

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
JANUARY 28, 2013**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Lenora Murad, Taras Tesak, Fred Kiehm, John Montrose, and Karen Stanislaus. Board Member absent: Tim Tallman. 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 noted that one (1) Board Member is absent and it is up to the applicant whether to proceed or postpone.

The application of Mr. Michael Sheridan, P.E., for **Mr. Robert Cunningham (Cunningham Coins building), 4528 Commercial Drive, New Hartford, New York**. The applicant is located in a Retail Business 1 zone, which requires one (1) parking space per 200 square feet of building. The applicant is required to have 32 parking spaces but only providing 23. Therefore, the applicant is seeking a quantity Area Variance for nine (9) parking spaces. Tax Map #328.008-1-17; Lot Size: .73 Acres; Zoning: Retail Business 1. Tabled at the December 17, 2012 Zoning Board meeting. The applicant notified the Zoning Board Secretary that he does not have all the necessary information and asked that this be placed on the February 25, 2013 agenda. All Board Members in attendance agreed.

The application of Pastor James Smellie of the **First Apostolic Church** who is requesting to place a 32 square foot freestanding sign on their front property at **140 Clinton Road, New Hartford, New York**. Zoning in this area is Medium Density Residential, which allows for a 2 square foot sign. Therefore, the applicant is seeking a 30 square foot Area Variance for this sign. Tax Map #328.019-1-4; Lot Size: 3.5 Acres; Zoning: Medium Density Residential. Tabled at the December 17, 2012 Zoning Board meeting. Pastor Smellie appeared before the Board with a vice president of the Church.

Pastor Smellie presented photos of the sign as it sets on the site. He doesn't think this causes a visibility problem – the sign was made up by Church members – writing on both sides. It has the capability of being lit, but not hooked up at this time. He would like to do some type of lighting – it would not be lit during night hours. Pastor Smellie related to the Board the surrounding area. He talked to a neighbor who did not have an opposition.

Board Member Tesak referred to the two pillars and if they were existing – Pastor Smellie said yes, He explained that they would like exposure, to be a part of the community, and this is the only way to utilize the sign (as one existed previously) other than to place the sign on the building, which he feels would not be seen. The new sign is smaller than what was there previously.

Chairman Bogar asked if they had a lighting plan. Pastor Smellie said it could be whatever the Board wanted. He believes the lights were in the ground before.

Discussion ensued regarding type of construction of the sign, lighting, zoning updates by zone, and the type of sign there previously (which was a flashing digital sign).

Chairman Bogar asked if there was anyone present to address this application – no response. However, a call was received from a resident at 50 Arbor Drive who addressed the location of the sign from the road. Oneida County Planning 239 and NYSDOT responses were received with no adverse comments. The Public Hearing closed at 6:15 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 Taras Tesak to approve the application as long as lights are governed by this Board in that there will be no flashing lights (no dusk to dawn lighting); and this won't change the character of the neighborhood; and it has met the criteria for an Area Variance; also, a Building Permit be obtained within one (1) year of approval date; seconded by Chairman Randy Bogar. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of Shawn Smith of Site Enhancement Services, Inc. for signage at the proposed **Olive Garden Restaurant, 4646 Commercial Drive, New Hartford, New York**. This is located in a Retail Business 1 zone, which allows only two (2) wall signs. Therefore, the applicant is seeking a quantity Area Variance for two (2) additional wall signs. Tax Map #328.008-1-12.2; Lot Size: approximately 8 Acres; Zoning: Retail Business 1. Mr. Shawn Smith appeared before the Board.

Mr. Smith distributed some additional information for the Board's review. He explained in detail the layout of the proposed structure on the property and how it is visible from adjacent properties. Mr. Smith feels their request is comparable to the area. Also, he referred to a proposed To Go sign, which would be located over a landscaped island. The only thing illuminated would be the words To Go (this is for pick up). In addition, the only other illumination is the words Olive Garden. They are under the allowed square footage – they have cross access and that is why they need more exposure.

Mr. Smith feels these signs will be able to get people in the right direction through the site.

Board Member Tesak asked if this is the same type of signage with their other Olive Garden restaurants – Mr. Smith said yes. Board Member Tesak felt these are state of the art signs and sees no change in the character of the area.

Chairman Bogar asked if there was anyone present to address this application – no response. County Planning 239 and NYSDOT responses were received with no adverse comments. The Public Hearing closed at 6:35 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 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 Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of **McDonald's USA, LLC at 8522 Seneca Turnpike, New Hartford, New York** who is requesting to add to the existing freestanding sign. The applicant is located in a Retail Business 1 zone, which limits free standing signs to 64 square feet. The site already has 77.5 square feet. The applicant is seeking an Area Variance to add 24 additional square feet to their freestanding sign. Tax Map #328.012-1-57; Lot Size: 180' x 190'; Zoning: Retail Business 1. Mr. Randy Bebout of TY LIN International Engineers, appeared before the Board.

Mr. Bebout stated that McDonald's has requested a changeable reader board to add to their existing freestanding sign. This allows them to advertise menus, special items, etc. McDonald's has tried to do away with window signs.

Board Member Stanislaus questioned why this request wasn't made with the original application. Mr. Bebout said the sign is up, however, McDonald's didn't recognize that they needed to do anything – it was an oversight. They assumed it was on the drawings but it wasn't. However, he indicated that this sign is smaller than what was there previously. The changeable letters are manual – he doesn't know the frequency of the change.

Chairman Bogar stated that the trend seems to be these types of signs – going to electronics.

Board Member Tesak complimented Mr. Bebout on the new building and also the double window access. He also asked if the sign is high enough so as not to block visibility – Mr. Bebout said yes; also, Board Member Tesak asked if this a trademark – Mr. Bebout said yes.

Chairman Bogar asked if there was anyone present to address this application – no response. County Planning 239 and NYSDOT responses were received with no adverse comments. The Public Hearing closed at 6:45 P.M.

Board Member Tesak stated that this applicant submitted and addressed all the criteria necessary for the granting of an Area Variance, known as Exhibit B on their application.

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: difference of opinion.

Motion was made by Board Member Fred Kiehm 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 Taras Tesak. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of Mr. Timothy Lachacz for **Allison Ryan Cahalan, 5 Doris Road, New Hartford, New York**. The applicant is proposing to add an 8' x 8' mudroom onto a non-

conforming structure. This area is zoned Medium Density Residential, which requires a 30' rear yard setback. The applicant is seeking a 16' rear yard setback Area Variance. Tax Map #328.015-2-47; Lot Size: 60' x 110'; Zoning: Medium Density Residential. (The house is a legal, non-conforming home and the home doesn't meet the front yard setback).

Mr. Lachacz appeared before the Board and presented a picture of what exists on the house at this time. The structure will be 3' further to the back of the yard. The applicant would like the additional space to be able to remove boots, outer-ware, etc. It will be vinyl siding on the outside and the rest of the home may be done over with vinyl at some other time.

Board Member Tesak asked if there was any other way to accomplish this – Mr. Lachacz said no – he can't infringe on the door.

Chairman Bogar asked if there was anyone present to address this application – there was no response. County Planning 239 and NYSDOT responses were received with no adverse comments. 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 Lenora Murad 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 John Montrose. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of **L & D Builders for High Field Open MRI of Utica** to place a mobile MRI on the site at **4693 Commercial Drive, New Hartford, New York**. A mobile MRI is not recognized by the Town of New Hartford Code. The applicant is seeking a Use Variance to place it on the site temporarily. Tax Map #328.008-1-3; Lot size:

total 19.6 Acres; Zoning: Retail Business 1. Mr. Louis Bieler of L & D Builders, and Mr. Jacob Levine of QPK Design appeared before the Board. .

Board Member Tesak addressed the Town Attorney regarding whether he could participate in this application and he explained why. Town Attorney Cully asked him if he could be fair and impartial – Board Member Tesak said yes.

Mr. Levine presented a sketch of the unit and location. The existing site has been in operation for at least eight (8) years. There is a fault in the design of the existing unit and they need to change it. To do this it takes a certain amount of time to remove it (unit is 82,000 lbs.) and install the new one (14,000 lbs.). To keep the facility operating, they are asking to place a temporary MRI trailer. It will be located adjacent to the Clinton Street side. It will be within the owner's property line. There will be the removal of trees and temporary relocation of the light pole (which will be reinstalled at the same location). It is intended to take about 120 days, however, that is based on customer schedules and weather.

Board Member Tesak referred to the dumpsters on the site. Mr. Levine again addressed the trees to be taken out and replanted and light pole – nothing else changes. They will have to check the manhole. There is about 30' of width between the building and this unit.

Board Member Tesak mentioned that there may be a more feasible way of doing this – why stay there. Mr. Bieler said this is where they are located now – it is not for him to say. The doctors are in this area. Also, he said it would be too costly to move somewhere else.

Board Member Murad asked if patients are protected – Mr. Bieler said yes and it is ADA approved. Someone will usher patients, enter through the front and escorted. There is no radiation. He presented some specifics on the equipment. – this is a GE unit.

Board Member Tesak asked if any existing parking would be affected and he is concerned about traffic flow. Mr. Levine said it will not occupy any parking or site direction and a vehicle can go through. Also, Board Member Tesak asked, if this was moved into a facility pre-existing in the neighborhood, is that mobile unit already equipped – Mr. Bieler said this equipment takes 600-700 amps so it adds up when you start the numbers. The mobile unit is the best way to go and less costly.

Board Member Tesak asked the Town Attorney if there would be a liability issue with the Town. if approved. Town Attorney Cully said no – the owner is responsible.

Chairman Bogar asked if there was anyone present to address this application – there was no response. County Planning 239 and NYSDOT responses were received with no adverse comments. The Public Hearing closed at 7:05 P.M. The Board discussed the time frame for this application.

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: yes;
- 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 – this is a temporary situation.

Motion was made by Board Member Fred Kiehm 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; that the applicant be granted six (6) months to complete this project (or the reopening of the permanent facility, whichever is shorter); a Building Permit be obtained within one 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 Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. William C. Morris II, 35 Jordan Road, New Hartford, New York**. Mr. Morris is located in a Low Density Residential zone, which prohibits a fence/gate in a front yard. He is seeking a 30' Area Variance to place a fence/gate in his front yard. Tax Map #329.018-7-16; Lot Size: .84; Zoning: Low Density Residential. Mr. William Morris appeared before the Board.

Mr. Morris stated that the gate is already up. He was aware of fencing requirements in the front yard, but not a gate. The gate was installed by Gateway and is a 24' double opening steel gate (not electronic) – same color as the house. He feels it is not intrusive. The reason for the gate is the safety of his children. Jordan Road is busy and he would like to have his children safe on his property. He referred to some activity in the area and he is concerned. He submitted some names of his neighbors who support his application, which was given as part of the file.

Board Member Tesak feels the gate compliments the neighborhood. He explained about situations such as this and how this Board needs to use the balancing act – setting a precedent, etc. Chairman Bogar explained that this Board takes each application and reviews it independently.

Mr. Morris stated he came before this Board not knowing whether he would get an approval.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:20 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: 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: difference of opinion.

Motion was made by Board Member Fred Kiehm 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 John Montrose. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes

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

Board Member Tesak mentioned that perhaps we should read into the meeting responses from the applicant regarding how they address the criteria.

Draft minutes of the December 17, 2012 meeting were distributed to each Board Member. Motion was made by Chairman Randy Bogar to approve these minutes as written; seconded by Board Member Karen Stanislaus. All in favor.

The next Zoning Board of Appeals meeting is Monday, February 25, 2013.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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