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**ZONING BOARD OF APPEALS
COMMON COUNCIL CHAMBERS - CITY HALL
JULY 10, 2018 5:00 PM**

ZBA Case No.: 24-17
230-238 Roosevelt Drive
Applicant: Abraham Fada
Owner: Ashford-Clinton Corp.

Zone: CN
Rehearing/Special Use Permit

Pursuant to Section 2-29-65 of the Zoning Ordinance of the City of Utica, the applicant is seeking a rehearing of a special use permit application in order to operate a neighborhood convenience store at the above referenced property which was previously denied by this Board on June 13, 2017. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

The applicant has opened the store which was previously denied by the Zoning Board of Appeals and has been closed by the Codes Department.

In accordance with Section 2-29-605 of the Zoning Ordinance of the City of Utica, neighborhood convenience stores shall be special permit uses within the Neighborhood Commercial (C-N) Zoning District. No such use shall be located within 2,000 linear feet of a similar existing use regardless of the zoning district in which such existing use is located and measured from lot line to lot line. As part of the application for a special use permit to the Zoning Board of Appeals, the applicant shall submit a development plan that addresses the following: days/hours of operation; hours of deliveries and services (i.e., trash removal, snow plowing, etc.); provisions for parking, both on- and off-street; provisions to manage and regulate potential impacts of use, including but not limited to: litter and refuse by store patrons, excessive noise, loitering, crime prevention; signage, including both permanent and advertising/promotional signage; staffing; landscaping; and a building floor plan.

The applicant is proposed to purchase the property and utilize two storefronts for a convenience store and deli. The proposed hours of operation will be 8:00 am – 12:00 am seven days a week. The store will employ five people. They are proposing to sell groceries to include but not limited to alcohol, tobacco, lottery tickets, coffee, ice cream, snacks and hot and cold sandwiches.

The applicant has stated that parking is available on site for 25 cars. The parking lot will be paved and striped. The façade of the building will also be updated.

The applicant currently operates two other convenience stores located at 5 Oswego Street and 919 Bleecker Street.

David Diodati, Esq. and Mr. Fada presented the application to the Board.

Councilman John Jacon, 3rd Ward, spoke in opposition to the proposal. He didn't feel that there was a need for this

type of store in this neighborhood because there is a full service grocery store in the area. He referenced some issues at the Oswego Street store which include the sight of 59 distinct police incidents in the past year including five warrant arrests, five reports of disorderly groups, four drug investigations, three neighbor disputes, one prostitution investigation and a report of an assault with shots fired.

Richard Light of 140 Seward Avenue submitted an email in opposition to the application.

Laurie Dowell of 140 Seward Avenue submitted approximately 110 signatures from neighbors as a petition for contesting the application for a Special Use Permit at this location. Ms. Dowell said she visited the other stores owned by the applicant which she stated were filthy. She also provided a study from Pacific Institute for Research and Evaluation on "How Alcohol Outlets Affect Neighborhood Violence." Ms. Dowell explained to the Board that this type of use is not needed in this area. She further explained that this area is not located within a food desert. The full service grocery store is located within a couple of blocks and a liquor store is also located in that plaza.

Leo Plato of 2303 Sunset Avenue had concerns regarding the types of products sold in the other stores that the applicant operates such as pipes and tobacco. He didn't feel that this is needed in a neighborhood with children.

Betty Plato explained that she operates a business in the Roosevelt Plaza and she visited the applicant's store on Oswego Street, at which time single cigarettes were purchased. She also stated that there isn't enough parking in the Plaza in addition to the existing businesses.

Cynthia Kelly of 140 Hawthorne Avenue observed the parking lot at the plaza at approximately 4:30 pm and submitted photos of 10 cars which filled the parking lot. She expressed concern that there will not be enough area for any parking for this type of business.

David Diodati, Esq. stated that he didn't feel that the applicant was conducting any illegal business at his other stores. He stated that if this is denied, his client will withdraw his proposal to purchase the property.

The Board voted to **DENY** the application for a Special Use Permit at this location.

ZBA Case No.: 19-18
2303 Portal Road
Applicant: Daniel Post
Owner: Daniel Post

Zone: RS-1
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to erect a fence at the above referenced location.

The applicant is proposing to install a 6' high wood fence in the front yard area of his property. In accordance with Section 2-29-447, all solid fences measuring more than three feet high are prohibited in the front yard, therefore, the applicant will be required to receive an area variance for the location of the 6' proposed fence.

The fence will need to be placed at least 11.5' in from the edge of the pavement to calculate the area maintained as the City right-of-way.

ZBA Case No.: 20-18
806 Arthur Street
Applicant: Robert M. Palmieri
Owner: Robert M. Palmieri

Zone: RS-2
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to construct a shed at the above referenced property.

The applicant is proposing to construct a 10' x 12' (120 sf) shed in the rear yard of the property. The applicant has stated that they need a shed for additional storage due to the lack of a garage. They are proposing to utilize the shed for lawn, garden and snow removal equipment. The shed will be 10' in height.

In accordance with Section 2-29-492 of the Zoning Ordinance of the City of Utica, the maximum size for an accessory structure in a Residential Single-Family zoning district is 100 sf. The applicant will be required to receive an area variance to increase the size of the proposed shed to 120 sf.

The applicant has explained that due to the size of the yard and the location of an in ground pool, they needed to locate the shed approximately 5' from the rear and side property lines. In accordance with Section 2-29-495 no accessory structure or use which exceeds six feet in height shall be located closer than a distance equal to its height from any side or rear property line. Therefore, the applicant will be required to receive an area variance for the location of the shed.

ZBA Case No.: 21-18
921 Sunset Avenue
Applicant: Pastor Ron Colangelo Sr.
Owner: Calvary Gospel Church

Zone: RT-1
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to install signage at the above referenced property.

The applicant is proposing to install a 4' x 8' (32 sf) sign on the front of the property to identify the church and its services. The sign will read "921 Sunset Ave • Utica – My Father's House – Where All Are Welcome! – Services Every Saturday 11:00 AM".

The property is located in a Residential Two-Family zoning district where signage is not permitted, therefore, the applicant will be required to receive an area variance for the installation of this sign.

ZBA Case No.: 22-18
628 Arthur Street
Applicant: Nedzad Andelija
Owner: Nedzad Andelija

Zone: RT-1
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to legitimize the installation of a fence at the above referenced property.

The applicant has installed a 6' high white vinyl solid fence at the above referenced property. The fence is located on lot adjacent to the home. It is approximately 14" from the inside edge of the sidewalk. The applicant stated that they installed the fence to prevent kids from passing through their yard and for a play area for their children. A 7' hedge row was removed from the same area where the fence is located.

In accordance with Section 2-29-447, all solid fences measuring more than three feet high are prohibited in the front yard, therefore, the applicant will be required to receive an area variance for the location of the 6' proposed fence.

ZBA Case No.: 23-18
1905 Genesee Street
Applicant: Upstate NY Bottle & Can Retrieval Center LLC
Owner: Eton Centers/Brause Realty, Inc.

Zone: CC
Interpretation

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an interpretation from the Zoning Board of Appeals in order to use the above referenced property as a bottle and can redemption center.

In accordance with Section 2-29-22 of the Zoning Ordinance of the City of Utica, every question involving the interpretation of any provisions of this chapter shall be presented to the Director of Planning for decision. An appeal of any decision of the Director of Planning may be taken to the Zoning Board of Appeals.

In accordance with Section 2-29-192 the purpose of the Community Commercial District is to provide areas for large scale shopping and service centers, and to delineate predominately retail shopping areas outside the Central Business District, with adequate off-street parking. A variety of permitted uses within this district include but are not limited to : •Bars, •Drive-in/fast-food restaurants, limited by the provisions of Subsection 2-29-192(e), •Banks and financial institutions, •Business offices, •Personal service establishments, •Repair service establishments, •Retail sales establishments, •Theaters, •Hotels, motels, inns or auto courts, •Churches and other similar places of worship, •Apartment buildings, •Funeral homes, •Auto driving schools, •Florists, •Laundry and dry-cleaning establishments (pickup or self-service).

The applicant is proposing to utilize 2,150 sf of space within the 7,700 sf building for a bottle and can redemption center. The center will be a registered New York State Department of Environmental Conservation Redemption Center. The applicant, together with its affiliates, presently operates seventy-two (72) redemption centers through much of upstate New York.

ZBA Case No.: 24-18
9 Lyon Place
Applicant: Rebecca Morgan
Owner: Rebecca Morgan

Zone: RS-2
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to construct an addition to the rear of the home at the above referenced property.

The applicant is proposing to construct a 14' x 25' two story kitchen and bedroom/bathroom addition to the rear of the home. In accordance with Section 2-29-172 of the Zoning Ordinance of the City of Utica, the minimum side yard setback in a Residential Single Family – Medium Density zoning district is 10 feet. The applicant is proposing to have approximately 8' which will require an area variance. The existing house currently is placed approximately 5' from the side property line.

ZBA Case No.: 25-18
437 Mary Street
Applicant: Central Association for the Blind & Visually Impaired
Owner: Central Association for the Blind & Visually Impaired

Zone: CN
Area Variance

Pursuant to Section 2-29-67(d)(1) of the Zoning Ordinance of the City of Utica, the applicant is seeking an area variance in order to expand the width of a curb cut at the above referenced property.

The proposed project involves the construction of a 21,800 square foot, single story building for use as a rehabilitation center for the blind and visually impaired. This construction will include a four bay garage/storage building which will require a curb cut width of 66 feet. In accordance with Section 2-23-123 of the City of Utica's Code of Ordinance,

for the purpose of constructing a driveway approach, no curb cut, opening or section broken out or removed shall exceed 20 feet for residential purposes and 40 feet for commercial or other purposes. Therefore, the applicant is seeking an area variance in order to increase the size of the commercial curb cut to 66 feet.

ZBA Case No.: 26-18

1113 Linwood Place

Applicant: Cassandra Harris-Lockwood

Owner: For the Good, Inc.

Zone: RT-1

Special Use Permit

Pursuant to Section 2-29-68 of the Zoning Ordinance of the City of Utica, the applicant is seeking approval of a special use permit in order to expand a legal non-conforming use at the above referenced property.

In accordance with Section 2-29-88 of the Zoning Ordinance, whenever property is nonconforming for any reason the proposed addition or enlargement may be authorized only by means of a special use permit or by means of both a variance and a special use permit.

The applicant currently operates a not-for-profit out of the first floor of the structure. The applicant is proposing to locate Phoenix Radio, Inc. in the space on the second floor. The space will accommodate a production studio and a broadcast studio. There will be a station manager, production director and engineer on site part time developing the stations which will operate from 6:00 am – 12:00 am. Automated broadcast will run through the night. A driveway is adjacent to the structure and a parking area in the rear which can accommodate up to three additional cars.