

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
NEW HARTFORD PUBLIC LIBRARY  
FEBRUARY 27, 2012**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Tim Tallman, Taras Tesak, Karen Stanislaus, Lenora Murad and John Montrose. 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.

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**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. (This application was tabled at the January 23, 2012 meeting to be addressed on February 27, 2012). Property owners within 500' were notified about the rescheduling of this application. Mrs. Kristine Putrelo and Mr. Tony Putrelo appeared before the Board.

The Board Members reviewed the plan submittal dated February 10, 2012 for a 7,000 (175' x 40') storage building to be constructed on his property for their maintenance equipment. He placed future storage buildings on the map, however, this Board is reviewing and deciding approval for the one proposed building only – Chairman Bogar stated this Board will not be entertaining any buildings listed as future on the plan tonight, just the 7,000 square foot storage building.

Board Member Tesak asked Mr. Putrelo to address the Board with the background of this request. Mr. Putrelo did so and he indicated that this building would have six (6) bays with doors on them, secured and it will be built on a gravel slab..

The exterior storage on site now will be placed inside the building - there will be no outside storage. All equipment is owned by Mr. Putrelo and not used for any rental. He will occupy this building within one (1) year; it will be placed on one (1) tract of land with one (1) tax identification number.

Property owners were again notified of this application – no one was present.

Criteria for this proposal was addressed at the November 21, 2011 Zoning Board meeting. Therefore, motion was made by Board Member Fred Kiehm to approve the plan submitted dated February 10, 2012 for the 7,000 square foot (175' x 40') storage building only; Building Permit to be obtained within one (1) year of approval date. Vote taken:

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

Motion was **approved** by a vote of 7 – 0.

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**Innovative Associates, Inc., aka Anchor Heating, 8556 Seneca Turnpike, New Hartford, New York.** The applicant is requesting to place a sign approximately 6’ from the front property line and 2’ from the left side property line. This property is located in a Retail Business 1 zone which requires a 20’ side yard setback and a 5’ front yard setback. Therefore, the applicant is seeking an 18’ left side yard setback Area Variance and a 4.5’ front yard setback Area Variance. Tax Map #328.012-2-13; Lot Size: approximately 40’ x 102.75’; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on February 21, 2012 and property owners within 500’ were notified. Mr. Vinny Ficchi, owner of the property, appeared before the Board.

Mr. Ficchi stated that he started thinking about this sign in 2006 but the only way it would fit according to Codes is in the middle of the property and that wouldn’t work. He is now leasing the building to a new business. This sign will be closer to the Mitsuba Restaurant almost in line with the edge of his building. It will be a flag-type structure toward Seneca Turnpike, illuminated, and similar to the NBT Bank sign. This will be the only business on site.

Board Member Tesak asked about elevation and visibility from Irving Road. Mr. Ficchi knows of no visibility problem - he also mentioned that the structure is permanent. If the business ever changes, he would be able to change the facing.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 6:20 P.M.

OC Planning has responded with no comments; NYSDOT responded indicating sign had to be on private property and not on their right-of-way.

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: 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 – 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 Lenora Murad 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 Fred Kiehm. Vote taken:

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

Board Member Tim Tallman - yes  
Board Member Karen Stanislaus – yes  
Board Member Lenora Murad - yes

Motion was **approved** by a vote of 7 – 0.

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The application of **McDonald's USA, LLC for Franchise Realty LLC, 8522 Seneca Turnpike, New Hartford, New York**. The applicant is proposing to demolish an existing 3391 square foot building and replace it with an approximate 4473 square foot building. Applicant requires the following Area Variances:

- Front building setback Area Variance of 18.1 feet
- Front parking setback Area Variance of 6.7 feet
- Side parking setback Area Variance of 5 feet
- Rear parking setback Area Variance of 5 feet
- Parking spaces Area Variance of 9 spaces
- Lot coverage Area Variance of 17 percent
- Quantity Area Variance of 3 for number of building signs
- Area Variance on free standing sign of 13.5 square feet
- Front setback Area Variance for free standing sign of 3.4 feet
- Accessory building setback Area Variance of 27.3 feet

Tax Map #328.012-1-57; Lot Size: approximately 180' x 190'; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on February 21, 2012 and property owners within 500' were notified. Mr. Randy Bebout, Project Manager of Tylin International Engineers and Mr. Al Dohn, Director of Operations for McDonald's appeared before the Board representing McDonald's.

Mr. Bebout stated the plan is to demolish the existing building and all site features (the existing building was constructed in the 1960's) and start brand new. The size of the building proposed is a non-prototypical (they try to build it to last about 30 years). It is minimal in size to be able to fit this site. The large arch would not be replaced. There will no longer be play lands. He said McDonald's is replacing all their sites in the nation. He displayed some renderings of standard prototypical buildings – this will carry the same design but smaller. They know the need to

minimize the variance requests and feel this works. Mr. Bebout talked about getting delivery trucks into the site and he addressed the 20' lane and the Fire Code. He presented Exhibit B which addressed the criteria necessary for granting the Area Variances. Further, he explained that the drive-thru is about 70% of their operation. However, the expansion will be making the kitchen more energy efficient which produces faster service to everyone and makes the site more efficient. They are proposing a tandem drive-thru.

Mr. Al Dohn addressed the Board. He stated that drive-thru business continue to increase. He referred to the McDonald's in South Utica which is similar. Further, he stated that this New Hartford McDonald's takes a lot longer to process orders because it is an outdated process.

Board Member Tallman referred to the drive thru and why the increase in the building space . Mr. Dohn explained people stay inside the building longer using wi-fi, enjoying new coffee items, etc.

A lengthy discussion ensued regarding the proposal for the outlet to Oakdale Avenue. It was stated that this is not a consideration at this time and it is still being discussed with all interested parties.

Discussion also ensued regarding back up traffic at the drive-thru, i.e., customers placing special orders and having to wait for it. Mr. Bebout said they could designate the first couple of spots for cars to pull up and possibly alleviate some traffic backup. Of particular concern is parking, and traffic in and out of Seneca Turnpike.

They are proposing new striping and vegetation. He referred to the overlay which outlined the proposed and existing building.

Board Member Kiehm asked about the current structure and signage – are all of those acceptable as far as our current law is concerned. Mr. Bebout said the existing pole sign is non-conforming and has a variance request – it is smaller than what is there now. The new sign will still be non-conforming.

Board Member Tesak felt there is no way to run this restaurant in 2012 in an efficient way without proposed changes. He asked if they tried to purchase additional property on either side or rear of this property. Mr. Dohn said for the past five (5) years they have looked at alternate sites in the area but they want to stay on Route 5. Mr. Dohn said with the new proposal, the new kitchen changes, and people being trained with PAR Technology equipment, things would improve at this site.

Mr. Bebout again explained this size is mostly driven by kitchen area and also the freezer will come inside the store rather than outside where it is now. The actual building size is 4,317 square feet.

Chairman Bogar asked Mr. Bebout why they needed this request. Mr. Bebout said this store is antiquated and from a business standpoint they need more capacity. They would like to stay ahead of the competitors. Chairman Bogar asked, if you don't get this, is it something to affect

them in the future; and if you don't do this by a certain time, what would happen? Mr. Dohn said at this New Hartford site they still want to put in a new store. Mr. Bebout said McDonald's is doing a nationwide for rebuilds and locations for major remodel projects. If this store was in better condition, it could be considered for a major remodel. It has gone past that. It needs a lot more work and not cost effective any other way.

Mr. Bebout was asked who owned the property – this information has been given for the file. Mr. Dohn is an employee of the local owner.

Board Member Kiehm wanted to know how long the business would be closed during construction – Mr. Bebout said about 90 days.

Board Member Tallman is concerned about the purchase of the out parcel, parking and traffic flow. He wants to see a better layout of the existing building and what is proposed - something more clearly outlined.

Chairman Bogar asked what type of time table is involved – Mr. Dohn mentioned the project in Dewitt, New York and what transpired there. Chairman Bogar asked what the time frame would be on the drive out to Oakdale Avenue – Mr. Dohn said he didn't know as he thought it wouldn't be shown on the plan. Chairman Bogar mentioned this project would need Planning Board review.

Board Member Montrose asked about snow removal – Mr. Dohn said snow is taken from the lot. Board Member Montrose also asked whether more green space could be placed on site. Mr. Bebout said possibly a couple more feet but not more.

Discussion ensued regarding the building being brought forward more towards Seneca Turnpike. The existing site is non-conforming. It was stated that parking isn't getting any closer to the road. The other businesses adjacent to this property and location of their structures from the road were discussed. Mr. Bebout said this site is fairly tight.

The pole sign was addressed. The frontage isn't available on this site but they know the signs have to be on their private property.

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

Mr. Donald Peavy, 171 Merritt Place. He is concerned about the drive-thru and the tandem proposal. Mr. Dohn felt the new proposal would get people out quicker and felt it would help with cars going in and out of Seneca Turnpike. Mr. Peavy asked whether any traffic control was discussed with the grand opening and any traffic studies done for this site. Mr. Dohn said he would hire people for the grand opening, and he is not aware of any traffic study for that site.

Chairman Bogar stated the traffic issue falls within the realm of the Planning Board.

Mr. Peavy asked them to explain the tandem concept as he feels this concept creates more congestion and is it mitigated somehow. Mr. Bebout stated that having two (2) order points doesn't always mean more customers. Mr. Peavy also asked if there are any changes required to zoning for egress in back – it was stated it is on the diagram but not in front of this Board. It will be addressed by the Planning Board.

Board Member Murad asked if there were any changes for residences behind the store, especially during construction. Mr. Bebout said there is an existing stockade fence that they maintain. If a new fence is needed, they would look into it.

Chairman Bogar asked if there was anyone present to address this application – Mr. Peavey addressed the Board previously – there are no other people in attendance. The Public Hearing closed at 7:15 P.M.

OC Planning was received with no recommendations; NYSDOT was received with comments that will be addressed by the applicant; Solid Waste response was received also with comments regarding demolition debris (these letters have been made a part of the file).

Chairman Bogar reopened the Public Hearing at 7:18 P.M. as Mr. Peavey wanted to know about any mitigation on storm water and how it would be managed. Mr. Bebout said the lot is less than an acre and no plan needs to be submitted. The increase in impervious is minimal. If NYSDOT says runoff needs to be addressed, they will address it with piping.

The Public Hearing closed again at 7:20 P.M.

The Board Members discussed additional green space – lot coverage; The Public Hearing was reopened at 7:25 P.M. Board Member Montrose asked if they could lower the lot coverage – Mr. Bebout said there is no way to get more green space except perhaps in the rear – maybe 3' to 5' but he doesn't think so. This is the only place to increase green space and it isn't really much different than what they have now. He said if they can, they will move to get back to the number it is today – depending on tractor trailer/truck deliveries. However, they are adding green space between Carmella's Restaurant and their site. It is within their calculations, but now it is a driveway running into a driveway.

Discussion ensued regarding location of the building to Seneca Turnpike, the tandem drive-thru, vehicle stacking, etc.

Board Member Tallman said the building will be 24' closer to the front and the 12' driveway is where people can cut through and come back out the entrance way – how are people going to be stopped from coming in from Seneca Turnpike and people cutting through. Mr. Dohn said there will be drive-thru markings. Board Member Tallman said he still wants to see a better view of the traffic pattern going out to Seneca Turnpike, where the building is now and where it will be placed. He feels we may be setting a precedent moving this building forward more.

Chairman Bogar feels if they don't get Oakdale Avenue access, they really don't need that 12' area in front of the building – perhaps that could be more green space.

The Public Hearing was closed again at 7:35 P.M. Chairman Bogar asked the Board Members if they had enough information to go through with this application tonight – the majority said yes.

Board Member Tesak referred to Codes Officer Booth regarding adjacent property setbacks, and he mentioned a couple of the gas station canopies which are open on four sides. Codes Officer Booth said average setbacks do not apply in commercial zones. This application is infringing on the front setback considerably and that would put them in front of another building.

The Public Hearing was reopened at 7:45 P.M. and addressing the Area Variances one at a time or collectively. Mr. Bebout stated to the Board that this is a non-prototype basically because of the configuration of the kitchen. Comparing this to the one in Utica isn't a comparison. The building size of South Utica isn't known at this time.

Reference was made to distance from speaker to cash window. Mr. Bebout said this really can't be changed.

Board Member Murad asked, again, if this didn't get approved, what would McDonald's do – Mr. Bebout said he didn't know as this building is beyond a major remodeling project..

Board Member Tesak feels the applicant has addressed all questions. Discussion ensued again regarding whether to group the variance requests. Board Member Stanislaus would like to see each request voted on one by one. It was decided to group the Area Variance requests.

Codes Officer Booth said, during discussion of property line setbacks, if this Board says no to one item, it could affect the whole variance/site plan. The Public Hearing closed again at 8:00 P.M.

At this time, Board Members reviewed the file and went thru the application of the applicant:

- 1) The proposed front building setback is less than required (40' minimum required, 21.1' proposed) – Board Member Tim Tallman wanted more information and additional visuals presented;
- 2) The proposed rear building setback (shed) is less than required (30' minimum required, 2.7' proposed) – The Board Members felt this was not an issue - acceptable;
- 3) The proposed front parking setback is less than required (15' minimum required, 8.3' proposed) – The Board Members felt this was not an issue - acceptable;
- 4) The proposed side parking setback is less than required (10' minimum , 5.0' proposed – side parking less than required; more than they have now – no further discussion - acceptable;
- 5) The proposed rear parking setback is less than required (10' minimum required, 5.9' proposed) – no further discussion - acceptable;

- 6) The proposed number of parking spaces is less than required (43 minimum required, 34 proposed) – no further discussion - acceptable;
- 7) The proposed amount of lot coverage is greater than allowed (66% maximum permitted, 83.0% proposed) – the Board Members decided this was acceptable;
- 8) The proposed number of attached signs is greater than allowed (two permitted, five proposed) – no further discussion - acceptable
- 9) The proposed face area of the pole sign is greater than allowed (64 sf permitted, 77.5 sf proposed) – no further discussion - acceptable;
- 10) The front setback of the pole sign is less than required (5' minimum required, 1.6' proposed) – no further discussion - acceptable.

and the Board Members also addressed the criteria necessary for the granting of an Area Variance which are:

- 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.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance.
- The requested variance is substantial.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance.:

and they were all in agreement on the variance requests except for #1 when Board Member Tim Tallman expressed his concerns.

Motion was made by Board Member Taras Tesak to approve the application as presented for all ten (1) Area Variance requests as it met the criteria necessary for the granting of an Area Variance. He feels McDonald's have addressed the new footprint dated February 3, 2012 that is within limits, and they addressed the traffic issues. Also, the equipment is geared to a new type of kitchen apparatus; it would help to get cars through faster; also, this building will be more modern and more pleasing to the Seneca Turnpike area; the building will keep within the character of the neighborhood especially about the setbacks; and a Building Permit be obtained within one (1) year of approval date;

Chairman Bogar asked if any of the Board Members wanted to pass along information to the Planning Board. Board Member Tesak wants the Planning Board, after looking at the footprint of the building, to add any type of additional green space and to address any other issues they may decide, i.e., setback and access road.

seconded by Board Member Fred Kiehm. Vote taken:

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Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Fred Kiehm – yes  
Board Member Taras Tesak – yes

Board Member Tim Tallman - no  
Board Member Karen Stanislaus – yes  
Board Member Lenora Murad – yes

Motion was **approved** by a vote of 6 – 1.

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Draft minutes of the January 23, 2012 meeting were approved by motion of Board Member John Montrose; seconded by Board Member Karen Stanislaus. All in favor.

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There being no further business, the meeting adjourned at 8:15 P.M.

Respectfully submitted,

Dolores Shaw  
Recording Secretary

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