

MINUTES OF THE REGULAR MEETING
FEBRUARY 25, 2008

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Kristen Shaheen, Steve Welty, John Montrose, Fred Kiehm , and Tim Tallman. Board Member absent: Bob Schulman. Also in attendance were Councilman David Reynolds, Councilwoman Christine Krupa, Codes Enforcement Officer Joseph Booth, Asst. Codes Enforcement Officer Tom Rowlands, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He also mentioned that one Board Member was absent and it was up to the applicants if they wanted to proceed.

The application of **Mr. Dan Whitaker/Mr. Craig Pritchard, 8145 Seneca Turnpike, Clinton, New York (Town of New Hartford)**. Mr. Pritchard would like to erect a 6' high fence around property at 8145 Seneca Turnpike (corner of Seneca Turnpike & Concord Boulevard), which will be a new business known as Picture Perfect Pools (formerly a gas station/convenience store). Town of New Hartford Code 118-590 only allows for a 4' high fence to be constructed in any front yard. Therefore, the applicant is seeking a 2' height Area Variance. Tax Map #328.005-2-34; Lot Size: 150' x 136'; Zoning: Planned Highway Business. Legal Notice was published in the Observer Dispatch on February 15, 2008 and residents within 500' were notified. Mr. Pritchard appeared before the Board.

Mr. Pritchard referred to the sketch of the lot and the location of the proposed chain link fence. He would like this fence (which also has a sliding gate) for safety and security reasons. An above ground pool will be on display between the house and the east side of the building, and five (5) gallon liquid chlorine plastic containers will be stored outside like he did at the former Rec Pools. He also stated that this site meets OSHA requirements. The gas tanks that were once there are gone. He does not have any vehicles that would be stored outside.

Reference was made to the building behind his property, but he stated it does not belong to this property. Board Member Montrose suggested another alternative for the placement of this fence, but Mr. Pritchard said he has to be able to get his equipment through the fence. Discussion ensued between Board Members regarding the repositioning of this fence along Concord Boulevard. Chairman Bogar asked how far is it from where the proposed fence is to Route 5 – Mr. Pritchard was not sure. Board Member Tallman has concerns with the left side of the property (Concord Boulevard).

Board Member Shaheen asked Mr. Pritchard if he would be willing to relocate the proposed fence on the Concord Boulevard side – Mr. Pritchard said he would be willing to accommodate this Board.

Chairman Bogar asked Codes Enforcement Officer Booth if he had a problem with the repositioning/angling of the fence along Concord Boulevard – Mr. Booth said no.

Hours of operation are M-F 10:00 AM – 6 PM; Saturday 10 AM – 5 PM; Sunday 10 AM – 2 PM. He would like to stay open during the winter, but is not sure of the hours.

Chairman Bogar asked if there was anyone present to address this application:

-Mrs. Gladys Sylwar, 12 Concord Boulevard. She lives two (2) properties over from this site. She wanted to know who owns the property – Mr. Pritchard said it is owned by someone else and he has a three-year lease. Mrs. Slywar mentioned that there was a grandfather clause on this land and the only things that could go on that property is a gas station and mini-market. She wanted this Board aware of this, but she did not have any documentation.

Chairman Bogar asked the Codes Enforcement Officer if he knew of any restriction on this site. Mr. Booth stated she may be referring to a deed restriction and the Town does not enforce deed restrictions. The Town Zoning Law permits this type of use and he doesn't know of anything that would prevent this use at that location.

-Mr. Paul Way, 3 Concord Boulevard. He doesn't have a problem with this business but he is concerned about safety and parking. Chairman Bogar explained that this project is before the Planning Board for Site Plan Review and they address parking. The Zoning Board is reviewing the Area Variance for the fence. Mr. Way reviewed the map with a diagram of the possible relocation of the fence.

County 239 Planning Review and NYSDOT were received with no comments. There being no further input, the Public Hearing ended at 7:10 P.M.

The Board Members discussed the height of the proposed fence, relocation as it sets towards Concord Boulevard, safety factors, and other permitted uses.

The Board Members went through the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no;
- The requested variance is substantial – response: no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance–response: no.

Motion was made by Board Member Tim Tallman to approve this 2’ height Area Variance, and that the location of the fence be modified to be from the southern and western most “x” post to approximately 20’ on easterly side (the fence will run parallel with Concord Boulevard); seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member Steve Welty – yes	Board Member John Montrose – yes
Board Member Kristen Shaheen – yes	Board Member Fred Kiehm - yes

Motion was **approved** by a vote of 6 – 0.

The application of **Mr. Dong Min Chen** who is requesting to open a restaurant in the former Blockbuster Video building in the **Avenue /K-Mart Plaza** on property owned by **Goodrich New Hartford LLC at 4631-4645 Commercial Drive**. He would be changing the occupancy from mercantile to a restaurant. Chapter 118-51B of the Town of New Hartford Code requires one (1) parking space for every 50 square feet and one (1) parking space for each employee. This proposed restaurant requires 110 parking spaces. Mr. Chen is requesting an Area Variance for 83 parking spaces. Tax Map #328.008-1-3; Total Lot Size: 9.3 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on February 15, 2008 and residents within 500’ were notified. Mr. Dominick Pavia, Realtor, and Mr. Tony Chen appeared before the Board.

Mr. Pavia explained that this project is before the Planning Board for Site Plan Review. He referred to the sketch of the entire parking lot of K-Mart. He highlighted 101 parking spaces around the restaurant, in front of K-Mart and parking associated with Chuck E Cheese. He explained that employees would park away from the restaurant. Mr. Pavia explained that he feels parking is available because this project is in the K-Mart Plaza and vacant buildings exist there. The restaurant would be open for lunch and dinner, but feels

people would primarily have dinner. He understands parking Codes, but addressed peak hours of operation, square footage of the actual interior. He further explained that K-Mart has total control of this property and anything suggested or recommended would have to be approved by them, which could take months, if at all.

Discussion ensued regarding prospective businesses who may want to come to that plaza and the parking requirements needed. Chairman Bogar referred to the change in use from the former Eckerd's Pharmacy to what is there now, Chuck E Cheese and the change in parking requirements. He just wanted to make the Board Members aware of what happens with change.

Board Member Kiehm asked why they are here when this is all one property. Codes Enforcement Officer Booth said this application went through the Town Planner and the parking spaces were evaluated for the entire parking lot. When Chuck E Cheese came in that maximized the parking for a restaurant. Taking that into account, changing the use of this space necessitated the additional spaces because of the higher requirement for seating. If Chuck E Cheese stayed retail and not a restaurant, it would have had enough parking. He also referred to the former Discovery Zone that was located at the opposite end of the proposed restaurant, which was like a Chuck E Cheese type operation.

Mr. Pavia said there are 115 seats and 101 parking spaces and that is what confuses him about the Code. Codes Enforcement Officer Booth referred to the plan which shows 152 seats. Mr. Pavia said it was downsized to 115 and it is the second draft of the plan (the map on file still shows 152). Codes Enforcement Officer Booth also stated that there is an area by the garden center that doesn't get used for parking any more and it is almost adjacent to the restaurant, and could be used for parking.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:30 P.M.

Board Member Shaheen thanked Codes Enforcement Officer Booth for his input. She feels there is ample parking; feels the flexibility of needing that many parking spaces probably won't happen; that store has been vacant for a long time; and that it will be an asset for the community. Chairman Bogar still has concerns regarding other types of businesses coming to the site and availability of parking. He feels parking could be a problem and that the request is substantial. He is not opposed to business, but wanted to relay his thoughts. Codes Enforcement Officer Booth stated that anyone coming into that plaza would have to be evaluated for parking usage.

Board Member Montrose would like to see more lighting on site. People always cut thru this parking lot to get to the traffic light.

Mr. Pavia referred back to what he said earlier about K-Mart having to approve everything. A stop sign may not be enforceable, he just can't change the parking configuration. Mr. Pavia represents the landlord but if the Police Department would confirm there is no trouble and no traffic problems, then there isn't a problem. He can't speak further than this.

County 239 Planning Review and County DPW was received with no comments.

Board Member Tallman referred to the Orchards Plaza and the Marquee Theater, and the open parking that exists there. The Public Hearing was reopened again at 7:40 P.M. Board Member Tallman asked Codes Enforcement Officer Booth for his opinion. Mr. Booth concurs. The Public Hearing closed again at 7:45 P.M.

The Board Members went through the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: difference of opinion;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no;
- The requested variance is substantial – response: difference of opinion;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance–response: no.

Motion was made by Board Member Kristen Shaheen to approve this application as presented for the 83 parking spaces as she feels there is ample parking at this site and that the applicant has demonstrated a need; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – no
Board Member Steve Welty – yes
Board Member Kristen Shaheen – yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Fred Kiehm - no

Motion was **approved** by a vote of 4 – 2.

The application of **Mr. Don McHarris representing Mrs. C. Rupa Rao, Smithport Road, New Hartford, New York**. Mr. McHarris is requesting a Use Variance for the purpose of using the vacant property owned by Mrs. Rao on Smithport Road for a public storage facility within the existing barns. Zoning in this area is RA2 which does not allow for a public storage facility, therefore, the applicant is seeking a Use Variance. Tax Map #340.000-3-32; Lot Size: Total Acreage is approximately 69 Acres – land use for this application is approximately ½ Acre; Zoning: Residential/Agricultural 2. Legal Notice was published in the Observer Dispatch on February 15, 2008 and residents within 500' were notified. Mr. Don McHarris and Mr. George Massoud appeared before the Board.

Mr. McHarris stated that this is an Agricultural property with existing barns. They want to use the barns as storage, and which have been vacant for several years. Mr. McHarris presented pictures of the barns. It was stated that Mrs. Rao never used these barns for space until now. It used to be a hangar at one time also. There was an ostrich farm previously, then sheep, but now there is an organic farmer leasing the property. This farmer doesn't pay enough to meet the taxes. They have cleaned up the area, fixed the barns and would like to store, i.e., boats, RV's, motorcycles, cars – seasonal equipment. This would enable them to raise capital to fix the barns and help defray the cost of taxes.

Board Member Montrose asked if this is for season usage – Mr. McHarris said yes. Mr. McHarris said no one would have a key and could only enter by appointment by him. Mr. McHarris stated that if they had one tenant wanting to use this facility that would be to their liking but right now that doesn't exist. There will be no construction except for barn siding and fixing the roof.

This application is for the two (2) barns.

Board Member Shaheen asked if they were renting the property – Mr. McHarris said there is someone doing organic farming. Mr. Don Odin is an excavator and he keeps his equipment at this site, which is about 37 tractors. There is no outside storage. There is one bobcat stored outside now but that is farm equipment. Board Member Shaheen asked Mr. McHarris what his role is with this property – Mr. McHarris said he a friend of the owner and acts as property manager. She also asked how long Dr. Rao has owned this property – since 1997. Board Member Shaheen asked if there was any proposed signage – no. She further asked if there would be outside lighting – Mr. McHarris said there is none there now but they would like to do so for safety reasons.

Chairman Bogar and Board Member Tallman wanted the applicant to be aware that there will not be any outside storage at this site. Mr. McHarris said they cleaned up what was outside previously.

Board Member Montrose wanted a clarification regarding storage. Codes Enforcement Officer Booth stated that public storage is a legitimate use, but it is not permitted in a residential zone. Board Member Montrose asked what they wanted to do with the property in the future. Mr. McHarris said they just want to rent out the barns to generate enough income to fix the barns, clean the property and pay the taxes.

Mr. McHarris and Mr. Massoud were asked if a business will be run from there – the answer was no.

Chairman Bogar asked if the landscaper runs his business from there – the answer is no. He also asked if he had a key – the answer is yes. Chairman Bogar referred to the previous statement that no one would have a key. Mr. McHarris said the landscaper will probably have a key, but no one else. He also stated that if the landscaper shouldn't be there and it is a violation, then he would have to leave.

Board Member Kiehm asked about traffic impact. Mr. Massoud said he couldn't answer this, but if a farm was operational at this site, equipment would be going in and out every day.

Chairman Bogar asked if there was anyone present to address this application:

-Mrs. Sharon Schilling, 39 Smithport Road. She bought the house because of the beauty and character of the area with a dead end road and a farm nearby. She noticed traffic coming and going, and the landscaper doesn't just store things there – there are dump trucks up and down the road. There are boats, cars, and trucks. It was a nice quiet residential street, but now trucks are coming and going daily, especially in the summer. She also stated that farming was less intrusive than trucks going in and out.

-Mr. & Mrs. Schilling, 30 Smithport Road. They questioned why this variance is being sought now as they feel a business is already being run there. They feel that when something is zoned one thing and other things happen, it's not right. Mrs. Schilling also mentioned that unless people complain, no one knows what is happening.

Chairman Bogar stated that what is occurring there may be an issue because of the landscaper. Board Member Shaheen asked if they had a problem if twice a year, i.e., spring and fall, vehicles were taken out then stored, and that the landscaping business be eliminated? Mrs. Schilling said if that was presented they probably wouldn't even be here. The dump trucks are creating a problem.

Codes Enforcement Officer Booth stated that there is no policing a situation like this without residents notifying us and he welcomes their input. In this case, this property can't been seen from a public way.

-Mr. Mike Evans, 22 Smithport Road. He's lived there for many years. The idea of a non-agricultural, commercial enterprise is what distresses him. He has a problem believing what the applicants say when a business is already bring run from that property.

-Ms. Rena Letterman Gerard, 16 Sherman Lane. She has concerns regarding safety, especially with the storing of valuable property – it's like an invitation for someone to come to the site. Also of concern is lighting. The property sets up slightly from her property and it would be an eyesore. What about storing items that have gas residue and oil. She wonders what kind of damage could be done to wells in the area. The road is narrow, children ride their bikes and there are no sidewalks. Ms. Gerard referred to the existing pond that has frogs and geese and what kind of environmental impact this would have on them. Of further concern to her is whether the applicants will adhere to a possible condition regarding no outside storage and how it would be defined.

Chairman Bogar stated that a farm could be run there again with farm equipment and that equipment would need to be serviced. Also, liquid manure could be allowed to be spread on the farmland. It was stated that it wouldn't bother anyone because it is allowed.

Mrs. Gerard mentioned that she read the Comprehensive Plan of the Town of New Hartford which identified traffic issues at Higby and Tilden. She feels there is already a traffic problem that has been identified. Further, it addresses retaining residential and agricultural zones and it seems incumbent to the Zoning Board to reflect on this. She also referred to liability concerns as there are items on the property that are hazardous to people.

It was stated that people feel you can still get into the property even with a locked gate.

Discussion ensued regarding the noise that existed from the sheep when they were there.

-Ms. Leilani George, 26 Smithport Road. She has lived there since 1973. She has a disabled daughter – there are always people walking on the road. She is concerned about traffic and public safety as there is a bad turn with poor visibility. She liked it when it was a farm. Mr. Owens used to farm here and there were break-ins with his equipment at the site, and he had locks.

-Ms. Donna LaValle, 1915 Tilden Avenue. If the property were to be sold, would the zoning variance be permanent after that – the answer is yes. Once it is changed, it

stays with the property. She also mentioned how Sitrin Home keeps expanding in this area. Her concern also is that this variance stays with the property.

Board Member Welty stated that the Zoning Board could place restrictions on an application - any change in use would have to come back before this Board.

-Mr. Skip Mansur, 28 Smithport Road. He inquired about zoning and if someone else could seek a variance for storage – the answer was yes, but Board Member Shaheen stated that this Board is reviewing this application only tonight.

-Mr. Frank Vita, 2059 Tilden Avenue. He has concerns about this variance being granted and what it would do to property values. The area is peaceful and that's why people move there. Also, he feels there is a lot of traffic on Tilden Avenue.

Mr. Massoud addressed the Board stating that the owners of this property have been approached by certain farmers to be allowed to spread liquid manure. The owner hasn't entertained these requests because they don't want to bother the neighbors. If it was used as a farm again, there would be more traffic; further, farm equipment requires oil and gas also. They just want to use the existing barns to generate some revenue. Mr. Massoud said Smithport Road is a public road and they have every right to use it – he feels traffic doesn't have any bearing. Traffic would be there whether it is this application or not.

-Mr. Don Odin appeared before the Board. He has his equipment in this facility. He had approached the neighbors in the area and all he asked was what the neighbors might want; he would even put up no trespassing signs. If the landscaping company has to leave, then he would have to go. All they are asking for is to use the existing barns for storage. He has tried to work with the neighbors. He referred to when the sheep were there and they always got loose. Mr. Odin said he cleaned up the property so that the farmer could use it. It is his dump trucks that the neighbors were referring to (the noise at the beginning of the year was him), not the landscaper, and he'll reduce the speed if that is what people want. If people don't want the lights, there won't be any. Mr. Odin referred to what was being stored at this site. He would like to continue to work with people in a positive way and to get the barns to start generating some revenue. There are no plans to develop there. He also wanted the Board to know that the organic farmer can't use pesticides.

Mrs. Gerard asked Mr. Odin what his position is with this property. Mr. Odin said he does the maintenance of the property. Mr. Odin said he is employed but doesn't get paid.

Mrs. Gerard stated that she feels they are being misled. Mr. McHarris said he doesn't intend to sneak things by people; they just didn't realize they couldn't do what they are doing at the site.

At this time, Dr. Rao, the owner of the property, addressed the Board. He stated that he has tried to accommodate the neighbors. He spent a lot of money with the ostrich farm and lost it; and had to deal with issues with the Humane Society. He feels people use his property for their backyard. All he wants to do is generate enough money to pay the taxes and have this storage. He may have to go back into agricultural again or utilize other options. If that happens, he doesn't want people to complain about what is allowed. He has tried his best to get along with people.

Mr. Mansur said he doesn't have a problem with the storage facility, he would rather see that than other things, but it is the zoning issue that bothers him. Perhaps restrictions could be placed on it.

Mrs. Schilling addressed the Board again stating how this came to the Codes attention and trying to make contact with Dr. Rao.

Chairman Bogar asked if there were any different opinions on this application – there being no further input, the Public Hearing closed at 8:45 P.M.

Secretary Dory Shaw mentioned that there was a call from Mr. Lou Spiridigloizzi, 18 Sherman Lane who was not opposed to the storage but inquired about who enforces what is stored on site, and how not to add to the traffic situation.

Board Members Montrose & Welty don't have a problem with this request as long as the two (2) barns are used for storage of cars, boats, etc. (seasonal). They do not want any outside storage.

Board Member Montrose wanted to question the Codes Enforcement Officer as to how long this use has been going on if the ostrich farm has been gone for a few years. The Public Hearing was opened again at 8:50 P.M. Codes Enforcement Officer Booth said this was brought to his attention in November 2007. The Public Hearing closed again at 8:52 P.M.

Board Member Kiehm felt other uses can be utilized at this site that aren't offensive, i.e. horse farm/riding stable. He doesn't feel the revenue to be generated from this use would be that great.

Board Member Shaheen stated that she is familiar with this area. There have been trespassing problems, vandalism, kids on ATV's, etc. She feels Dr. Rao has made efforts to maintain it as Agricultural. She feels the change is very narrow with just two (2) barns. There are multiple farms throughout the area not being used as farms. The storage serves a purpose and it is seasonal. Also, she feels the landscaper has got to leave as it is not a permitted use; that Codes and the owner are aware of it and feels this use will cease. She feels the money generated from this storage will help with the taxes and it is still a very nice area. Board Member Shaheen feels Dr. Rao is doing the best he can with this property.

Board Member Tallman felt that there is no change in the use of the land, just the two (2) barns. He also feels it is low impact as long as the vehicles are inside the building – not outside, and it remains seasonal. He referred to the other types of uses that could go there. He feels the landscaper needs to move out.

Chairman Bogar stated he is not in favor of this application. He has reviewed the criteria and feels the applicant hasn't met what is required.

At this time, the Board Members reviewed the criteria necessary for the granting of a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: yes;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – response was no;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response was a difference of opinion;
- The alleged hardship has not been self-created – response was difference of opinion.

Motion was made by Board Member Steve Welty to approve this application for a Use Variance with the following conditions:

- 1) all vehicles stored inside at all times
- 2) no businesses on the property – any business there now has to be removed
- 3) people using this storage will not have keys; by appointment only
- 4) no outside storage for any commercial type purposes
- 5) no other buildings to be placed for storage; only the existing two (2) barns
- 6) no signs to be placed on property
- 7) no after hours access (daylight hours only)

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motion seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – no
Board Member Tim Tallman – yes
Board Member Steve Welty – yes

Board Member John Montrose – yes
Board Member Fred Kiehm – no
Board Member Kristen Shaheen - yes

Motion **passed** by a vote of 4 – 2.

The Board asked Dr. Rao if he could live with these conditions – Dr. Rao said yes.

There being no further business, the meeting adjourned at 9:20 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbS