

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
APRIL 16, 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, Karen Stanislaus, Lenora Murad Taras Tesak, and John Montrose. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Councilman Paul Miscione, and Recording 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 also commented that this meeting is being videotaped by an independent group who is not associated with the Town of New Hartford.

The application of **Mr. Ray Quinn, 4738 Commercial Drive, New Hartford, New York**. Mr. Quinn is seeking a Use Variance, as he would like to use the existing roadside signage on his property at 4738 Commercial Drive (former Added Touch) for off-site advertising. Section 118-54C14 of the Town Code does not permit offsite advertising. Therefore, the applicant is seeking a Use Variance to do so. Tax 317.017-4-23; Zoning: Retail Business 1. Mr. Ray Quinn appeared before the Board.

Mr. Quinn stated that he owned Added Touch at this site for many years and it was taken over by the State about fifteen (15) years ago which left him with no access from Commercial Drive. He has his business, Added Touch, in the Village of New Hartford and his business is good there now but he lost a lot of business when he left Commercial Drive. He would like to be able to use the existing sign to generate some income to offset taxes. Mr. Quinn stated he was compensated by the State for this property but he still has ongoing taxes to pay. He enters into his property from time to time through Clinton Street. He presented a letter from Edward Jekel, 62 Main Street Co., and Mr. Joseph Hage, who both have property adjacent to Mr. Quinn's and who are in favor of the application. He also presented a letter from Utica Sign Company who stated that they would transport any materials via the blacktop/walkway next to Commercial Drive. All letters have been made a part of the file.

Board Member Tallman asked Mr. Quinn if the State took the property and left him the building with no access – Mr. Quinn said yes. However, as he stated, he was compensated. Mr. Quinn explained the court issue.

Codes Officer Booth was asked if it can be any type of retail – Mr. Booth said they would need parking. He doesn't see any viable use of that building unless he got access from a private property owner.

Board Member Tesak asked if the adjacent property owner, Mr. Parisi, would allow him to access the property. Mr. Quinn has not approached him

Board Member Tesak questioned whether the access from Clinton Street needed any kind of public notice because of traffic, etc. He also asked Mr. Quinn why he needs this variance. Mr. Quinn said he wants to improve the property as current sign is an eyesore and he wants to make it more aesthetically pleasing and it would give him some income to cover maintenance, etc. The building will not be used – he is only interested in the sign.

Discussion ensued regarding whether the sign would be illuminated. Mr. Quinn said no. He will rent space to someone else on this sign also.

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

Jeff Reale, Esq., attorney for Mr. Joseph Parisi. Mr. Parisi owns USA Tailors and also rents to a business on the site. Their main concern is access. He referred to a letter received from NYSDOT with their comment regarding access from a private owner. He is not sure if Mr. Quinn is allowed to have access from a public right-of-way. His client is concerned about billboard off-site advertising that may draw people to his business looking for the business on the sign – it would cause confusion and also may create people crossing his property to get to the building where the sign would be (not knowing it is off-site advertising). Commercial Drive doesn't have any off-site billboards and he feels this changes the character. Has the property owner ever tried to sell the property – it was stated no. Concern was also expressed as to whether the walkway was for public leisure or used to access properties on Commercial Drive. He thinks it is just suppose to be used for walking.

-Mr. Joseph Parisi, Commercial Drive. He owns the adjacent parcel. He further expressed his concern about people approaching his business looking for direction to the business on the sign. There is no business at this site, and the Code said a sign isn't allowed for off-site advertising.

Chairman Bogar asked Mr. Parisi if he approached Mr. Quinn. Mr. Parisi said Mr. Hage approached him for access but he doesn't want to allow it for either of them.

-Mr. Brian Legg of Leggs Diamond, Commercial Drive. He rents from Mr. Parisi. He heard that Mr. Quinn wants to rent the sign to another gold competitor down the street from him. Mr. Quinn now wants to clean the area when it has been this way for approximately fifteen (15) years. With the condition of the existing sign, he feels it should be taken down.

-Mr. Edward Waitr, Sylvan Glen Road. He referred to the Department of Planning response for No Recommendation and the footnote. There may be some significant impacts and maybe not at the County level but certainly at the local level. He also referred to the section of law that addresses off-site advertising.

-Attorney Reale feels removal of the sign would be a good idea.

-Mr. Felix Stoppollo, Gold Leaf, Commercial Drive. He is friends with Mr. Quinn and in conversation he thought about renting the sign on one side and Mr. Quinn keeping the other side. He feels the sign isn't in disrepair and it is not a billboard. Other businesses got compensation

from the State but they are still in business. He doesn't agree with Mr. Parisi about people going to his site. He feels it is a significant grievance as Mr. Quinn has to walk from down the road to get to his sign. He hasn't come to an agreement with Mr. Quinn, but he would put the address on the sign showing where his business would be. He feels it would not impede any other business.

Board Member Murad asked Codes Officer Booth what would happen if this were granted. Mr. Booth said if the Board granted the variance, they should stipulate conditions because this is a unique situation as currently the sign is non-conforming and falls within the removal in the next few years due to the Ordinance that was formulated in 2008 giving 10 years life span to non-conforming signs.

Board Member Tesak wondered if utilizing the State property is permissible to bring in supplies, etc.

Town Attorney Cully referred to the NYSDOT letter which says the owner should be aware he may have a problem with access. Our determination is narrowed to an issue of allowing off-site advertising. He feels access is not this Board's concern. The question is can he get materials in there. Also, using the right-of-way walking to a business, it could be a problem.

Board Member Tesak asked Mr. Quinn what has changed since he has had this site. Mr. Quinn referred to the eminent domain issue again and how the State took 1' of frontage and put him out of business. He had a good business there before. He asked Mr. Quinn if he approached any of the other property about parking, etc. Mr. Quinn said no, but he was approached by a realtor who wanted to buy the entire parcel, however, someone didn't want to sell.

Chairman Bogar referred to the non-conforming sign issue and if the Town elects to proceed with the law that all non-conforming signs be taken down by 2019. Mr. Booth said once a sign comes down, it stays down.

-Mr. Joseph Parisi, Commercial Drive. He feels this is a personal issue between two (2) businesses.

Attorney Reale referred to Mr. Quinn stating he doesn't have a financial hardship, he was compensated by the State. He received money from the State but Mr. Quinn doesn't want to disclose it.

There being no further input the Public Hearing closed at 7:00 P.M.

Further discussion ensued regarding an economic hardship as Town Attorney Cully stated the applicant has to prove the hardship to this Board. If the applicant doesn't want to tell us, that is his prerogative and we have to judge from there.

Chairman Bogar to Codes Officer Booth – in 2018/2019 does this sign come down – Mr. Booth said yes only if it is over the square footage. If the variance is granted, the use continues. Mr. Quinn took some of the letters down, at his request, and the sign has been sitting there for two (2) years with nothing on it.

Board Member Stanislaus felt the applicant has not shown or demonstrated a financial hardship, which is part of the Use Variance criteria. She feels a personal situation should not be considered unique.

The Board Members went through the criteria for granting a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: financial hardship has not been demonstrated;
- 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: the Board Members don't know if it is unique because no financial data has been provided;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - there is a difference of opinion;
- The alleged hardship has not been self-created – response: it has not been self-created.

Motion was made by Board Member Lenora Murad to approve the Use Variance request with the stipulation that 1) no illumination; 2) no changeable sign; 3) sign for Added Touch on one side and any other sign on the other side would need to be reviewed; 4) same size on both sides and conform to Codes; 5) 4 signs total (2 signs on each side as shown now); 6) sign to be renovated and site cleaned up; there was no second.

Board Member Murad asked, if anyone bought the building could they use the sign – it was stated yes. Further discussion ensued.

Motion was made by Board Member Fred Kiehm to **deny** the application for the Use Variance based on the fact that the proper financial information was not demonstration to show a loss; seconded by Board Member Tim Tallman. 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 – no
Board Member Stanislaus s- yes	

Motion to **deny** was carried by a vote of 6 – 1.

The application of **Mr. Kevin Elbrecht, 28 Rollingwood Drive, New Hartford, New York**. Mr. Elbrecht is requesting to replace an existing front stoop to be 8' x 13' in size, and also a portico, on his home. This home is a non-conforming

structure, therefore, it cannot be expanded according to Section 118-69. The applicant is seeking an Area Variance to expand on the non-conforming structure. Tax Map #339.001-1-64; Lot Size: 104' x 150'. Legal Notice was published in the Observer Dispatch on April 10, 2012 and property owners within 500' were notified. Mr. Elbrecht appeared before the Board.

Mr. Elbrecht explained that the non-conforming part of his home isn't going to be affected at all. He is replacing a dilapidated structure and it is within the front setback. When the house was built, it was in compliance. He feels it would not change the character of the neighborhood – only add to it.

There were no calls or letters received. Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing ended at 7:20 P.M.

The Board Members went thru the criteria for an Area Variance:

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 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 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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Draft minutes of the March 19, 2012 Zoning Board of Appeals meeting were received by each Board Member. Motion was made by Tim Tallman to approve these minutes as written; seconded by Board Member Fred Kiehm. All in favor.

There being no further business, the meeting adjourned at 7:30 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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