



Sag Harbor Express

Since 1859

Fun Time
Bay Street lays out a season of comedy. pg B1



Bees Take D
Bridgehampton wins county championship. pg 10



Drip Guitars
Instruments inspired by Pollock paintings. pg B3

sagharboronline.com

THURSDAY, FEBRUARY 21, 2013 VOLUME 154 NO. 33

ONE DOLLAR

SAG HARBOR

Harbor Heights Gets Slammed

Opposition attorney calls project too big for neighborhood

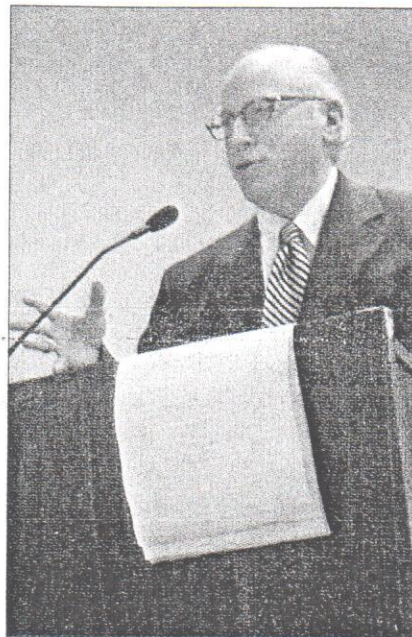
BY KATHRYN G. MENU

FORTWO YEARS, residents opposed to the expansion of the Harbor Heights Service Station in Sag Harbor have waited to have their say in front of the board that really holds the fate of this project in its hands - the Sag Harbor Village Zoning Board of Appeals.

On Tuesday night, at least part of the opposition got their chance to do just that.

Representing the not-for-profit Save Sag Harbor, East Hampton attorney Jeffrey Bragman spent the better part of an hour arguing that property owner John Leonard could in fact redevelop the Hampton Street property while largely complying with the village's zoning code. Bragman noted the number of variances the project needs alone should be a source of concern, and an indication what is proposed is simply too big for the property.

Leonard is proposing a 1,842 square-foot building, with a 972 square-foot convenience store within it. Several areas, where goods are not visible, including the bathroom, have not been counted towards the square-



JEFFREY BRAGMAN k menu photo

footage of the store.

The service station building will also be expanded slightly. Four pump islands with eight fueling positions is proposed under a canopy, as are two new curb cuts into the property, 32 parking spaces and new landscaping.

Leonard needs eight variances from the ZBA, including for the height of

continued on page 4

Debate gas station

continued from page 1

the canopy, for setbacks for the building as well as the fuel pumps, for landscape buffers and for the size of the convenience store. In two sections of the village code, it is specifically noted that convenience stores should be limited to 600 square-feet.

Bragman argued that instead of 972 square-feet, which is what Leonard's attorney and engineer have argued would be what they would consider display sales space within the 1,842 square-foot building, he believes the board should be looking at the full gross square footage.

"It is also fairly obvious installing two more pumps on the site amounts to a physical extension of the use," said Bragman, adding he has case law that would back up that argument. The pumps are being expanded, moved to a different location on the property, put on a platform under an almost 24-foot tall canopy in what he described as an area that would be 2,700 square-feet in space.

"That is quite a sizeable expansion and it certainly doesn't make any common sense that a non-conforming gas station would be able to plunk down however many pumps they wanted to," said Bragman.

"And it is bigger than the front building they want to build," he added of the canopy, arguing as an expansion of use he believes the ZBA should demand a use variance — a variance that would change the permitted use on the property that Leonard would not likely earn from the ZBA.

Reminding the board the ZBA is required to only grant the minimum variance needed in a case, Bragman illustrated what he believes Leonard can do on the property without variances.

In the illustration, the canopy is removed as Bragman's position is it should require a use variance, and instead of four pumps with eight fueling stations, the station operates two pumps with four fueling stations — as it does now. The convenience store is also scaled back to 800 square-feet, with 600 square-feet dedicated to the sales area and 200 square-feet dedicated to the register aisle.

The existing Sag Harbor Service Station building remains the same size at 1,242 square-feet.

The project meets parking demands based on the new size of the store with 26 parking spaces, where 21 are required, according to Bragman's drawing, meets the 50-foot front yard setback to Hampton Street, also known as Route 114 and meets all landscape buffer requirements.

"The reason I am showing you this plan is to show you it is possible to build a good size gas station and complying convenience store and comply with everything," he said.

In a third exhibit, Bragman questioned the need for the additional 1,242 square-footage in the 1,842 square-foot store, particularly given there is a full basement planned as a part of the project.

"What he is doing is stripping out of this plan every zoning protection designed to protect the community and the neighbors," said Bragman, pointing to the reduced buffers and amount of vegetation required for the re-development of the property.

"The stakes are very small for this applicant," said Bragman looking at the square footage lost if Leonard's store was required to comply with the village code, "but the stakes for the community are very large."

Instead of looking at the zoning requirements and trying to make a plan fit within village code, Bragman said, this project was designed first with what was desired in terms of the size

of buildings, the canopy and the circulation needed for deliveries of fuel and gas station traffic, and then tried to work in what was possible in terms of buffers and setbacks.

"The real issue is not a circulation problem, it is not an existing building problem and it is not really a parking problem," said Bragman. "You know what the problem is — it is a too-big-of-a-building problem."

Bragman noted once a 1,842 square-foot building is plunked down on that property, it does become impossible to comply with the code.

"And they don't have any vested right to do that, especially if they are tearing this building down and moving it," he said. "That's why I call this a 'have your cake and eat it too' project. It defies planning."

Looking at the existing station, Bragman noted it is typical of a country gas station with just two pumps, no canopy, similar to a number of East End country gas stations. The expansion of the property to this extent changes that into something more similar to the Hess station in Wain-scott, he argued.

"This big of a canopy is inappropriate in this setting," said Bragman. "I know [Route] 114 is busy, but this is not Montauk Highway."

"One of the standards you use is asking yourself if this produces an undesirable change, and I would say, emphatically, in this case it does," he continued.

Looking at country gas stations locally, Bragman noted fire suppression devices are often visible and not as unattractive as they would be painted out to be. It's startling, he added, to think the village would want a huge canopy, simply to cover up a fire suppression system visible at other small gas stations around the East End, and not a visual blight.

"This is how you protect the neighborhood. That is how you prevent unwarranted, undesirable change, and all you have to do to protect the values that make Sag Harbor special is just to follow the law," said Bragman. "And if you do you will see the station shrink to its appropriate size."

Variances are not granted for the convenience of an applicant, he added. The need to make more money with a larger store should not outweigh the burden being placed on the community, said Bragman.

"There is a landmark church hard up against the west side of this property," he said.

Bragman also struggled with the notion that the trustees did not have a clear idea of what 600-square-feet meant when it wrote the zoning code to allow for convenience stores as accessory to a gas station. They did not, argued Bragman, use the same retail sales area formula used by Leonard's engineer.

"It is not persuasive to think of village board members discussing the size of a convenience store getting into an arcane discussion about how much shelving you need for your bags of Fritos," he said.

Otherwise, said Bragman, someone could build an enormous store, with few shelves, and argue it still conformed to 600 square-feet of display retail sales area.

"Who is going to be able to walk into a larger than 600 square-foot store and figure out if the guy slipped in another shelf," he said. "It is designed to create a loop hole or exception that will swallow the rule."

The ZBA will meet in work session on Thursday, February 22 at 2 p.m. for a public meeting about the Harbor Heights application, however, only members of the board will be permitted to speak. The public will be able to speak again about the Harbor Heights application at the board's March 19 at 6:30 p.m.