

**TOWN OF NEW HARTFORD
ZONING BOARD OF APPEALS MINUTES
DECEMBER 6, 2010**

Zoning Board of Appeals of the Town of New Hartford, Oneida County, New York, Public Hearing at the New Hartford Public Library, Monday, December 6 , 2010 6:00 P.M. Present Chairman Randy Bogar, Karen Stanislaus, Julius Fuks, Bob Schulman, Fred Kiehm, Town Attorney Herbert Cully and Code Enforcement Officer Joseph Booth. Pledge of Allegiance recited. Chairman Bogar alerted applicants that they were not a full Board tonight and to get approval applicants would need a minimum 4 affirmative votes.

The application of **Mr. J. Michael Johnson, 4480 Commercial Drive, New Hartford**, for a proposed free standing sign at Bikes & Boards. The applicant is located in a Retail Business 1 zone which requires a sign to be set back 20' from the side property line. He is seeking a 13' right side-yard setback Area Variance. Tax Map 328.011-1-14; Lot Size: 120' x 275'; Zoning: Retail Business 1.

Mr. Johnson addressed the Board and explained that due to the underground utilities, proximity to parking, and the state ROW this was the only feasible location for his new sign. Old sign would be removed and a new 128 sq. ft sign would be located as specified per plan. This is the same sign that was located in the front of the Hook, Line and Sinker restaurant. Code Officer Booth said Mr. Johnson took advantage of a code that allows the size of the sign to be doubled in size when advertising more than one business. All aspects of sign would meet code except for sideyard setback.

At this time, Board Members reviewed the file and went thru 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, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion made by Board Member Bob Schulman to approve; seconded by Board Member Fred Kiehm. All in favor. Motion **passed** unanimously by a vote of 5-0.

The application of **Mr. Brian Gaetano** for an **Interpretation** of a medical use vs. office at **106 Business Park Drive, New Hartford, New York (Smith Barney building)**. The applicant is seeking an Interpretation on whether or not the use for a proposed imaging center is an office or medical use. Property is zoned RB3 Office Business, which does not permit a medical use. Tax Map #317.000-2-8.8; Lot Size (total): 2.79 Acres; Zoning: RB3 Office Business.

Mr. Booth explained reasoning for Interpretation as follows: There are three definitions in town office, professional office, and medical building and use. The latter not being allowed in this zone. Due to changes in the medical field, procedures are routinely performed in most offices and professional offices, so basically the Ordinance has not kept up with the times. Brian Gaetano then stated that the current area surrounding this property is inundated with similar uses. In fact, there are Oral Surgeons located in the Merrill Lynch building located next to this building. Mr. Gaetano stated that there would be no overnight care in the office. Board Member Bob Schulman agreed that the surrounding area is very similar in use. The Board discussed this case. Motion was made by Board Member Fred Kiehm to approve and seconded by Board Member Bob Schulman. Vote taken 5-0 in favor of **allowing this medical use in this zone.**

The application of Mr. Thomas Bezak for **Mr. Frank Anechiarco, 22 Bolton Road, New Hartford, New York**. Mr. Anechiarco is proposing to add a second story onto his existing home for additional living space (the existing home is non-conforming). Therefore, the applicant is seeking a 5' right side-yard setback Area Variance and a 7' +/- left side-yard setback Area Variance. Tax Map #339.006-2-43; Lot Size: 60' x 140'; Zoning: Low Density Residential.

Mr. Anechiarco and Mr. Bezak presented their case. Growing family, only practical way to increase size of home, would fit character of neighborhood better. Most of the houses on this street are two family and they would not be doing anything different than what their neighbors already have done. Board had no opposition.

At this time, Board Members reviewed the file and went thru 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, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member Karen Stanislaus to approve the application as presented; seconded by Board Member Fred Kiehm. Vote taken and it **passed** unanimously 5-0.

The application of Mr. Robert Frazee of **Cazenovia Equipment, 8186 Seneca Turnpike, Clinton, New York (Town of New Hartford)**, who is seeking an Interpretation as he is proposing an expansion to an existing building in a Planned Highway Business zone. In 1999, his use was deemed retail. However, the use "machinery sales and service" exists within the Town of New Hartford Zoning Law and the current Codes Officer has deemed his use to be such, which is not permitted in a Planned Highway Business zone. Therefore, the applicant is seeking an Interpretation as to whether this is a retail use or machinery sales and service. Tax Map #328.000-2-24; Lot Size: 8.62 Acres; Zoning: Planned Highway Business.

Mr. Booth presented this to the Board as a use that was proved to be a retail use to his predecessor (Jerry Back) in 1999, however, a Machinery sales and service use does exist in the Town zoning but does not allow this use in this zone. Mr. Frazee again substantiated to the Board that his use was 60% pure retail, with an additional 30% of retail sales or usage from parts sales and only 10% storage. The building will meet all other code requirements. The storage area and repair areas will look much larger than the retail but this is due to the parts storage and size of the new equipment. The applicant was hoping that his employment would go from the current 5 employees to 13 -15 employees. Mr. Booth said for future reference that if this use is ever presented to him in this zone again, he would make the same initial determination - that this use is machinery sales and service and any new applicant would need to make an appeal to this Board for a Use Variance or Interpretation. Motion made by Board Member Kiehm and seconded by Board Member Schulman to allow expansion - vote taken 5-0 in **favor** in determining **this use to be a retail use which is permitted in this zone**.

Minutes prepared by Joseph Booth
Codes Enforcement Officer