

REGULAR MEETING

Salute to Flag: 8:04 P.M.

OPENING STATEMENT:

This is the Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Herald News and the Suburban Trends on March 14, 2012 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk

ROLL CALL: Chairman Jack Dunning, Vice Chairman William Grygus, Members Frank Covelli, Joseph D'Alessio, Peter Hoffman, Michael Levine, Attorney Ronald Mondello and Engineer Christopher Nash.

MEMBERS ABSENT: Members Donald Ludwig and Jaime Landis

Application #ZBA-2012-01 – Quick Chek, 382 Ringwood Avenue, Block 209 Lot 3
Bulk Area Variances

Mary Elizabeth Warner, Attorney for the Applicant, Quick Chek Corporation
3 Old Highway 28, Whitehouse Station, New Jersey 08889

This evening we are before the Board because we are looking for variances in order to install the channeled signage that represents the re-branding of Quick Chek which was started about four years ago. The proposed channeled lighting has raised the issue of whether or not it is considered back lit as well as there are two letters that are negligibly larger than what is permitted per Ordinance.

Attorney Mondello has reviewed the Hearing Notice served on property owners within 200 feet, Affidavit of Service and Notice for Publication, and deems the Application complete.

Attorney Mondello swore in the Applicant's Engineer, Derek Jordan of Bohler Engineering, 35 Technology Drive, Warren, New Jersey
I have a Bachelor of Science in Civil Engineering from Ohio Northern University. I have been practicing civil engineering for almost ten years; the last eight with Bohler Engineering. I am a Licensed Professional Engineer in New Jersey. I have appeared before boards in New Jersey in the towns of Warren, Toms River, Bayonne, Washington. The Board accepts you as an expert in engineering.

Testimony of Engineer Derek Jordan

Exhibit A-2 – Enlarged Plan (Smaller version previously given to Board for review)

We are here to obtain approval for the channel letter signs that are going on the Quick Chek. As the detail indicates, it is not a box sign, but a channel letter sign with individual letters, which are internally illuminated.

There are two letters that are larger than the 15” that is permitted by Ordinance. The first letter is the “Q”. The O part of it has an opening of 15”, but with the tail part of the letter it goes to approximately 16”. In addition, the individual logo of the “Q with the Leaf” is approximately 25” in total height from the end of the leaf to the top of the Q.

With regard to the freestanding sign, this is a conforming sign. The blank panel part of the sign has already been removed so we have the proper clearance. Before coming today, I confirmed the height of the sign, which is just under 15’ high from the top of the sign to the ground.

Engineer Nash questioned that the other dimension we were looking for is from the ground to the underside of the sign. Engineer Jordan did not measure that specifically, but it is more than ten feet.

Member Levine asked if there were any structural changes to the supports. Engineer Jordan answered, “No, it is exactly the same”. The top panel was just removed and a new panel of the same size was installed.

Chairman Dunning asked if the bottom panel was being left there? Engineer Jordan stated it was already removed. There is no plan to replace that.

What is the banner you have there now on the bottom of the pole (not in the picture)?

Engineer Jordan said nothing; it is pole straight up to the bottom of the Quick Chek sign.

Chairman Dunning stated there is signage below that sign right now. I just looked at it.

There is a mounting bracket hanging down maybe three feet with a piece of some kind of material hanging below the Quick Chek, which would change the square footage of the sign. Engineer Jordan stated he did not see that and would have to go back to the site to take a look. Attorney Warner stated that they would be glad to remove it.

Engineer Jordan stated that the square footage is conforming. You are permitted 50 square feet and this is a 35 square foot sign. Even with the banner, it would be conforming.

Engineer Nash stated that you are not allowed to have anything below 10’.

Engineer Jordan stated that the mounting bracket and banner will be removed.

Chairman Dunning questioned whether they were going to landscape the area at the bottom of the sign? Engineer Jordan stated no because of the amount of space on either side is a parking stall, there really is not enough width there to plant anything that would stay or survive with parking spaces so close. I think you have may have 1-1/2 – 2 feet maximum and typically to put in a landscaping bed you want a minimum of 3 – 5 feet and that amount of area is not presently available around that sign.

Attorney Mondello questioned who is going to address why you are seeking a variance? There are some legal requirements and the Board has to hear some testimony as to why

you want to do this and whether or not the positive aspects of granting this variance exceed the negative aspects.

Engineer Jordan stated that the variances are all for the channel letter signs that are proposed on the building. One is the internal illumination, if you consider that backlit or not, and the other one is the height of the letters. As Attorney Warner said this is part of Quick Chek's new branding which was started several years ago and they are going through and catching up on their existing stores.

Attorney Mondello questioned whether you cannot have this size and be in conformance with the branding. You couldn't shrink the letters and it wouldn't equal what the branding is. It is this particular height and this particular size. Engineer Jordan answered, "correct". In addition, looking through the neighborhood tonight, going up and down the main street here, there are several other signs in the area that are similar to this, including the restaurant across the street has the red channel letters similar to ours and internally illuminated. I don't know the exact height of those, but they did appear to be about two feet. Quick Chek's building is set back off the street so there is no issue with glare or impacting motorists on the street. I don't really see any major negative impacts to the community or any of the other businesses or residents surrounding the property. It is a branding issue.

Vice Chairman Grygus questioned are the height of the letters and the Q on the building and the sign identical in size? Engineer Jordan answered they are dimensioned as per the plan. 15" height for the majority of the letters with the exception of the two Qs, which exceed that.

Vice Chairman Grygus questioned what you are proposing on the building, is it identical to your new pylon sign? Engineer Jordan stated no. The letters on the pylon are smaller than what is proposed on the channel letters sign.

Chairman Dunning questioned if there was any way you could put this lettering on the building without using a backlit type of lighting? Engineer Jordan said "no". These are internally illuminated; it is not like there is a light behind it that shines onto it or over it. There is no other way to mount a light or to light it any other way. In fact, even if you tried to do something, it would probably be more intensive to try to put a light on the ground or somewhere on the building and shine to it, as opposed to just an internally lit sign.

Chairman Dunning advised that our Ordinance encourages exterior lighting on those letters.

Engineer Nash, referencing item no. 5 in his letter, raised the question that there is a difference in the lighting of the channel letters versus the pole sign. The pole sign is backlit, basically a piece of plastic with a light bulb behind it. The channel letters are l.e.d.s. behind each letter. You could argue it both ways, but it is for the Board to interpret. Chairman Dunning stated that the intent of the Mayor & Council's Ordinance was they did not want any type of backlit lettering. What you see on the Avenue, pre-dates this newer Ordinance, with the exception of the businesses we gave variances to, i.e. the CVS, Gulf Gas Station. Also, does Quick Chek intend to put up window type signs? The Ordinance also prohibits that. No neon-type signs, even though there are some in the

Borough, technically they violate the Ordinance. This includes any “open” signs, advertising banner for certain brands or sales and lottery signs.

Attorney Mondello stated that this would be a reasonable condition. You are coming here asking for a variance. As you can see, the Board is not in favor of the neon signs and the various other signs.

Chairman Dunning stated that they have had issues with window signage, especially CVS. The Building Inspector will tell them to take it down; they take it down for two months and then put it back up. They originally said they were not going to do it at a Board Hearing a few years back.

Attorney Warner will gladly make this a condition of approval. I know for a fact our corporate policy has been to move away from that because it does clutter the appearance and we are really trying to make ourselves a very clean, crisp operation with the new branding. If you approve our application, I will make sure those signs do not go up.

Attorney Mondello advised that the Resolution would state that they are prohibited from putting up neon signs and other paper signs and advertisements of products.

Vice Chairman Grygus stated that, from time-to-time at this location, freestanding advertising signs (cigarette ads, etc.) have also been an issue popping up in the dirt area. These should be temporary, but wind up being long-term. Temporary signage is really only limited typically to grand openings.

Chairman Dunning questioned Attorney Warner if she had a copy of the County’s letter on this application? Yes, I do. We are scheduled to appear before them tomorrow evening (June 7th).

Attorney Mondello stated that, if the Board grants the application, the Resolution will contain a provision that Quick Chek will not only comply with County requirements, but also State requirements, etc.

Member Covelli, referenced the first paragraph on page 2 of the County’s letter, “...the applicants are strongly urged to have the landscaping for the front of this property restored and maintained. The addition of some trees would also greatly improve the look of the site.” Counselor, what do you have in mind? Attorney Warner would love to do more with that site. I have personally been involved with negotiating with Mr. Scangarella and Mrs. Mangini in trying to get a more pro-typical site there, but because of certain stances that they have taken, we have been unable to expand the site as we would deem most optimal for the town as well as us. There are significant constraints at the site. I am not even sure where we could put landscaping.

Member Covelli stated this has been a sore spot in the borough. You have frontage where inside the sidewalk, with the parking area, there are only river rocks there. There is no landscaping there and it tends to provide a very harsh frontage.

Chairman Dunning advised that the existing site plan shows shrubs. The problem is all of that is gone. Years ago, they were there. What happens is nobody maintains them, they get a little too big and then they are removed.

Attorney Mondello stated he would have to review the prior Resolution. If that Resolution said that this site is to be developed as per the site plan dated and revised through, that is what this site should look like.

Engineer Jordan agreed and if these shrubs, which were approved, aren't there anymore would have to be replaced. We would certainly agree to replant these per the original design.

Attorney Warner stated she would personally ask that the Resolution read that way. Attorney Mondello agreed and we will try and track down the prior Resolution and incorporate the same.

Chairman Dunning questioned if there were any protective pipe guards around the pylon sign? I think they are gone and, I would recommend they be put back on to protect the sign.

Chairman Dunning also mentioned that the site will benefit from the work on Ringwood Avenue. They are re-curbng and repaving Ringwood Avenue. This work may enhance the front of this property wherein you could dress it up.

Vice Chairman Grygus questioned the County requesting planting of "trees". Trees can be problematic because of sight line issues. Engineer Jordan stated they would put the shrubs back since they are low lying and you can see over them.

Member Covelli questioned if Quick Chek had a landscape plan for this property?

Engineer Jordan stated that the majority of the work and the focus was on the building and internal to the building. We would do whatever the prior Resolutions required.

Chairman Dunning stated there is also an issue with the exit and entrance signage because people pull in the wrong driveway. The signs get twisted. There has been very poor maintenance on the property.

Vice Chairman Grygus also notes that the tractor-trailer driver backs in the exit. I don't even know how he gets in there with the truck.

Chairman Dunning also stated there is not enough parking and there are issues getting the tractor trailer backed into the property. Deliveries are usually made during the morning rush hour, between 8 and 8:30am.

Attorney Mondello mentioned that for safety issues deliveries should not be made during rush hours, i.e., 9am or 5pm.

Chairman Dunning stated there have been problems with the site and now we have a chance to address the issues with you. Quick Chek has been here for many years and has been a good tenant for the town. You are expanding the store, making a modern Quick Chek to match your other sites, and the inside is going to look great, but this Board is a little concerned about the outside. Member Covelli added and there needs to be a commitment to maintain the outside because there hasn't been evidence of that in the past. Attorney Warner stated she will address this at a corporate level. In all sincerity, one of the things we found was that as we began to grow there wasn't a conscientious effort to keep up with the conditions of each approval. I have been with the Quick Chek team for five years and one of the things I have instituted is that we now have a "cheat sheet" in every store that spells out all the conditions of our approval, and the store manager has to maintain this because they can shut us down. There are no excuses; clearly, you are not impressed with the level of maintenance, which is honestly one of our corporate commitments.

Vice Chairman Grygus believes what the Board is saying, isn't necessarily a part of this application, but the history of this site is outside garbage containers constantly overflowing,

the whole gravel area where the shrubs are dead would be full of garbage, just a lack of general maintenance of the site. Unlike the stores you have in Franklin and Hackettstown, which are spotless.

Member Covelli also addressed that this is even a more sensitive situation because your neighbor is a cemetery. The litter is found within the cemetery and that cemetery has a lot of history and veterans buried there. A lot of veterans get very angry and upset with Quick Chek. In fact, that jersey barrier that is north of your property was put in by veterans because of their disgust and frustration with Quick Chek and the amount of trash that was blowing into the cemetery. This really has nothing to do with this approval, but it is a sore spot with the community.

Attorney Warner stated this message has been received loud and clear and corporate will be advised. Legally, there are several things we can capture in any Resolution that comes out of this hearing, but even if we were to be denied, I have heard you. We want to be good neighbors and we are proud of our brand and we don't want a community to look at us with distain and this is a good time to "clean up our act".

Attorney Mondello stated they are coming before the Board for a variance and the very nature of the variance means that anything is really on board and everything that has been discussed are all reasonable conditions.

Is indoor/outdoor seating being proposed? No

Attorney Mondello reviewed the reasonable conditions:

1. Removing the banner on the pylon sign.
2. Agreement to no neon signs or paper signs in any of the windows.
3. Agreement to comply with the prior 1985 Resolution wherein Quick Chek will conform to that site plan, specifically the landscaping that is depicted and more importantly, you are going to maintain that landscape.
4. Exit and Entrance Signs must be maintained/restored.
5. Deliveries to the store should be limited to non-peak hours especially, since this is a 24 hour operation.
6. General cleaning and maintenance should be conducted on a routine basis in order to keep the site clean and esthetically pleasing.
7. New pipe guards installed on pylon sign.

Discussions were held with regard to the variances requested and required and picking "safe numbers" for the two "Q"s in the back lit sign and logo.

L.E.D. lights are being used in the back lit letters and it is the applicant's opinion that this type of lighting produces less glare and they use a lot less energy and last longer than a normal lighting system. In terms of lighting, l.e.d. is the future.

Chairman Dunning: Does anyone in the public have any questions or statements on this application? Seeing and hearing none, we close the public portion.

Attorney Warner summarized that a compelling case has been presented that the positive aspects of this application outweigh the negative and that we would like to continue to be a good neighbor in this community and will gladly follow-up with housekeeping issues discussed as well. I respectfully request a positive vote. Thank you.

MOTION BY MEMBER COVELLI TO APPROVE QUICK CHEK APPLICATION CONDITIONED UPON THE FOLLOWING: WITH RESPECT TO THE WALL MOUNTED SIGN, THE HEIGHT OF THE LETTER SHALL BE GRANTED AT UP TO 26 INCHES; WITH RESPECT TO THE POLE MOUNTED SIGN, EXTRANEIOUS FIXTURES ON POLE TO BE REMOVED AND BALLARDS INSTALLED PER 1985 SITE PLAN APPROVAL; WITH RESPECT TO COMPLIANCE WITH ALL CONDITIONS AND REQUIREMENTS OF THE 1985 SITE PLAN AND SUBSEQUENT AMENDMENTS THEREOF AND APPROVAL AND CONDITIONED UPON THE PERMITS AND APPLICATION; COMPLIANCE AND CONFORMANCE WITH PROVISIONS OF PASSAIC COUNTY AND THE REQUIREMENTS OF THE STATE OF NEW JERSEY AS APPLICABLE; AND IT HAS BEEN REPRESENTED TO THIS BOARD AND TO THIS COMMUNITY THAT MAINTAINENCE OF THE SITE APPEARANCE WILL BE MAINTAINED TO ENSURE PROPER CURB APPEAL

ADDITION TO MOTION BY VICE CHAIRMAN GRYGUS: THERE IS A SECOND VARIANCE REQUIRED FOR L.E.D. BACKLIT FOR THE BUILDING MOUNTED SIGNS; A THIRD VARIANCE REQUIRED TO WAIVE THE LANDSCAPE REQUIREMENT FOR A POLE MOUNTED SIGN; AND A FOURTH VARIANCE FOR THE "Q" CHARACTER IN QUICK CHEK TO BE 18 INCHES

MOTION TO APPROVE APPLICATION: made by Member Covelli, seconded by Vice Chairman. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, D'Alessio, Hoffman and Levine. Motion Carried.

PUBLIC DISCUSSION: None/Closed - Let the record show there is no one present.

RESOLUTIONS: Application No. ZBA-2011-09, Theresa Kressaty, 3 Third Avenue, Haskell, Block 435/Lots 13 & 14 for bulk and/or dimensional variances to add an attached single car garage to a single family house located in the Business Zone
MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY: made by Member D'Alessio, seconded by Member Levine. Voting yes were Chairman Dunning, Members D'Alessio, Hoffman and Levine. Motion Carried.

CORRESPONDENCE: None

VOUCHERS: submitted by Boswell Engineering on the Kressaty Application in the amount of \$352; and another for the Quick Chek Application in the amount of \$440 for a total of \$792.

MOTION TO APPROVE: made by Member Covelli, seconded by Vice Chairman Grygus. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, D'Alessio, Hoffman and Levine.

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at tonight's meeting in the amount of \$300; and for File Review and Resolution Preparation on the Kressaty Application for \$600 for a total invoice of \$900.

MOTION TO APPROVE: made by Member Levine, seconded by Member Hoffman. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members D'Alessio, Hoffman and Levine. Member Covelli abstained.

MOTION TO APPROVE MAY 2, 2012 MINUTES: (with change to page 4, paragraph 2, line 28, sentence should read: "I had the property surveyed when I bought it." (not "brought" it): made by Vice Chairman Grygus, seconded by Member D'Alessio. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members D'Alessio, Hoffman, and Levine. Member Covelli not qualified.

ENGINEER'S REPORT: Nothing to report.

DISCUSSION: Exxon Gas Station – Member Covelli referred to the Minutes from the last meeting that the County is still looking for money on this application. What about the time constraint on our approval since nothing has been done? Attorney Mondello researched the matter and, per the Permit Extension Act, they have until December 31, 2014.

207 Ringwood Avenue - Chairman Dunning questioned Attorney Mondello that rumor has it that the new liquor store in town, Buy Rite Liquors, is going to come in for a sign variance. What we just did tonight with Quick Chek is to the Borough's benefit. This Board has some real issues with this property and with the site plan that was approved about 15 years ago that was never finished. Since the liquor store operator does not own the building, he is going to come in with a consent from the building owner, so we can't badger the liquor store operator because he has no control over the building, but what power does the Board have to bring in the owner at the same time to address the issues? There is a new building owner and a new owner of the business since the approval was granted.

Attorney Mondello stated you don't. The Building Department has to do the enforcement. The Board doesn't enforce. Based on tonight's application, you did reasonable conditions this evening. Those were all very reasonable requests and a judge wouldn't overturn any

of those conditions, but you cannot impose those conditions on the owner if he is not the applicant.

Vice Chairman Grygus questioned that this wouldn't be part of completeness; that there is outstanding open issues from a prior approval? Attorney Mondello stated that is a different angle on this. I would have to see the old Resolution to see exactly what you are talking about. This is why when the prior guy came in, and you asked him for a.b.c.d., and if you recorded that, then any new owner is on notice that he has to do all of these other things. It is also a reasonable request to ask an applicant to record a Resolution if you think there is going to be a problem. I may recommend that Quick Check's Resolution be recorded so that if the present owner of the franchise sells to another owner, the new owner will know all the requirements to maintain the premises.

Chairman Dunning stated that in our Resolution we talked about certain signage limitations on the building because the front of the building faces the parking lot, not the street. We had a long discussion about how he was going to put signage over the store spaces and I believe we had some limitations on the square footage and the canopy design, that was never built, affected the signage in the back. The pylon sign is also a question. What we approved was never straighten out because it was in the wrong location. There are a lot of issues that were never finished. To my knowledge there have been three owners of the property since we approved it initially.

Attorney Mondello stated that if not all of the approvals were done, a c.o. should never have been issued and any new owners would not be able to get a c.o. unless the list of things that need to be done are done and you escrow funds to fix the problem to get a c.o.

Chairman Dunning stated that Jeff has to issue a c.o. for the occupancy of the building as long as the unfinished improvements don't create a public safety issue. He had to give the owner a c.o.

Attorney Mondello stated that since Quick Chek has been a problem, and if you think there may be a problem in the future, we could require them to record the Resolution, which could cost about \$600. It is expensive but I may be able to do an abbreviated version for recording purposes so that when a new owner has a title search performed, this will show up and they will see the requirements that run with the land.

Vice Chairman Grygus questioned that since Quick Chek is a tenant only and does not own the building or property, how does the owner of the building get this information?

Attorney Mondello stated the owner has consented to this application and they have consented to the relief that was sought, so along with that, they have consented to this being of record. How the owner finds out about it is a good question. You would hope that the tenant would give him a copy of the Resolution.

The Board will add as a condition that whenever a tenant in a commercial property gets an approval, that we will endeavor to send a copy of the Resolution to the owner. Attorney Mondello usually determines if it should be recorded.

Member Covelli questioned that if a tenant files an application, but the owner has not paid his taxes – Attorney Mondello stated you still have to hear the application. I make it a

condition that you won't get the c.o./final approval until you paid those taxes, but you have to hear the application. Chairman Dunning stated we have not heard applications in the past when taxes were due. It is part of our application packet that the taxes have to be paid current. Attorney Mondello advised you have to hear the application, but you could have a condition that the c.o. cannot be issued until all taxes have been paid.

Vice Chairman Grygus will not be available for any July meeting and the August 1st meeting.

MOTION TO ADJOURN: at 9:20 P.M. made by Member Covelli, seconded by Chairman Dunning. Motion carried by a voice vote.

**Jennifer A. Fiorito
Board of Adjustment Secretary**