve these benefits without the requested area variance and finds that there is no feasible alternative. The site is located on the corner of Helderberg Avenue and Altamont Boulevard. The on-site driveways must meet the Driveway Design Policy of the New York State Highway Design Manual. The record demonstrates that centering the building in a manner similar to its current configuration or aligning the building with Altamont Boulevard would not eliminate the need for an area variance. In addition, aligning the building with Altamont Boulevard (outside the NYSDOT right of way [ROW]) would require Stewart's to move its gas island and related commercial operations closer to the adjacent residential property and neighborhood to the west of the site. This would create a greater impact on nearby residential properties by eliminating the physical barrier or buffer that is created by locating the proposed new building between the commercial activities on Stewart's property and other properties in the CBD and the adjacent residential neighborhood. Increasing the proposed setback would also interfere with the existing driveway on Helderberg Avenue which cannot be located closer to the corner in accordance with NYSDOT Highway Design requirements. Based on the foregoing, the ZBA determines the requested variance is the minimum variance necessary and that the benefit sought by Stewart's cannot be achieved by some other feasible alternative.

- iii. Whether the requested area variance is substantial;

The ZBA finds that the requested area variance to allow a 20-foot setback instead of the required 50-foot setback is substantial.

- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The ZBA finds that the requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district. The mitigating measures that have been incorporated in the Project design, including but not limited to the visual appearance and architecture of the proposed new building, the use of shielded LED light fixtures, a retaining wall around the condenser units, and proposed fence and plantings to be located in between the building and adjacent residential property, will ensure there is no adverse effect or impact associated with granting the variance. The elimination of one (1) of the (3) three existing driveways on the site will also make the area more walkable and safer for pedestrians. The ZBA also notes that the Project will require a Stormwater Pollution Prevention Plan (SWPPP) that complies with NYSDEC design guidelines which will be reviewed by the Village of Altamont Planning Board as part of the site plan review process. In sum, the ZBA finds these facts and additional facts documented in the record and in the Negative Declaration that was adopted by the Lead Agency following a coordinated review of potential environmental impacts under SEQRA demonstrate that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

- v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

The ZBA finds the alleged difficulty was self-created as Stewart's is voluntarily undertaking a redevelopment of its property and existing commercial operation.

- 2) **The ZBA does hereby grant Stewart's Variance Request #1 – Area Variance from Zoning Law §355-38(E)(4) to locate its proposed Stewart's Shop building 20 feet from the adjoining residential lot, with the following conditions:**

a) The Applicant shall provide the Planning Board with an opinion from a qualified professional stating what species of tree would be best suited to provide screening in the area between the proposed new building and adjacent residential property. The opinion shall specify the species of tree that is best suited to provide screening in this area, in addition to the ideal spacing, number, and age or maturity of the trees that can be planted to provide the maximum

screening that is practicable from the time of planting taking into account the physical characteristics of the subject property.

b) All deliveries and dumpster pick-ups shall take place between the hours of 7:00 a.m. and 7:00 p.m. Mondays through Fridays, and 9:00 a.m. to 7:00 p.m. Saturdays and Sundays.

3) The ZBA authorizes and requires the ZBA Chairman and its Secretary and Attorney to take the appropriate steps to effectuate this resolution including any filing and distribution requirements.

WHEREUPON, this Resolution was declared adopted by the Village of Altamont Zoning Board of Appeals:

The motion was moved by Sat Tassone

The motion was seconded by Teresa Matulewicz

The vote was as follows:

	Aye	Nay
Chairman McCormick	_____	<u>✓</u>
Provencher	_____	<u>✓</u>
Matulewicz	<u>✓</u>	_____
Ramirez	<u>✓</u>	_____
Tassone	<u>✓</u>	_____

STATE OF NEW YORK }
COUNTY OF ALBANY }
VILLAGE OF ALTAMONT }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Village of Altamont Zoning Board of Appeals at a special meeting held March 31, 2020, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
McCormick		Yea/Nay
Provencher		Yea/Nay
Matulewicz		Yea/Nay
Ramirez		Yea/Nay
Tassone		Yea/Nay

Witness my hand and the seal of the Village of Altamont, this 3rd day of April, 2020.

Ginger Hannah
GINGER HANNAH, SECRETARY
VILLAGE OF ALTAMONT ZONING BOARD OF

APPEALS

RECEIVED
LB APR 03 2020

VILLAGE OF ALTAMONT

RESOLUTION
ALTAMONT ZONING BOARD OF APPEALS

RESOLUTION, FINDINGS, AND DECISION ON
REQUEST FOR AREA VARIANCE

Stewart's Shops Corp Variance Request #2: Area Variance from Zoning Law §355-38(E)(11) to Permit a Gasoline Service Station on a Lot of 33,958 Square Feet.

WHEREAS, the Zoning Board of Appeals for the Village of Altamont ("ZBA") has received an application from Stewart's Shops Corp (Stewart's) for three (3) area variances necessary to redevelop its existing store and gasoline filling station on property it owns located at 1001 Altamont Blvd/ 107 Helderberg Ave and 109 Helderberg Ave (the "Project"); and

WHEREAS, Stewart's has been operating at its existing location at 1001 Altamont Blvd/ 107 Helderberg Ave since 1980 and is a lawful, non-conforming property under the Village of Altamont Zoning Law ("Zoning Law"); and

WHEREAS, in 2018, Stewart's applied to the Village of Altamont Board of Trustees ("Village Board") to change the zoning on an adjacent piece of property located at 109 Helderberg Avenue from Residential-10 (R-10) to Central Business District (CBD) so that the two lots could be merged and redeveloped with a new Stewart's store and gasoline filling station; and

WHEREAS, on or about December 12, 2018 the Village Board, acting as Lead Agency under the State Environmental Quality Review Act ("SEQRA"), adopted a Negative Declaration and thereafter, adopted Local Law No. 1 of 2018 which rezoned 109 Helderberg to CBD; and

WHEREAS, the Village Zoning Officer had previously determined that the Project qualified as a "Convenience Store" under the Zoning Law; this determination was appealed to the ZBA, and by decision dated May 28, 2019, the ZBA held the Project qualified as a "Gasoline Service Station" under the Zoning Law; and

WHEREAS, in the Spring of 2019, the Village Board's zoning determination was challenged in a legal proceeding in Albany County Supreme Court; and

WHEREAS, thereafter, the Village Board undertook a second coordinated review for the Project under SEQRA that included the ZBA as an involved agency; and

WHEREAS, the Village Board issued a Negative Declaration for the Project on November 19, 2019 and thereafter adopted Local Law No. 2 of 2019 reaffirming its rezoning of 109 Helderberg to CBD; and

WHEREAS, Stewart's submitted an application for area variances for the Project to the ZBA on November 25, 2019 (the "Application"); and

WHEREAS, the Application requests the following three (3) area variances: 1) A variance from Zoning Law §355-38(E)(4); No building or other structure, except a fence, shall be closer than 50 feet to any lot in a residential district or any other lot used for residential purposes; 2)

WHEREAS, the Application requests the following three (3) area variances: 1) A variance from Zoning Law §355-38(E)(4); No building or other structure, except a fence, shall be closer than 50 feet to any lot in a residential district or any other lot used for residential purposes; 2) Zoning Law §355-38(E)(11): Gasoline service stations shall be permitted only on lots of 40,000 square feet or more, with 150 feet minimum frontage, and on corner lots a minimum of 100 feet of frontage on each street or highway; and 3) Zoning Law §355: Attachment 2 – Maximum Front Yard Setback of 10 feet; and

WHEREAS, the ZBA has reviewed the application, including additional detailed submissions on the Project submitted by Stewart's in support of the application; and

WHEREAS, the ZBA duly noticed and held a public hearing on the application on February 11, 2020 at which time all members of the public wishing to speak were heard and kept the public hearing open for an additional ten (10) day period to receive written comments; and

WHEREAS, the ZBA referred the Application to the Albany County Planning Board pursuant to N.Y. General Municipal Law §239-m; and

WHEREAS, the ZBA has reviewed and considered all public hearing comments that were received on the application and the Applicant's responses thereto and the Albany County Planning Board's response to the N.Y. GML §239 referral; and

WHEREAS, the ZBA has publicly deliberated on this matter and directed that a draft Resolution and Decision with findings be prepared by its attorney; and

WHEREAS, the ZBA has duly considered all of the materials before it and a draft Resolution and Decision with Findings for each variance request has been prepared by its attorney.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE ZONING BOARD OF APPEALS OF THE VILLAGE OF ALTAMONT, ALBANY COUNTY, NEW YORK:

- 1) **Variance Request No. 3 - Zoning Law §355: Attachment 2 – Maximum Front Yard Setback of 10 feet. Stewart's requests an area variance to locate the proposed new building 104 feet from Altamont Boulevard (94 feet more than the maximum front yard setback).**

The ZBA has balanced the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and hereby adopts the following Findings:

- i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The ZBA finds that the requested variance will not result in an undesirable change in the neighborhood or create a detriment to nearby properties if the area variance is granted. The Project site is located on the corner of Altamont Boulevard and Helderberg Avenue. The current Stewart's Shop and gasoline filling operation do not comply with the maximum 10-foot setback on either street. The location of Stewart's new building will not comply with the maximum 10-foot setback on

Altamont Boulevard, but it will now meet the 10-foot setback on Helderberg Avenue; a new sidewalk is also proposed which will enhance walkability in this area. The proposed location of the new building (104 feet from Altamont Boulevard) will also allow the gasoline island and related commercial activity to be located in the front of the store, and eliminate the travel lane that now exists between the Stewart's Shop and adjacent residential parcel. The commercial activity at the front of the store will be consistent with the commercial character of other uses in the CBD. At the same time, locating the new store in the proposed location 104 feet from Altamont Boulevard will shield or mitigate the impacts of car traffic and light intrusion on the adjacent residential property and neighborhood. For these reasons, the ZBA finds the requested variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

- ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The ZBA finds that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Stewart's property is located on a corner lot. To meet the 10-foot maximum setback on Altamont Boulevard and Helderberg Avenue, the building would have to be located closer to the corner and NYSDOT ROW. This would require Stewart's to relocate the gas island and associated commercial activity to the back of the new building and closer to the adjacent residential property and neighborhood. In addition, moving the building closer to Altamont Boulevard would interfere with the existing driveway on Helderberg Avenue which cannot be located closer to the corner in accordance with NYSDOT Highway Design requirements. Based on the foregoing, the ZBA determines the requested variance is the minimum variance necessary and that the benefit sought by Stewart's cannot be achieved by some other feasible alternative.

- iii. Whether the requested area variance is substantial;

The ZBA finds that the requested area variance to allow a 104-foot setback instead of the maximum 10-foot setback (a difference of 94 feet) is substantial.

- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The ZBA finds that the requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district. The mitigating measures that have been incorporated in the Project design, including but not limited to the visual appearance and architecture of the proposed new building, the use of shielded LED light fixtures, a retaining wall around the condenser units, and proposed fence and plantings to be located in between the building and adjacent residential property, will ensure there is no adverse effect or

impact associated with granting the variance to locate the proposed building 104 feet from Altamont Boulevard. The elimination of one (1) of the (3) three existing driveways on the site will also make the area more walkable and safer for pedestrians. The ZBA also notes that the Project will require a Stormwater Pollution Prevention Plan (SWPPP) that complies with NYSDEC design guidelines which will be reviewed by the Village of Altamont Planning Board as part of the site plan review process. In sum, the ZBA finds these facts and additional facts documented in the record and in the Negative Declaration that was adopted by the Lead Agency following a coordinated review of potential environmental impacts under SEQRA demonstrate that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

- v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

The ZBA finds the alleged difficulty was self-created as Stewart's is voluntarily undertaking a redevelopment of its property and existing commercial operation.

- 1) **The ZBA does hereby grant Stewart's Variance Request #3 - Area Variance from Zoning Law §355 to allow a building 104 feet from Altamont Boulevard.**
- 2) **The ZBA authorizes and requires the ZBA Chairman and its Secretary and Attorney to take the appropriate steps to effectuate this resolution including any filing and distribution requirements.**

WHEREUPON, this Resolution was declared adopted by the Village of Altamont Zoning Board of Appeals:

The motion was moved by Danny Ramirez

The motion was seconded by Teresa Matulewicz

The vote was as follows:

	Aye	Nay
Chairman McCormick	<u>✓</u>	<u> </u>
Provencher	<u> </u>	<u>✓</u>
Matulewicz	<u>✓</u>	<u> </u>
Ramirez	<u>✓</u>	<u> </u>
Tassone	<u>✓</u>	<u> </u>

STATE OF NEW YORK }
COUNTY OF ALBANY }
VILLAGE OF ALTAMONT }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Village of Altamont Zoning Board of Appeals at a special meeting held March 31, 2020, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
McCormick		Yea/Nay
Provencher		Yea/Nay
Matulewicz		Yea/Nay
Ramirez		Yea/Nay
Tassone		Yea/Nay

Witness my hand and the seal of the Village of Altamont, this 3rd day of April, 2020.

Ginger Hannah
GINGER HANNAH, SECRETARY
VILLAGE OF ALTAMONT ZONING BOARD OF

APPEALS

RECEIVED
B APR 03 2020

RESOLUTION
ALTAMONT ZONING BOARD OF APPEALS

VILLAGE OF ALTAMONT

RESOLUTION, FINDINGS, AND DECISION ON
REQUEST FOR AREA VARIANCE

Stewart's Shops Corp Variance Request #3: Area Variance from Zoning Law §355
To Allow a Building 104 feet from Altamont Boulevard

WHEREAS, the Zoning Board of Appeals for the Village of Altamont ("ZBA") has received an application from Stewart's Shops Corp (Stewart's) for three (3) area variances necessary to redevelop its existing store and gasoline filling station on property it owns located at 1001 Altamont Blvd/ 107 Helderberg Ave and 109 Helderberg Ave (the "Project"); and

WHEREAS, Stewart's has been operating at its existing location at 1001 Altamont Blvd/ 107 Helderberg Ave since 1980 and is a lawful, non-conforming property under the Village of Altamont Zoning Law ("Zoning Law"); and

WHEREAS, in 2018, Stewart's applied to the Village of Altamont Board of Trustees ("Village Board") to change the zoning on an adjacent piece of property located at 109 Helderberg Avenue from Residential-10 (R-10) to Central Business District (CBD) so that the two lots could be merged and redeveloped with a new Stewart's store and gasoline filling station; and

WHEREAS, on or about December 12, 2018 the Village Board, acting as Lead Agency under the State Environmental Quality Review Act ("SEQRA"), adopted a Negative Declaration and thereafter, adopted Local Law No. 1 of 2018 which rezoned 109 Helderberg to CBD; and

WHEREAS, the Village Zoning Officer had previously determined that the Project qualified as a "Convenience Store" under the Zoning Law; this determination was appealed to the ZBA, and by decision dated May 28, 2019, the ZBA held the Project qualified as a "Gasoline Service Station" under the Zoning Law; and

WHEREAS, in the Spring of 2019, the Village Board's zoning determination was challenged in a legal proceeding in Albany County Supreme Court; and

WHEREAS, thereafter, the Village Board undertook a second coordinated review for the Project under SEQRA that included the ZBA as an involved agency; and

WHEREAS, the Village Board issued a Negative Declaration for the Project on November 19, 2019 and thereafter adopted Local Law No. 2 of 2019 reaffirming its rezoning of 109 Helderberg to CBD; and

WHEREAS, Stewart's submitted an application for area variances for the Project to the ZBA on November 25, 2019 (the "Application"); and

Zoning Law §355-38(E)(11): Gasoline service stations shall be permitted only on lots of 40,000 square feet or more, with 150 feet minimum frontage, and on corner lots a minimum of 100 feet of frontage on each street or highway; and 3) Zoning Law §355: Attachment 2 – Maximum Front Yard Setback of 10 feet; and

WHEREAS, the ZBA has reviewed the application, including additional detailed submissions on the Project submitted by Stewart's in support of the application; and

WHEREAS, the ZBA duly noticed and held a public hearing on the application on February 11, 2020 at which time all members of the public wishing to speak were heard and kept the public hearing open for an additional ten (10) day period to receive written comments; and

WHEREAS, the ZBA referred the Application to the Albany County Planning Board pursuant to N.Y. General Municipal Law §239-m; and

WHEREAS, the ZBA has reviewed and considered all public hearing comments that were received on the application and the Applicant's responses thereto and the Albany County Planning Board's response to the N.Y. GML §239 referral; and

WHEREAS, the ZBA has publicly deliberated on this matter and directed that a draft Resolution and Decision with findings be prepared by its attorney; and

WHEREAS, the ZBA has duly considered all of the materials before it and a draft Resolution and Decision with Findings for each variance request has been prepared by its attorney.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE ZONING BOARD OF APPEALS OF THE VILLAGE OF ALTAMONT, ALBANY COUNTY, NEW YORK:

- 1) **Variance Request No. 2 - Zoning Law §355-38(E)(11): Gasoline service stations shall be permitted only on lots of 40,000 square feet or more. Stewart's requests an area variance to permit a Gasoline Service Station on a lot of 33,958 square feet (6,042 square feet [15%] less than the minimum 40,000 square foot minimum required).**

The ZBA has balanced the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and hereby adopts the following Findings:

- i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The ZBA finds that the requested variance will not result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties if the area variance is granted. Stewart's has operated the existing Stewart's Shop and gas filling operation on the property at 1001 Altamont Blvd/ 107 Helderberg since on or around 1980. The lot meets the minimum 5,000 square foot lot size requirement for a Convenience Store but does not comply with the 40,000 square foot minimum required for a Gasoline Service Station. Stewart's has purchased the neighboring parcel at 109 Helderberg Avenue which increases the size of the Project site to 33,958 square feet. Therefore, the overall size of the parcel where

Stewart's new Gasoline Service Station will be located is more compliant than the site of its current operation. The ZBA also finds the placement of the proposed building in between the adjacent residential property and gas island will work to mitigate the impacts of Stewart's commercial operations and light intrusion by creating a physical barrier between those operations and the adjacent residential property and neighborhood. It will also eliminate a travel lane or pass through and related traffic that now exists between the Stewart's Shop and the adjacent residential property and enhance walkability in the area. For these reasons, the ZBA finds there will be no undesirable change in the character of the neighborhood or detrimental impact from granting the variance.

- ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The ZBA finds that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. The site of Stewart's existing Shop and gasoline service station is already undersized for a Gasoline Service Station and Stewart's has acquired the neighboring property at 109 Helderberg Avenue so that it can combine the lots and bring the site into greater compliance. Stewart's does not own any additional property that it could add to the Project site to meet the minimum 40,000 square foot requirement. Based on the foregoing, the ZBA determines the requested variance is the minimum variance necessary and that the benefit sought by Stewart's cannot be achieved by some other feasible alternative.

- iii. Whether the requested area variance is substantial;

The ZBA finds that the requested area variance to permit a Gasoline Service Station on a lot of 33,958 square feet, which is 6,042 square feet or 15% less than the 40,000 square foot minimum requirement is not substantial.

- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The ZBA finds that the requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district. The overall size of the parcel where Stewart's new Gasoline Service Station will be located is more compliant than the site of its current operation. In addition, the mitigating measures that have been incorporated in the Project design will ensure there is no adverse effect or impact associated with granting a variance to permit a Gasoline Service Station on a lot that is 33,958 square feet (as opposed to the minimum 40,000 square feet). The elimination of one (1) of the (3) three existing driveways on the site will also make the area more walkable and safer for pedestrians. The ZBA also notes that the Project will require a Stormwater Pollution Prevention Plan (SWPPP) that complies with NYSDEC design guidelines which will be reviewed by the Village of Altamont Planning Board as part of the site plan review process.

In sum, the ZBA finds these facts and additional facts documented in the record and in the Negative Declaration that was adopted by the Lead Agency following a coordinated review of potential environmental impacts under SEQRA demonstrate that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

- v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

The ZBA finds the alleged difficulty was self-created as Stewart's is voluntarily undertaking a redevelopment of its property and existing commercial operation.

- 1) **The ZBA does hereby grant Stewart's Variance Request #2 - Area Variance from Zoning Law §355-38(E)(11) to permit a Gasoline Service Station on a lot of 33,958 square feet.**
- 2) **The ZBA authorizes and requires the ZBA Chairman and its Secretary and Attorney to take the appropriate steps to effectuate this resolution including any filing and distribution requirements.**

WHEREUPON, this Resolution was declared adopted by the Village of Altamont Zoning Board of Appeals:

The motion was moved by Danny Ramirez

The motion was seconded by Sal Tassone

The vote was as follows:

	Aye	Nay
Chairman McCormick	<u>✓</u>	<u> </u>
Provencher	<u> </u>	<u>✓</u>
Matulewicz	<u>✓</u>	<u> </u>
Ramirez	<u>✓</u>	<u> </u>
Tassone	<u>✓</u>	<u> </u>

STATE OF NEW YORK }
COUNTY OF ALBANY }
VILLAGE OF ALTAMONT }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Village of Altamont Zoning Board of Appeals at a special meeting held March 31, 2020, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
McCormick		(Yea/Nay
Provencher		Yea/Nay)
Matulewicz		(Yea/Nay
Ramirez		Yea/Nay)
Tassone		(Yea/Nay

Witness my hand and the seal of the Village of Altamont, this 3rd day of April 2020.

Ginger Hannah
GINGER HANNAH, SECRETARY
VILLAGE OF ALTAMONT ZONING BOARD OF

APPEALS