

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
JANUARY 24, 2011**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present were Tim Tallman, John Montrose, Bob Schulman, Fred Kiehm, and Karen Stanislaus. Also in attendance was Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, and Dory Shaw, Recording Secretary. 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 the Board is absent a Board Member due to a vacancy. Minutes of December 6, 2010 were approved by Board Member John Montrose; seconded by Board Member Karen Stanislaus. (Board Member Tim Tallman abstained as he was not in attendance at that meeting). All others in favor.

Mrs. Christine Martin, **CEM Realty, LLC** is proposing a gift/grocery shop at **132 Oxford Road, New Hartford, New York**. (formerly known as Oxford Road Grocery). This property is zoned Low Density Residential which does not permit a gift/grocery shop. Therefore, the applicant is seeking a Use Variance. Tax Map #339.011-1-16; Lot Size: 120' x 217'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on January 14, 2011 and property owners within 500' were notified. Attorney Mark Levitt and Mrs. Christine Martin appeared before the Board.

Attorney Levitt explained that the application is actually for an art studio and gift shop . He circulated a colored rendering of what Mrs. Martin plans to do with the existing building/garage. She will update the exterior and use the garage as an art studio. He feels this would tie in with the surrounding neighborhood. It is not practical or economically feasible to convert this into a two-family home. The only way to get a reasonable return is a semi-commercial business downstairs and the apartment will remain upstairs. Mrs. Martin owns several properties and has kept them in all looking aesthetically pleasing. The proposed art studio will be hers with paint, brushes, and associated items relating to an art studio – somewhere also for artists to display their work. He refers to this as something like a home occupation allowed in a residential neighborhood. Attorney Levitt referred to the surrounding properties such as the NH Public Library, the Visiting Nurses building and Trainor & Associates located nearby.

Board Member Kiehm asked Mrs. Martin if she will live upstairs – Mrs. Martin said no, she will continue to rent it out.

Hours of operation were discussed and Mrs. Martin would like them to be 10 AM to 6 or 7 PM Monday thru Saturday. Some appointments.

Chairman Bogar referred to the application regarding the yellow grocery store. Mrs. Martin plans on keeping in with a yellow look as she feels it is a landmark. She also mentioned perhaps changing the porch.

Board Member Schulman asked about the sale of items, i.e., limited to art supplies – Mrs. Martin said yes and associated items; also, artists could paint and also sell their paintings.

Board Member Tallman referred to the rendering and wants to make sure the applicant adheres to what was submitted. Mrs. Martin said yes, and she wants to update the front porch, perhaps extend the awning and convert the garage to useable space (the existing porch comes out about 5' now). She will update the existing sign out front and won't exceed the square footage there. The sign is lit now and she wants to continue doing so – a much more attractive sign. She may have outside lights under the canopy. They would be on a timer as she doesn't want them to remain on all night long.

Board Member Stanislaus asked if she would be coffee being served. Mrs. Martin said she would like to offer tea or coffee and perhaps some pastries – but no baking on site – no alcohol. There will be no tables to sit – it will not be a coffee shop.

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

-Mr. Ed Waitr: It is his understanding that downstairs would be commercial and upstairs rental. He stated the existing deed has a restriction that it must be owner occupied. The deed prohibits that they have to live there.

Mrs. Martin said she would rent the upstairs out like is being done at this time – she would not live there. She stated it is not owner occupied now.

Town Attorney Cully said it is not a municipal requirement – it is a private restriction as it was placed by a prior owner. People could enforce it but it has nothing to do with the Town.

-Mr. Steve Carl, 128 Oxford Road. He has lived in this area for 18 years and is worried about commercial-type uses coming in little by little. The current property owners do not keep this property clean. Oxford Road is a busy road and he has concerns about single family homes staying that way,

Chairman Bogar explained that when applications are received by this Board, they try to go with the least obtrusive type business for this area. Restrictions can always be placed on an application.

-Mr. Peter Angelini, 3 Bromwich Road. He supports the application as Mrs. Martin has a good reputation and he feels the neighborhood would benefit.

-Mrs. Ellen Petell, 134 Oxford Road. Her property is adjacent to this application. She is concerned about hours of operation, the dilapidated signage, lighting, and whether this would be open on Sunday. She also stated that the property is not kept clean.

Mrs. Martin said if she was open on Sunday, it would be like people visiting a home. She assured Mrs. Petell that she won't see lights and traffic beyond 10:00 PM. She is sensitive to the neighbors' concerns. She has control of the exterior of the building and it will look nice. The sign

will be updated and made attractive; the name could be Studio 132 at the Yellow Store – nothing would say coffee shop or café.

Chairman Bogar asked if there were any calls or letters. Mrs. Shaw stated she did not receive any. However, Codes Officer Booth said he received an email on this regarding a deed restriction but that matter has been addressed.

Codes Officer Booth would like the Board to address the use now being an art shop; the expansion of the garage as it is an expansion of a non-conforming use. The porch would be an addition also. It would be an expansion to a non-conforming use again and would require a variance.

Town Attorney Cully referred to the expansion of a non-conforming use. He explained that this property will always be subject to a Use Variance and this Board has full control. We have to grant the expansion of the structure itself as we grant the Use Variance as it is an addition to a non-conforming use.

Board Member Tallman would like the applicant to adhere to the color enhanced photo of what the property would look like. He wants the Codes Officer to monitor this. Mrs. Martin stated she will keep the yellow exterior, but she may paint it or place siding; addition of brick.

There being no further input, the Public Hearing ended at 6:35 P.M.

At this time, Board Members reviewed the file and went thru the criteria necessary for the granting of an Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: they felt the applicant couldn't realize a reasonable return under the current conditions;
- 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: property is unique;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: this new application will improve the property;
- The alleged hardship has not been self-created – response: the property has been vacant for over a year.

Motion was made by Board Member Schulman to approve the application as presented with the following conditions:

- 1) Limited to an art studio with arts/crafts;
- 2) Hours of operation to be 10:00 AM to 7 PM Monday thru Saturday. Then appointments only on off hours;
- 3) Signage lighting would be off by close of business – lit only during business hours;
- 4) Low density interior only lights at awning;

- 5) Allow the expanding use of a non-conforming property with the expansion of the business through the garage and the porch. Size of the proposed porch will not exceed 8' in depth and the width of the principle structure;
- 6) Renovations to mirror the sketch presented or as close as possible;
- 7) No interior lit signage in the windows;
- 8) No neon signs on property;
- 9) Existing free standing signage not to exceed the existing sign;
- 10) Building Permit within one (1) year of approval date.

seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Bob Schulman – yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Karen Stanislaus - yes

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

There being no further business, the meeting adjourned at 7:00 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

dbS