

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
MAY 21, 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, Lenora Murad Taras Tesak, and John Montrose. Absent: Board Member Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, 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.

Chairman Bogar also stated that one (1) Board Member is absent and it is the decision of the applicant whether to proceed or wait for a full Board attendance.

Further, Chairman Bogar stated that this meeting is being videotaped by an independent source not affiliated with the Town of New Hartford.

Also, Chairman Bogar noted that the Hannaford Brothers Company application has been withdrawn.

The application of **Mr. Dean Kelly for Jay-K Lumber, 8448 Seneca Turnpike, New Hartford, New York**. The applicant is seeking an Area Variance to place a freestanding sign in addition to the two (2) signs that exist. Zoning in this area is Retail Business 1 which allows only one (1) freestanding sign. Therefore, the applicant is seeking a quantity Area Variance for two (2) signs. Tax Map #328.011-20.1; Lot Size: 11.67 total acreage; Zoning: Retail Business 1. Mr. Dean Kelly appeared before the Board.

Mr. Kelly stated he wanted to replace the old sign with a new, more modern freestanding sign and he presented a sketch. Jay-K /Cabinet will be shown at the top, Aldi's Food Market and Royal Landscaping shown with panels underneath. Also, a proposed vacant panel for any prospective business. The current Royal Landscaping freestanding sign will now come down. Currently the sign is 14' high and Codes allows 25'. He projects the new sign to be a little less than 25'. The proposed sign will be illuminated.

Mr. Kelly is also asking to change the setback from the Route 5 side to 5'. It is now 10'. He stated it is allowed and they know where the boundaries are for the State lines. Mr. Kelly said NYSDOT is in the process of taking about 300 sf of his property to move one of the poles and that is why he knows where the property lines are for the State. This sign will not hinder any visibility. He feels it gives better visibility because it sets higher.

Board Member Tesak asked Mr. Kelly if he felt this would change the character of the area – Mr. Kelly said no as it will be more modern and he referred to other adjacent signage in this area. Also, Board Member Tesak asked if a timer could be placed on the sign, and who might be the new tenant. Mr. Kelly said he isn't opposed to a timer, he would look into it, and he has no plans for development in the back at this time. Any development that might occur he would like an entrance/exit out to Middle Settlement Road.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Oneida County Planning and Oneida County DPW had no recommendation. The Public Hearing closed at 6:15 P.M.

Discussion ensued regarding any additional panel requests. However, the Board Members addressed the application as presented at this time.

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 for the sign as presented as it met the criteria necessary for the granting of an Area Variance; also, to approve the extra 5’ as requested by Mr. Kelly at the Route 5 side of his property; 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 Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Lenora Murad - yes

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

The application of **Mr. J.M. Lord for Hannaford Brothers Company, 4593 Commercial Drive, New Hartford, New York**. The applicant is seeking an Area Variance of 56 square feet and a quantity Area Variance of two (2) signs to erect a total of 136 square feet of signage and three (3) signs on the Hannaford building. This area is zoned Retail Business 1 which allows a maximum of 80 square feet and a maximum of one (1) sign per side of building. Tax Map #328.008-1-21.2; 23; 27.2; 7.3; Lot Size: 19.24 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on May 11, 2012 and property owners within 500’ were notified.

This application was withdrawn by the applicant.

The application of **Ms. Marsha Furgal, 3344 Church Street (corner of Church Street and Pear Street), Chadwicks, New York**. Ms. Furgal is proposing to replace an existing shed with a new 10’ x

10' shed on the existing foundation. Zoning in this area is Medium Density Residential which required the accessory structure to be set back the same distance as the principal structure. Therefore, the applicant is seeking a 10' front yard setback Area Variance. Tax Map #5350.01-1-48; Lot Size: 48' x 106'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on May 11, 2012 and property owners within 500' were notified. Ms. Furgal appeared before the Board.

Mr. Furgal stated she is just replacing an old shed with a new one on the existing foundation. However, because of Codes, she had to appear before this Board for a variance to keep the shed at this location. The shed will be used for garden equipment, storage, etc. There is no other area to place this shed.

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

-Ms. Paula Mariano, 9411 Hamilton Street: she approves of this request as Ms. Furgal keeps her property looking nice.

-Mr. Lonny Tupaj, 9414 Hamilton Street: he is in favor of this request.

There being no further input, the Public Hearing closed at 6:25 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 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 Tim Tallman. Vote taken:

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

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Lenora Murad - yes

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

The application of **Mr. Joseph Lopata, 13 Glendale Avenue, Whitesboro, New York (Town of New Hartford)**. Mr. Lopata would like to expand his family room which is a non-conforming structure.

Zoning in this area is Medium Density Residential. The applicant is seeking a 96 square foot Area Variance to enlarge his family room. Tax Map #316.06-3-84; Lot Size: 100' x 125'; Zoning: Medium Density Residential. Mr. Joseph Lopata appeared before the Board.

Mr. Lopata explained that he needs to replace his roof and the front of the structure. Since the roof needed to be done and that is why he decided to continue with other renovations. His contractor suggested he replace the wall and make everything more in line. Also, this would give him more living space. There is no other way to accomplish this change. All materials will match and be more energy efficient.

Chairman Bogar asked if there was anyone present to address this application – no response. Oneida County Planning response was received with no recommendation. The Public Hearing closed at 6:30 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 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 Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Lenora Murad - yes

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

The application of **Dr. Richard Sleeper, 20 Kellogg Road, New Hartford, New York.**

Dr. Sleeper is requesting to add one (1) apartment to his property at 20 Kellogg Road. Zoning in this area is RB4 (Neighborhood Business) which permits a two-family use. Applicant is seeking a Use Variance to add one (1) additional apartment. Tax Map #339.011-1-44.1; Lot Size: 1.39 Acres; Zoning: RB4 Neighborhood Business. Dr. Sleeper appeared before the Board.

Dr. Sleeper explained he didn't have any pictures of his property as nothing will change. He would like to add a third apartment to the existing two apartments he has upstairs. He has tried to lease the property upstairs for three (3) or four (4) years for commercial but to no avail. A letter has been submitted from Pavia Real Estate indicating that he has tried to lease the upstairs office suites but hasn't been able to do so (this letter has been made a part of the file). It was Mr. Pavia's suggestion to convert to residential apartments. Dr. Sleeper stated he is not changing the character of the area. There has been a downfall of the local economy. American Express moved out and a couple of others and no one has rented his space. He has owned the building since 1996

Board Member Tesak asked Dr. Sleeper to clarify the request. Dr. Sleeper said he took two (2) out of the three (3) spaces upstairs and made them residential units. The third space is not allowed as residential in the zoning, and that is why he is here tonight. The two (2) spaces have been occupied by one person each for a couple of months. He would like to use the third space for another residential use. This would generate more income so he can hire more people to work in the office – his expenses keep going up. Dr. Sleeper referred to mortgage information, etc.

Board Member Tesak stated he bought the property as commercial and has used it as commercial. He feels what created the hardship is because there is so much commercial in the area that he needs to convert to residential and get some income. Dr. Sleeper feels it is less of an impact with the residential use. Less parking and better for the neighborhood, employees and community. Board Member Tesak doesn't agree as a business could run from 8 – 4; residential could create more cars.

Discussion ensued regarding the existing commercial use, adjacent properties, etc.

Dr. Sleeper said he wouldn't have a number of people living in the apartment as he has many customers downstairs and doesn't want to affect the employees, customers, etc.

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

-Mr. Edward Waitr, Sylvan Glen Road: he feels Dr. Sleeper makes good business sense. He feels it is a win/win situation and the Board shouldn't nitpick this application, as it is a good use.

-Letter from Mr. Dominick Pavia, Pavia Real Estate, supporting this application

-Fax sent by Dr. Chazin, 24 Kellogg Road, supporting this application (fax was received later in the afternoon on May 21, 2012 as the phone lines were down at the Highway building. This fax has been made a part of the file).

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

The Board Members discussed this application. Board Member Tesak referred to the comment about nit picking. However, he feels Dr. Sleeper does not have a hardship in that he already has two (2) apartments which are allowed under this zone. He feels Dr. Sleeper could use the added space to make the two (2) existing apartments bigger. It was the consensus of the other Board Members that this is a lesser-type use and that the building is being used and not vacant.

At this time, Board Members reviewed the file and went thru 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: difference of opinion;
- 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;;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - it will not alter the character;
- 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 application as presented as she feels it met the criteria necessary for the granting of a Use Variance; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Tim Tallman Vote taken:

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

Board Member Tim Tallman - yes
Board Member Taras Tesak – no
Board Member Lenora Murad - yes

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

Chairman Bogar commented that if a business was put back in there, he felt it would be a potential problem with more traffic than converting it to an apartment. Board Member Tesak said he has a problem with the third apartment request.

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

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbS