

MINUTES OF THE REGULAR MEETING
MARCH 17, 2008

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Steve Welty, John Montrose, Fred Kiehm, Bob Schulman and Tim Tallman. Board Member absent: Kristen Shaheen. Also in attendance were Councilman David Reynolds, Councilwoman Christine Krupa; Codes Enforcement Officer Joseph Booth, 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 mentioned that one (1) Board Member is absent and gave the applicant the opportunity on whether to proceed.

The application of **Mr. John Feketa, 7998 Seneca Turnpike, Clinton, New York (Town of New Hartford)**, who is requesting a Use Variance for a home occupation in a Planned Highway Business zone. This zone does not allow for a home occupation, thus, necessitating a Use Variance request. Tax Map #327.000-7-14; Lot Size: 0.90 Acres; Zoning: Planned Highway Business. Legal Notice was published in the Observer Dispatch on Friday, March 7, 2008 and residents within 500' were notified. Mr. & Mrs. Feketa decided to go forward with their application.

Mr. & Mrs. Feketa appeared before the Board stating that they would like to operate a home occupation at their residence. This would be a showroom and mail order type operation for a new automatic hanging basket known as I Water Plant Nanny. Mr. Feketa said he invented this, it is patented, and it will be available throughout the country. This product should water plants ten (10) days to two (2) weeks or longer. He would like a 4' x 4' free standing, double-sided, unlit sign to place on the front of his property, and it won't be in the State right-of-way. He has his office in his home now, which is located in the garage, and this office has been there for over 40 years - it is approximately 10' x 12'. He said people will be coming to his home for a demonstration and to look at the product. Mr. Feketa explained that this would be like an internet service, email orders, etc.. There will be no outdoor displays and no storing of items in his house - shipments will be sent out of Syracuse or California. He is setting up distributors throughout the United States. He is working on other products, also, but that wouldn't happen for a few years.

Board Member Kiehm asked about parking. Mr. Feketa said he expects people to call for appointments; he has a big lot and doesn't see parking to be a problem as he is not storing any products at his house - one (1) for display only. He could fit about four (4) or five (5) parking spots at his house. Mr. Feketa feels that once people know about his product, they won't be coming to the house.

Codes Enforcement Officer Booth was asked about a temporary sign, one like what is used by a roadway – Mr. Booth said these signs are not allowed in the Town. Mr. Booth explained that it is up to this Board to condition the sign, if any at all. Mr. Feketa presented a sketch of the proposed sign. Chairman Bogar said that with a sign displayed, it may generate more people stopping at his house.

Discussion ensued regarding signage, hours of operation, permitted uses at this site, traffic and why Mr. Feketa needs to seek a Use Variance (home occupations are not listed as permitted uses in a Planned Highway Business zone). Question asked, if Mr. Feketa did not live there, could he have a business and sign according to what is allowed in this zone? Codes Enforcement Officer Booth said yes, but it would need Site Plan Review and it depends on the size and parking on the site.

Mr. Feketa mentioned the psychic who lives nearby, and who received a variance a couple of years ago.

Board Member Welty asked if this business could be placed somewhere else, i.e., Sangertown Mall. Mrs. Feketa said if they wanted to rent at Sangertown, it would be too costly. Mr. Feketa also stated that he may employ a couple of people in the future, but they would be family members only.

Chairman Bogar asked if there was anyone present to address this application – there was no response.

Secretary Dory Shaw stated she received a telephone call from John Cosgrove, Esq., who is Secretary and Legal Counsel to Kirkland Planning Board. He has no issues with this request and thinks it is a positive action for this site, especially for what is allowed under this zone.

There being no further input, the Public Hearing ended at 6:50 P.M.

Chairman Bogar asked Codes Enforcement Officer Booth how this use fits in with the Master Plan. Mr. Booth explained that the Master Plan didn't take into account residences existing in this Planned Highway Business zone. Technically, they are legal non-conforming uses. Any addition to those houses would be illegal. The Board has to take that into consideration.

Chairman Bogar asked what the outcome would be if this Board granted the variance and Mr. Feketa moved or sold the property. Mr. Booth stated it is critical that this Board look

at this variance for Mr. Feketa and place conditions on it. He hasn't heard any mention of displays of merchandise, limiting sales, exact hours of operation – things of that nature. He feels this Board needs to structure this variance in detail to Mr. Feketa's needs and something that is enforceable for him because if Mr. Feketa deviates from something, he wants to make sure there is a clear cut violation.

Board Member Kiehm asked to reopen the Public Hearing to Mr. Feketa at 6:52 PM. Mr. Kiehm asked Mr. Feketa if he had a problem with this Board conditioning employees to family employees only – Mr. Feketa said he did not object. The Public Hearing closed again at 6:55 P.M.

County 239 Planning Review was received with no comments; NYSDOT review was received with a comment that no sign be placed in the State right-of-way.

At this time, the Board Members went through 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: difference of opinion;
- 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 that this zone allows for much higher type uses and this request is for a lesser use – a residence in the middle of a business zone;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response was no;
- The alleged hardship has not been self-created – response was no.

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

- 1) Mr. Feketa will be allowed to have a freestanding 4' x 4' sign, double-sided, and unlit; height no higher than 8' from the ground up;
- 2) Sign cannot be in the State right-of-way;
- 3) Hours of operation to be normal working hours, i.e., 9 AM to 5 PM, Monday through Saturday only;
- 4) No retail sales other than the product itself, which is called the I Water Plant Nanny;
- 5) Business to be used for strictly office use only;
- 6) No expansion of the office to the rest of the home;
- 7) Any other use/application from this property other than Planned Highway Business must come back before the Zoning Board of Appeals;

- 8) No exterior product displays, except if Mr. Feketa wants to place one (1) product outside for a display;
- 9) No non-family employees to be working on site (family members only).

Motion seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes	Board Member John Montrose – yes
Board Member Tim Tallman – yes	Board Member Fred Kiehm – yes
Board Member Steve Welty – yes	Board Member Bob Schulman – yes

Motion passed by a vote of 6 – 0. Mr. Feketa was advised to contact the Codes Office for a Building Permit for the sign.

Board Member Montrose asked Councilman David Reynolds about the reopening of the Community Center Building on Kellogg Road. Mr. Reynolds stated that the building is due to reopen on May 1, 2008; the Town Board will evaluate and determine whether it will close again during the winter months.

Chairman Bogar explained that our February meeting lasted past 9:00 P.M., and the Library was closing. Someone had to wait until we were finished and let us out of the building. It was mentioned that this matter was discussed with the Library previously, and Secretary Dory Shaw would contact Mr. Kevin Kelly to address this further.

Codes Enforcement Officer Booth explained the panic hardware on the doors and how it affects the Codes.

Codes Enforcement Officer Booth referred to the proposed Zoning Advisory Committee and explained its purpose, i.e., proposed Sign regulations. Board Member Tim Tallman will represent the Zoning Board of Appeals.

There being no further business, the meeting adjourned at 7:20 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals
dbs