

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
JULY 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, Lenora Murad Taras Tesak, John Montrose, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, 4th Ward Councilman Richard Woodland, 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.

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

The application of **Mr. Larry Adler of New Hartford Office Group, LLC**, for an Interpretation as to whether or not gasoline pumps are accessory to a retail use. Property location: State Route 5 (Seneca Turnpike and Woods Highway). Tax Map #328.000-3-7; Total Lot Size: 20.5 Acres; Zoning: Planned Highway Business. This application was tabled at the June 19, 2012 Zoning Board of Appeals meeting to be discussed further on July 16, 2012.

Chairman Bogar announced and noted for the record that a letter was received from Terresa Bakner, Esq. of Whiteman, Osterman & Hanna LLP, who represents the applicant, regarding the proposed wholesale club and accessory gasoline fueling pumps, in that they are withdrawing their application for an Interpretation. The retailer has decided not to pursue this. The letter has been made a part of the file.

The application of **Mr. Brian Rahn, 8 Alexandria Road, New Hartford, New York**. (corner of Alexandria and Osborn Roads). Mr. Rahn is applying for an expansion of a non-conforming structure per Section 118-69A, which prohibits the expansion of a non-conforming structure. This application is for a 9' x 7' dormer onto the second floor rear of his existing home for a bathroom. Legal Notice was published in the Observer Dispatch on July 11, 2012 and property owners within 500' were notified. Mr. Rahn appeared before the Board.

Mr. Rahn stated he would like to extend his roof to make a bathroom upstairs. This proposal is the most feasible. There is no change to the footprint - actual room size is 9' x 7'. He needs the additional living space as he has two (2) daughters. There were two (2) bedrooms upstairs; however, the new dormer will now be one (1) bathroom and one (1) bedroom. Materials will match as closely to the existing home, same color and style.

Chairman Bogar asked if anyone was present to address this application – there was no response. Oneida County Planning and NYSDOT have no recommendations (these letters are a part of the file). The Public Hearing closed at 6:10 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 as Mr. Rahn needs the additional living space and it meets 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 John Montrose - yes
Board Member Fred Kiehm – yes
Board Member Karen Stanislaus - yes

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

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

The application of **Mr. Christopher Matthews, 15 Kellogg Road, New Hartford, New York (corner of Kellogg and Harrogate Roads)**. Mr. Matthews is located in a High Density Residential zone, which requires a 30' front and 30' rear yard and a 10' side yard setback. He is requesting to construct a 24' x 24' garage, with second floor storage, onto his existing home. Therefore, he is seeking a 3.5' and a 22.5' front yard Area Variance. a 3.5' left side yard Area Variance and a .5' rear yard Area Variance. Legal notice was published in the Observer Dispatch on Monday, July 11, 2012 and property owners within 500' were notified. Mr. Matthews appeared before the Board.

Mr. Matthews stated he currently has a one and a half car garage, and he needs a bigger garage for his two (2) vehicles and upper area for storage. He will not have a business run from this site. There is no storage at the site as he has a wet basement. There will be no apartment on the second floor – just storage, and there is no access to the attic. Half of the existing garage will be torn down. Mr. Matthews said the breezeway will now become the mudroom. He will match materials with the existing home.

Discussion ensued regarding setbacks and proposal. Board Member Tesak asked if he thought this would change the character of the area – Mr. Matthews said no and he noted businesses that are across from him. He owns a handy man business, but there will be no business operated from his home. He wants to keep his home looking nice and he needs the additional space.

Board Member Murad referred to the driveway and if it will be reconfigured. Mr. Matthews said they would like to eliminate 8' of driveway, as they don't need it. He would like to add more green space.

Board Member Tesak asked how long he has lived at this site, and referred to an in-law apartment and wheel chair access that was there previously –and did you know about this. Mr. Matthews said yes.

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

-letter received from Mr. & Mrs. Erwin Deimel, 12 Kellogg Road, who have no objection to this request.

Oneida County Planning has no recommendation and Oneida County DPW stated no significant impacts (these letters have been made a part of the file). The Public Hearing ended at 6:20 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: 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: difference of opinion;
- 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 he needs the additional space, and it met the criteria necessary for the granting of an Area Variance; that no business be operated from this site; 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 Taras Tesak - yes
Board Member Lenora Murad - yes

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

The application of Mr. **Peter Bolos, Big Apple Music, 8441 Seneca Turnpike, New Hartford, New York**. Big Apple Music is located in a Retail Business 1 zone, which limits signage on buildings.

Mr. Bolos would like to have decorative window treatments at six (6) existing windows at Big Apple Music. Therefore, he is seeking an **Interpretation** as to whether or not the proposed window treatments are considered signs. Tax Map #328.011-1-12.1; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on July 9, 2012 and property owners within 500' were notified. Mr. Peter Bolos appeared before the Board.

Mr. Bolos presented a sketch of his proposed window treatments. His property at this corner has gone through many renovations. These six (6) windows are black – behind them is a hallway, are insulated and sheet rocked. They are deteriorating, and are costly to repair/replace. He wanted to put something over them to look better and give a nicer curb appeal, i.e., jamming guitars, potted plants, pool game, etc. These are done on banner material with vinyl. Nothing will be printed on the banners that say Big Apple - the decorations will not be lit. These will look like silhouettes. This decoration material should last about ten (10) years. He is not sure at this point if he will change them occasionally, as they are very expensive. If any change, it will still be a silhouette – no writing on them at all.

Codes Officer Booth stated that based on the fact he has a pizza store, TV store, etc. at this location, and with our definition of a sign, that is why he is requesting this Interpretation.

Board Member Tesak addressed lighting – Mr. Bolos said no lit decorations, however, he may want to do something on the building, i.e., old fashioned lighting – he has no plans to have any of the windows lit. This is one of the last things that he wants to do at this site. Board Member Tesak also asked if he thought this would change the character of the area – Mr. Bolos said no, it enhances it – no one would have to look at black windows any longer.

Board Member Tesak addressed any type of verbiage. Mr. Bolos said that is why he is going with this type of look – new windows there would be nothing to see inside.

Comments were made that Mr. Bolos has done a great job with the property at this location.

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

-4th Ward Councilman Richard Woodland said he supports this application – he has no objection.

The Public Hearing closed at 6:35 P.M.

Chairman Bogar to Codes Officer Booth: if we say these window treatments are considered signage, the application would have to seek an Area Variance. Mr. Booth said yes. If we say these aren't signs, Mr. Bolos can proceed with his window treatments? Mr. Booth said correct.

Codes Officer Booth commented about no verbiage and no back lighting.

At this time, motion was made by Board Member Lenora Murad to Interpret that this is not signage, that they are window treatments because there will be no verbiage and no back illumination; and that no

words of advertising will be shown on these window treatments; seconded by Board Member Tim Tallman. 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 Taras Tesak – yes
Board Member Lenora Murad - yes

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

Board Member Murad asked Codes Officer Booth if lighting on the building is allowed – Mr. Booth said yes. Board Member Tesak asked Codes Officer Booth, what if they bought windows, could signs be put in the window – Mr. Booth said yes.

Town Attorney Cully stated that this Board Interpreted this application not to be a sign because of no verbiage and no advertising, and not back lit.

The application of **Faxton-St. Luke's Healthcare, 1710 Burrstone Road, New Hartford, New York**. The applicant is seeking a one-year extension on their Use Variance for the existing modular unit at 1710 Burrstone Road, New Hartford. The current terms expires on August 4, 2012. Therefore, the request for a one-year extension. Tax Map #317.000-2-25; Lot Area: 3.5 Acres; Zoning: Planned Development Institutional. Legal Notice was published in the Observer Dispatch on July 9, 2012 and property owners within 500' were notified. Ms. Sharon Palmer of Faxton-St. Luke's appeared before the Board.

Ms. Palmer explained that the plan was to move personnel into the St. Luke's campus. This modular unit houses their IT staff and classroom facilities. By the end of this year, space will become available and the IT staff and classrooms will be moving into that vacated space. They need the additional time to accomplish this, and they feel that a one-year extension is adequate.

Board Member Tesak asked about the facility at the former Pharmhouse Plaza on Seneca Turnpike and if this was part of their facility – Ms. Palmer said yes – it is an off-site facility. He also asked if there was any plan to move them into this area. Ms. Palmer said they train physicians and nurses with IT and like to keep them close to the hospital.

Chairman Bogar asked if there was anyone present to address this application – there was no response.

Oneida County Planning and NYSDOT comments were received with no recommendations (these letters are a part of the file). The Public Hearing closed at 6:40 P.M.

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: this doesn't apply;

- 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: this modular has been on site for three (3) years;
- 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 Fred Kiehm to approve the Use Variance request of a one-year extension for this modular unit; 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 Tim Tallman – yes	Board Member Lenora Murad – yes
Board Member Stanislaus - yes	

Motion to **approve** was carried by a vote of 7 – 0.

Draft minutes of the June 18, 2012 Zoning Board of Appeals meeting were received by each Board Member. Also, there was a typo on Page 6 of the May 21, 2012 minutes on the vote for Dr. Richard Sleeper, Kellogg Road. The vote should have read 5 – 1. Motion was made by Chairman Randy Bogar to approve the June 18, 2012 minutes as written and to correct the May 21, 2012 minutes as described; seconded by Board Member Fred Kiehm. All in favor.

There being no further business, the meeting adjourned at 6:45 P.M.

Board Member Tesak asked to address the Board; Attorney Cully stated that this Board cannot talk about things as it deals with the Town or Zoning Board of Appeals unless the meeting is reopened.

Based on the Town Attorney's comment, Board Member Tesak made a motion to reopen the meeting at approximately 6:45 P.M.; seconded by Chairman Randy Bogar. All in favor

Board Member Tesak's thought is he would like information that is given to the Board Members prior to the meeting to be made available to the general public before the meeting. He would like to know how the other Board Members feel. He referred to a particular application and what transpired with emails and information given to the Board before the meeting. Also, he addressed how the Chairman refers to the secretary for her to read responses from certain involved agencies, address phone calls, etc. at the meeting.

Discussion ensued regarding how to address this type of situation in a timely manner. It was stated that files are made available to everyone to review at the time of the meeting and prior when notices are mailed to the adjacent property owners and through a Legal Notice.

Town Attorney Cully referred to the process of opening, tabling and closing of a Public Hearing. When this particular email was received, the Zoning Board secretary called him on how to proceed. He stated to send this to all Board Members and the applicant so they can respond. He feels it should go on the record that we got this submission and made it available to everyone, and listen to those additional comments because those emails can generate more interest. This makes for more open government.

Codes Officer Booth asked if this Board wants information prior to the meeting or at the meeting. The Board Members stated yes, as this gives them an opportunity to offer the applicant every option to proceed with their application and the Board Members to make a fair and informed decision; and site visits are made to the properties.

Town Attorney Cully said in the interim we received submissions that are available here. Mr. Booth said this Board needs time to read and absorb the information with the application.

Chairman Bogar felt if someone sends something to the secretary, that individual should make the presentation in front of this Board at the meeting – this allows the public to be aware.

Town Attorney Cully referred to that particular application and how certain people took the initiative to do research and come up with relevant information. They wouldn't have had the ability to do that at the first meeting and tonight. Chairman Bogar could have said we received submissions and asked the public to summarize it; and they would have done so if the applicant appeared (in this case they did not).

Board Member Tesak feels if someone is going to make a statement and study case law and get a reply from the other party, we should ask both of those parties to come to this Board and make their presentation. This allows the option to address what they want to say before this Board and the public.

Motion was made by Board Member John Montrose to adjourn the reopened meeting at 7:10 P.M.; seconded by Board Member Lenora Murad. All in favor.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbb

