

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
JANUARY 23, 2012**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Lenora Murad, Taras Tesak, John Montrose, and Karen Stanislaus. Board Member absent: Tim Tallman. Also in attendance was Town Attorney Herbert Cully, Codes 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 further explained that one (1) Board Member was absent and it was up to the applicant whether they wanted to proceed.

Chairman Bogar read a letter addressed to the Town thanking everyone involved for their support in the rebuilding of their home at 17 Bolton Road. This has been made a part of the file.

The amended application of **CEM Realty LLC, Mrs. Christine Martin**, who is seeking a Use Variance to expand a non-conforming use (former Oxford Road Grocery), **132 Oxford Road, New Hartford, New York**. Therefore, the request for a Use Variance. Mrs. Martin is amending her application which was addressed at the Zoning Board meeting of December 27, 2011. 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, 2012 and property owners within 500' were notified. Mrs. Christine Martin appeared before the Board.

Mrs. Martin presented a sketch of the proposed three-stall garage. One stall is for the upstairs tenant and the other two stalls would be for her personal use, i.e. motorcycle, cars, and any type of lawn maintenance equipment; as well as storage in the loft – they will not be used for any type of auto shop. They don't have any commercial business.

Chairman Bogar referred to the original application of the garage size, which was 38' x 24'; and one for 48' x 24'. He sees another figure of 48' x 44' on the application. Mrs. Martin said the correct new size is 48' x 44'. Board Member Montrose referred to the 18' x 42' addition – Mrs. Martin said – these are two different projects.

Board Member Tesak asked Mrs. Martin to explain from the very beginning to present. Mrs. Martin stated there are no changes to the existing Use Variance and the shop. She is asking to expand the square footage of the building with a garage. With the existing garage there is usable space for the shop on the first floor. Those requests are what the current application says.

The 44' x 48' garage expansion is to allow for a one stall garage for the tenant and the other space for her own personal use. She was told to come back to this Board with a rendering. Mrs. Martin feels this proposal isn't much bigger than what exists in the neighborhood. The lot size is 120' x 217' and she presented a copy of the tax map.

Board Member Montrose referred to the second floor loft and the driveway. Mrs. Martin said the loft is the whole length of the upstairs. This is for her personal storage – it will be heated. She also presented a photo location of the driveway.

Board Member Tesak complimented her on the work she has done on this site. He asked why she is building storage for her use as he feels this is a large request. Mrs. Martin said she bought the building/property and feels the property would support that much building space. She doesn't have enough storage space and they also need a garage for the tenant. Board Member Tesak asked if she was going to put in apartments – Mrs. Martin said she has no future plans for apartments unless the zoning changes.

Chairman Bogar reviewed the door sizes of the garage. Mrs. Martin was also asked about any dormers on the back of the roof – there are none – just in front. Chairman Bogar also asked where she was storing her items now - Mrs. Martin mentioned outside at the property now.

Mrs. Martin stated she has an advertising agency and she works somewhere else. She wanted an art gallery. That plan hasn't been put together yet. She got approval for the art studio. She wants to expand it back. Also, she would like a fixed roof rather than the awning. The side porch was the only one approved.

Board Member Tesak asked if there was any way she could reduce the size of the proposed garage. Mrs. Martin said this is ideally what works for her and if it looks big the size of her lot should be taken into consideration. The hardship is what she has is really small and she needs space.

Board Member Montrose addressed drainage onto other properties.

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

-Mrs. Pat Sherman, 3 Beechwood Road. She referred to drainage problems that exist in this area. Expanding the use of this property concerns her regarding drainage onto her property. She also referred to the swale on site. Further, there are no two-story garages in this neighborhood or three-stall garages. Also, is this setting a precedent to allow this type of request.

Mrs. Sherman also addressed a possible power easement on the property and is Mrs. Martin infringing on that easement. She referred to the garage and any height requirements.

-Mrs. Ellen Petell, corner of Wills Drive and Oxford Road. Her main concern is the existing water problems. With this building and blacktop, there will be more water problems in her back yard. Also, she is concerned about traffic in and out of the garages. This is taking away from what was originally a neighborhood store.

-Mrs. Pat Sherman, 3 Beechwood Road. She understands wanting to improve the property and it looks nice. But she prefers something smaller and doesn't affect the neighborhood. Also, the Town has spent a lot of money regarding drainage and we shouldn't ignore it. She would like someone from the Town to look at their situation, perhaps an engineer.

Reference was made to the Trainor garage which was stated to be grandfathered in.

Mrs. Martin stated her basement floods and she knows there is a water problem on her property and she wants to get it fixed.

Board Member Tesak asked Mrs. Sherman, are you against the building size or flooding – she said both.

-Mr. Peter Angelini, 3 Bromwich Road. He supports the project. He feels she has done a good job at this site and she should receive her variance request.

-Mr. Tony Putrelo stated he doesn't live in the neighborhood but he is a builder. She is trying to put something in the roof area – utilizing the attic space instead of just letting it go.

There being no further input, the Public Hearing closed at 6:45 P.M.

Board Member Murad stated Mrs. Martin is doing a nice job on this building. She feels it will not make any difference with the variance request and feels she can address the drainage situation. The lot is huge and could accommodate this. She is keeping items outside and it would be better to move these into a garage. Board Member Murad questioned whether she would be able to use this for her purposes prior to this – could she put things in that parking lot that belong to her. She owns the property and is she allowed to use it for her own use?

Codes Officer Booth said he hasn't seen what is being parked there. If it is associated with the business, it is not illegal. If she has vehicles in compliance, it is legal.

Board Member Montrose would like to see paperwork for any kind of easement on the property. Board Member Stanislaus feels Use Variance criteria by law is well established. She feels Mrs. Martin has to prove financial evidence that she is being deprived use of the land and economic hardship. Board Member Stanislaus feels we are not sure exactly what is being built. Perhaps this Board should limit the size.

Mrs. Martin said she would consider this.

Chairman Bogar is having a difficult time with the size and difference to what is incidental to an art studio and her personal use. He is also concerned about any type of easement.

Board Member Tesak addressed drainage and flooding, and wanted to know if we could reach out to the Town for help.

Town Attorney Cully addressed the Board bringing them up-to-date on drainage issues in the Town and the role of Barton & Loguidice, contract engineers. It is up to the applicant to come to us and provide the necessary information. Easements don't have anything to do with the Town at all. She runs the risk by building over an easement. As far as storm water, it wouldn't be unreasonable to ask the applicant to provide a storm water plan. Also, the taxpayers would have to pay Barton & Loguidice to review this project on behalf of a private individual. It is her

responsibility to satisfy the criteria for the variance. If the Board agrees to a lesser request, then we can legally handle it in that fashion.

Mrs. Martin approached the Chairman and revised her plan. Chairman Bogar asked if the residents wanted to see what was reconfigured.

The reopened Public Hearing closed at 7:15 P.M.

Reopened again at 7:18 P.M. Mrs. Pat Sherman again addressed the swale issue and asked the Board keep this in mind while reviewing the application. The reopened Public Hearing closed at 7:20 P.M.

Board Member Montrose had a question for Mrs. Martin – the Public Hearing was reopened at 7:25 P.M. Board Member Montrose referred to the size of the garage. Could it be reduced. Mrs. Martin said she could consider it. Other thoughts from Board Members were tabling this and have stakes placed on the property for people to look at how it sets, further address drainage and easement issues. Closed at 7:30 P.M.

*The Board addressed criteria for a Use Variance for the revised size of 24' x 48' garage and an additional 12' back behind existing garage (12' x 15).

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: not proven – all in agreement;
- 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: yes – it is unique – all in agreement;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: difference of opinion;
- The alleged hardship has not been self-created – response: it is self-created – all in agreement.

Motion was made by Chairman Randy Bogar to deny, without prejudice, the proposed revision as stated above* as it has not met the criteria for a Use Variance; seconded by Board Member Fred Kiehm. Vote taken:.

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Lenora Murad – no

Board Member John Montrose – yes
Board Member Terry Tesak – no
Board Member Karen Stanislaus - yes

Motion to **deny** was passed by a vote of 4 – 2.

****Note:** See minutes on Pages 9 and 10.

Mrs. Kristine Putrelo for Grange Hill Realty, 9273 Grange Hill Road, New Hartford, New York. This applicant was instructed to reappear before the Zoning Board of Appeals with specifications for a storage building, which was approved at the November 21, 2011 Zoning Board meeting. Tax Map #349.020-1-5; Lot Size Area: approximately 3.05 Acres; Zoning: RB4 Neighborhood Business. Property owners within 500' were again notified about her appearance before the Zoning Board. Mr. & Mrs. Putrelo appeared before the Board.

Mr. Putrelo presented plans for the proposed storage building. He is proposing to downsize the garage to 35' x 150' and put an addition on the existing garage. He felt this was a better fit for the property – more aesthetically pleasing.

Board Member Tesak asked the Town Attorney if this needed a new application as Mr. Putrelo was going from one building to two and in different locations, and with a different amount of square footage. Chairman Bogar referred to the draft minutes of November 21, 2011 regarding his application – 7000 square feet was approved with one building location. The plan Mr. Putrelo submitted this evening totaled 8,050 square feet. He wondered if the neighbors had to be re-notified because of the change. Attorney Cully explained this Board granted the application subject to the plans being submitted previously for this Board's review. The notice for the variance stated a 70' x 100' building. If he changed this to two buildings and a different location, then it is a new application.

Mr. Putrelo stated he had the neighbors' support and their concern was with the upper lot. Mr. Putrelo stated there will be open bays with doors and they will be secured.

Codes Officer Booth referred to the map and asked why the property is being shown as two lots. Mr. Putrelo stated he doesn't know why it shows up that way and used a program to display the buildings on the lot, but it is one lot only.

Codes Officer Booth asked Mr. Putrelo if he wanted to stay with the approval of the 70' x 100' building or proceed with a new plan. Mr. Putrelo stated his intentions were to go with a plan that he thought was more aesthetically pleasing, but asked that the Board table this. He will decide how he would like to proceed and advise the Board accordingly. He is aware that if he changes the approval, he would need to file a new application.

The application of **Mr. Tony Quirici for Rock Solid Provisions, Inc.** Mr. Quirici is applying for a Use Variance to allow two clothing drop boxes to be located at 3906 Oneida Street, New Hartford, New York (Cristiano property). This area is zoned Retail Business 2 and it is the Codes Officer's contention that drop boxes are not accessory uses, therefore, the applicant is seeking a Use Variance. Tax 339.016-1-64; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on January 14, 2012 and property owners within 500' were notified. Mr. Quirici appeared before the Board.

Mr. Quirici referred to his previous appearance for an Interpretation of the use, which this Board considered he would need a Use Variance and that is why he is here this evening.

Discussion ensued regarding any additional requests for the placement of more boxes. Mr. Quirici said he is no longer with Rock Solid but these are the only two boxes they are interested in for New Hartford. He wanted to finish this project before he left this firm.

Board Member Tesak asked how we can be assured there won't be clutter at these boxes, and if any clothing stays locally. Mr. Quirici stated whether the boxes are full or not, pickups would be twice a week. He further stated most clothes are kept locally, sorted and sold which benefits the Upton Lake Christian School. He doesn't know of any local thrift stores himself in this particular area, but it is not like Salvation Army type operation..

Board Member Montrose asked if any signs would be displayed at the site. Mr. Quirici said no. Board Member Kiehm felt these boxes were not in the thoroughfare and couldn't be seen. Some Board Members were concerned about clutter, and whether a hardship has been shown. Board Member Stanislaus felt financial hardship was not demonstrated in his application, which is a part of the criteria. She felt this was an important part of the application process.

County 239 Planning Review and NYSDOT responses were received with no comments.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:55 P.M.

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: no submittal received – all in agreement;
- 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: difference of opinion;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - will not alter – all in agreement;
- The alleged hardship has not been self-created – response: no – all in agreement.

Motion was made by Board Member Lenora Murad to grant the Use Variance as requested for the two clothing drop boxes; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – no	Board Member John Montrose – yes
Board Member Fred Kiehm – yes	Board Member Terry Tesak – no
Board Member Lenora Murad – yes	Board Member Karen Stanislaus - no

Vote taken at 3 – 3. Motion **did not** carry – a total of four (4) votes are needed for approval.

The application of Kassis Superior Signs for property located at **Men's Wearhouse, 4640 Commercial Drive, New Hartford, New York** (property owned by T.S. New Hartford Partner, LLC). The applicant is located in a Retail Business 1 zone which permits two wall

signs at 80 square feet each. Applicant is seeking a 42 square foot Area Variance for the front sign and an 11 square foot Area Variance for the side wall sign. Tax Map #328.008-1-6.1; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on January 14, 2012 and property owners within 500' were notified. Mr. Jamie Bracy of Kassis Superior Signs appeared before the Board.

Mr. Bracy explained that Mens Wearhouse is moving into what was formerly Hollywood Video at the former Pier 1 Plaza. This gives them two store fronts. Hollywood Video had signs there before and they are looking to do something similar. There would be no change in character with the new signs – they will be internally lit, LED, which are better environmentally.

Chairman Bogar asked if there was anyone present to address this application – there was no response. County Planning 239 and NYSDOT were received with no comments. The Public Hearing closed at 8:10 P.M.

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 John Montrose to approve the application as presented for two signs as it met the criteria necessary for the granting of an Area Variance; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes
Board Member Karen Stanislaus – yes
Board Member Lenora Murad – yes

Board Member John Montrose - yes
Board Member Fred Kiehm – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Larry Adler for New Hartford Office Group, LLC** for signage at the **Hampton Inn & Suites, 201 Woods Park Drive, New Hartford, New York**. Zoning in this area is Planned Development Park which allows a maximum of 40 square feet for wall signs.

Applicant is seeking two Area Variances for walls signs: east sign requiring a 99 square foot Area Variance, and northern sign requires a 49 square foot Area Variance. Tax Map #328.000-3-7.1; Lot Size: 3.3 Acres; Zoning: Planned Development Park. Legal Notice was published in the Observer Dispatch on January 14, 2012 and property owners within 500' were notified. Mr. Larry Adler appeared before the Board.

Mr. Adler presented a photo of the proposed prototype signage for Hampton Inn & Suites. When the Planning Board approved the building, it is consistent with the approved building plans. This is exactly the same as the signs at the Utica Hampton Inn.

Board Member Tesak referred to the location of the sign in comparison with Route 840. Mr. Adler explained from Route 840, the sign will be at the end of the building. Coming from Woods Highway, no sign. The signs will be illuminated to national standards.

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

-Mrs. Christine Martin: she feels it should be granted as she feels it is needed for visibility and it is the standard of the company.

-Mr. Jeffrey McMichael, 8228 Woods Highway: he is concerned about traffic on Woods Highway and location of signs.

Mr. Adler said there will be NYSDOT signs on Route 840 that will show the Hampton Inn. He also explained the road between Lowe's and the Hartford Insurance building is open.

Chairman Bogar stated a call was received from Mrs. Ann Rieben who wanted to speak with Mr. Adler. Mr. Adler stated her question did not relate to this application.

There being no further input, the Public Hearing ended at 8:20 P.M.

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 Fred Kiehm to approve the application as presented as it met the criteria necessary for the granting of an Area Variance; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes	Board Member John Montrose - yes
Board Member Karen Stanislaus – yes	Board Member Fred Kiehm – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus - yes

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

Christine Martin, CEM Realty, 132 Oxford Road, New Hartford, New York approached the Board as she felt two of her requests weren't addressed this evening and that focus on the proposed garage took precedence. Board Member Tesak questioned whether to continue as the public isn't here to listen to the application. Town Attorney Cully stated the notice is adequate and a motion is needed to address and look at the other aspects of her application.

Motion was made by Board Member John Montrose to reopen the application at 8:25 P.M.; seconded by Chairman Bogar. All in favor.

- 1) Fixed roof over the front of the building. Board Member Montrose agrees this is best suited over the porch rather than an awning, especially because of snow load. Board Member Kiehm agrees that canvas wouldn't be suitable here.

The Board Members went through the criteria necessary for the granting of a Use Variance for #1:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – yes, all in agreement;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – yes, all in agreement;
- The requested variance, if granted, will not alter the essential character of the neighborhood – yes, all in agreement;
- The alleged hardship has not been self-created – yes, all in agreement.

Motion was made by Board Member Terry Tesak to grant the Use Variance as requested for the fixed roof, to be constructed as indicated, as it met the criteria; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes	Board Member John Montrose – yes
Board Member Fred Kiehm – yes	Board Member Terry Tesak – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus - yes

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

- 2) Seeking an additional 20' to accommodate more space for the shop and for the stairs. This request is for the garage on the side of the building that exists. Mrs. Martin stated it is too small. In the middle is a chimney. She needs a stairway and there is no way to put stairs there now the way it is. Also, she needs handicap access and to get from one room to the other with stairs. The additional floor space is needed for artists to perform, display and sell their work. The building will be squared off. She will carry the same line but go back 20'. It is going back a little further – about 7' beyond the footprint.

Board Member Tesak asked if we should act on this particular variance without notification to the neighbors. It was stated that this is not new. It is the same information as what was submitted before. This is what she originally asked for the last time. Draft minutes of the December 27, 2011 meeting were read regarding this.

The Board Members went through the criteria necessary for the granting of a Use Variance for #2:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – yes, all in agreement;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – yes, all in agreement;
- The requested variance, if granted, will not alter the essential character of the neighborhood – yes, all in agreement;
- The alleged hardship has not been self-created – difference of opinion.

Motion was made by Board Member Fred Kiehm to grant the Use Variance as requested for the additional 20' for the extension of the garage which would now be 15' x 20', to be constructed to follow the same line as indicated; it met the criteria; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar – yes	Board Member John Montrose – yes
Board Member Fred Kiehm – yes	Board Member Terry Tesak – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus - yes

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

The application review was closed at 8:35 P.M.

Draft minutes of the November 21, 2011 Zoning Board of Appeals meeting were received by each Board Member. Motion was made by Board Member Fred Kiehm to approve these minutes as written; seconded by Board Member John Montrose. All in favor (Board Member Murad abstained as she was not in attendance).

Draft minutes of the December 6, 2011 Zoning Board of Appeals meeting were received by each Board Member. Motion was made by Board Member Karen Stanislaus to approve these minutes

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as written; seconded by Board Member Fred Kiehm. All in favor (Board Member Tesak abstained as he was not in attendance).

Draft minutes of the December 27, 2011 Zoning Board of Appeals meeting were received by each Board Member. Motion was made by Board Member John Montrose to approve these minutes as written; seconded by Board Member Fred Kiehm. All in favor (Board Member Stanislaus abstained as she was not in attendance).

There being no further business, the meeting adjourned at 8:45 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

DbS