

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
OCTOBER 22, 2012**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Tim Tallman, Lenora Murad, Taras Tesak, John Montrose, and Karen Stanislaus. Board Member absent: Fred Kiehm. Also in attendance were Town Supervisor Patrick Tyksinski, 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. Further, that one (1) Board Member was absent and it is the applicant's option whether to proceed or postpone.

The application of **Mr. Leonard J. Pugh, Jr. et al, 1707 Burrstone Road, New Hartford, New York 13413**. This property at 1707 Burrstone Road is located in a Planned Highway Business zone and does not allow drive-thru restaurants. The applicant is seeking a Use Variance to re-establish a drive-thru. Tax Map #317.000-2-33.60; Lot Size: Approximately 196' x 150'; Zoning: Planned Highway Business. Legal Notice was published in the Observer Dispatch on October 15, 2012 and property owners within 500' were notified. Mr. Pugh and Attorney Mark Levitt appeared before the Board.

Attorney Levitt represents the applicant. Twenty-two (22) years ago he represented Hardee's Restaurant, which was built with a drive-thru. The zoning at that time was B1, which allowed for a drive-thru. The current zoning does not allow for a drive-thru. At this time, Castlewood Restaurant is closed and there is an interest for a Dunkin Donuts at this site, which they require a drive-thru.

Attorney Levitt addressed some questions from Board Member Tesak: 1) this property has always been a food-type business and Dunkin Donuts fits into this area; 2) this drive-thru would not alter the character of the neighborhood; 3) it cannot be leased without the drive-thru as most places require them now; 4) the applicant is not infringing on anything else on the property; 5) no problems with ingress and egress; 6) the zoning changed, thus, the Use Variance request.

Codes Officer Booth stated the use of the drive-thru was lost once it wasn't used – had the use been continue, it would have been grandfathered in.

Chairman Bogar asked if there was anyone present to address this application – no response. County 239 Planning was received with no comments; NYSDOT had no comments as well. The Public Hearing closed at 6:15 P.M.

The Board Members discussed the application and they had also been to the site.

At this time, 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: interested parties want a drive-thru;

- 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: property is unique
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - it will not alter the character, business in the area;
- The alleged hardship has not been self-created – response: not self-created.

Board Member Tesak asked how long the property was for sale and did they try to sell it. Attorney Levitt said it was on the market in August. Mr. Pugh has shown it to national clients and there was no interest unless a drive-thru was on site.

Motion was made by Board Member Taras Tesak to approve the application as presented as he feels the applicant has presented the need and that it won't change the character of the neighborhood; a Building Permit be obtained within one-year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Lenora Murad – yes

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Curtis Kemp, 3285 Oneida Street, Chadwicks, New York 13319**. Mr. Kemp is taking down the existing old garage and building a new one, same size, but he would like to add additional height. Zoning in this area is Medium Density Residential, which limits the average height on an accessory structure to 15'. The applicant is seeking a 6.5' height Area Variance to increase the height of this new structure. Tax Map #349.020-1-49; Lot Size: 108' x 400'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on Monday, October 15, 2012 and property owners within 500' were notified. Mr. Kemp appeared before the Board with his contractor, Herb Benn.

Mr. Benn presented a drawing. The new garage will be in the same footprint of the existing one (which needs to be replaced as there is no footing and it has started to sink in the ground). The height of the old garage is 17.5'. He further explained that he miscalculated and the size of the garage is 32' x 24' and the application states 24' x 30'. However, nothing has changed except for the height. The proposed height of the new garage will be 21.5'.

The Board Members had been to the site and noticed a neighbor's garage, which looked higher than what is proposed for Mr. Kemp, which could be caused by the layout of the property.

Board Member Stanislaus wanted to see pictures, which Mr. Benn gave her. Board Member Tesak asked Codes Officer Booth how the height is determined and Mr. Booth explained. Chairman Bogar

asked what the materials would be. Mr. Benn said the bottom half will be pole barn construction and the top will be stick built. Everything is wood, and will have engineered trusses. The door opening will be 7'. They haven't determined if they will have siding yet, maybe vinyl. No business will be run from this site, strictly storage.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 6:25 P.M.

The Board Members had been to the site and feel the new garage will look much better than what is there now.

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 Karen Stanislaus to approve the application as presented and it has met the criteria for 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 Lenora Murad – yes

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Samuel Talarico (Creekside Restaurant), 3888 Oneida Street, New Hartford, New York 13413**. Mr. Talarico is requesting to have an 18-hole miniature golf course on his property. This property is located in a Retail Business 2 zone, which requires a 25' side-yard and a 30' rear-yard setback from the property lines for an amusement enterprise. Therefore, the applicant is seeking a 23' left side-yard setback Area Variance and a 28' rear-yard setback Area Variance. Tax Map #339.016-1-50; Lot Size: Approximately 1.04 Acres; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on Monday, October 15, 2012 and property owners within 500' were notified. Mr. Talarico appeared before the Board.

Mr. Talarico presented a rendering of the proposed miniature golf course. He is working with a premier company. He is seeking setback Area Variances because of the 18-hole course in the back portion of his property. This is the minimal size for this particular golf course. He has tried to reduce it but it takes away from the integrity of the course. The proposed site is of no other use.

Board Member Tesak asked about the surrounding area. Mr. Talarico explained the rear portion of the property is woods. There are businesses adjacent and a home, but the parking lot is near the home. His property extends to the rear and sides. Board Member Tesak also asked if he has given any thought about flooding in this area and how it would affect his project. Mr. Talarico is aware of the flood plain. Construction is all concrete. Mr. Talarico has met with the State and an engineer, Mr. Al Swierczek. He has not heard back from Mr. Swierczek about securing the banks. Mr. Swierczek has updated drawings and scales. Board Member Tesak asked if this project could be done anywhere else on the property. Mr. Talarico said he can't because they have to stay 5' away from the creek. They have tried several ways but to no avail, especially with handicap accessibility. Chain link fence will be along the side and a wood fence along the creek bed itself. He will repair the existing bridge.

Board Member Tallman addressed lighting. Mr. Talarico said lights will not disturb the area – there were lights there before.

Codes Officer Booth stated this application needs to be reviewed by the Planning Board. They will be addressing a number of items, i.e., lighting, landscaping, parking, hours of operation, etc.

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

Mr. Guy Bonomo: He owns a house across the street. He asked if lighting would be shining at his house – Mr. Talarico said no. Mr. Bonomo asked about hours of operation. This will be addressed by the Planning Board.

Codes Officer Booth said this Board can put a stipulation on the hours of operation. Board Member Stanislaus asked Mr. Talarico if he had any idea about hours. Mr. Talarico said his ice cream establishment is open from 10-10:30 AM to 11:00 PM.

Board Member Tesak asked if there was any other manufacturer besides this one. Mr. Talarico said the only other way would be a wood course. This wouldn't be a good idea for this type of climate. The surrounding environment was a big part of his picking out this type of course.

Board Member Murad asked about parking with this new business and his existing businesses. Mr. Talarico did a parking study and he is well over what is required for parking. He is aware that he needs to address ingress and egress.

Board Member Tesak asked Town Attorney Cully if the Town was liable if this was approved and it is in a flood zone. Attorney Cully said we are approving the application of this impervious area but that is why the Planning Board gets involved so there will not be an increase in the flow of storm water. There is no liability on our part.

County 239 Planning had no comments and NYSDEC didn't send any written comments at this time, but Codes Officer Booth said the engineer for this project will have to come up with a flood proof design. The Public Hearing closed at 6:45 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, but the Planning Board will be reviewing it;
- 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 has met the criteria for 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 Lenora Murad – yes

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

Board Member Montrose recognizes there isn't much that can be done with this property. He would like Mr. Swierczek to check into the Sauquoit Creek Commission. He feels this project will improve the area, and will be an asset to the Town.

The application of **Ms. Eva McMahon, 1443 Ney Avenue, Utica, New York 13502 (Town of New Hartford)**, who is seeking a 7' front yard setback Area Variance for the front porch. Zoning in this area is Medium density Residential, which requires a 30' front yard setback from the property line, thus

necessitating the 7' Area Variance request. Tax Map #317.012-3-24; Lot Size: 50' x 90'; Zoning: Medium Density Residential. Ms. Eva McMahon appeared before the Board.

Ms. McMahon presented pictures of the property and porch. The house was in a rough condition and she wanted to update it. She didn't know she needed a variance when she was putting on the porch roof as the porch was already there. She hasn't changed the structure at all. She did this for safety reasons, especially for snow and rain. This porch is not enclosed.

The Board Members had been to the site and felt this was a big improvement.

Chairman Bogar asked if there was anyone in attendance to address this application – there was no response. The Public Hearing closed at 6:50 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 the applicant has met the criteria for 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 Lenora Murad – yes

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

Correspondence:

Town Attorney Cully referred to a three-lot subdivision this Board approved known as 360 Higby Road LLC. The approval restricted the developer to maintain a 50' buffer as it abuts the homes on Ironwood Road so sound would be shielded and no trees removed in this buffer area.

A landowner at 36 Ironwood Road had stated that some trees were rotted and he was in fear of them falling onto his property, and is concerned with the safety and welfare of his family. He would like to

take the responsibility and go into the buffer area, which is not his, and hire an insured contractor to take down the dangerous trees. Attorney Cully said we can't restrict him but we can restrict the developer. He was told by the resident that this is an urgent and dangerous situation.

Attorney Cully wanted to bring this to the Board. If this Board agrees, he would get a release from the resident at 36 Ironwood Road and developer and in no way to hold the Town liable. As an abutting landowner, he is going to incur the responsibility. The resident got approval from Mr. John Rich, who represents the developer, and they will enter into an agreement and the enforcement of this. Attorney Cully said these trees affect his property most of all. This does not affect any other property.

The resident at 36 Ironwood Road presented pictures of the diseased and rotted trees. Codes Officer Booth said he asked that this resident be placed on the agenda after talking to him.

Board Member Tesak asked if he was going to plant seedlings. It is so dense in this area he doesn't think they would survive. He stated that his other neighbor may consider doing the same – they are both concerned.

Board Member Murad is concerned about a domino effect and how do you control the cutting of trees at other areas in this restricted buffer. If approved, she would like to see a limit of the number of trees taken down. She wants to make sure other people in this area know they just can't take down trees. The resident felt this would be a case by case issue.

Town Attorney said he would want to see an agreement between the resident at 36 Ironwood Road, the owner, and the developer that they are all in agreement that this resident can have some trees taken down that are dangerous.

Town Attorney Cully would like to see a motion regarding this if the Board agreed.

Motion was made by Chairman Randy Bogar to approve an amendment to 360 Higby Road LLC so as to allow the resident at 36 Ironwood Road to enter into an agreement with the developer and owners of 360 Higby Road LLC subject to Town Attorney Cully's approval to remove a few dead or dangerous trees; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Lenora Murad – yes

Board Member Tim Tallman - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

Board Member Murad stated everything that was approved has to be put in motion before any trees are taken down.

*Note: since this meeting, the resident at 36 Ironwood Road has decided not to proceed with the removal of any trees as indicated above.

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The draft minutes of the September 17, 2012 Zoning Board of Appeals minutes were approved by a motion of Board Member John Montrose; seconded by Board Member Taras Tesak. All in favor.

There being no further input, the meeting adjourned at 7:05 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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