

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
APRIL 28, 2014**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Byron Elias, Tim Tallman, John Montrose and Karen Stanislaus. Board Member absent: Lenora Murad. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, and 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 mentioned that the Board has one member absent and it is up to the applicants whether to proceed or wait for a full Board.

\*\*\*\*

The application of Mr. Ty Robbins of Site Enhancement Services, regarding a sign for the **Red Lobster Restaurant, 4619 Commercial Drive, New Hartford, New York**. The applicant is located in a Retail Business 1 zone, which allows only one (1) sign per side – maximum two (2). Applicant is seeking a quantity Area Variance for one (1) additional building mounted sign at 24 sf. Tax Map #328.008-1-23; Total lot size: 2.74 Acres; Zoning: Retail Business 1. Mr. Robbins appeared before the Board.

Mr. Robbins stated they are replacing the signs in the current locations. The square footage is almost the same but slightly under what is existing. The main reason for the change is to aid in the movement of traffic. Their "critter" logo is an identifier of Red Lobster. He feels the request is not excessive and makes sense with the architecture of the building. They are also doing remodeling inside the restaurant.

Board Member Montrose referred to the lobster sign. Mr. Robbins said this is an LED lighting for inside the sign only. It will not be a blinking sign.

Chairman Bogar asked how long the signs will be lit. Mr. Robbins does not know at this time.

Mr. Joe Burke of Tehan's Realty addressed the Board stating the column lights go off at about 10 or 11 P.M. As far as the signs on the building, he thinks they go off at closing. He feels this applicant is an improvement to this site.

Chairman Bogar asked if there was anyone else who would like to address this application – no response. The Public Hearing closed at 6:15 P.M.

Oneida County Planning 239 and NYSDOT have no comments.

It was stated that this request is slightly smaller than what exists at the site now and this company is reinvesting in the business.

At this time, the Board Members reviewed the criteria for 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 a Building Permit be obtained within one year of approval date; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes  
Board Member Byron Elias – yes  
Board Member Tim Tallman – yes

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

\*\*\*\*

Interpretation for **Mr. Omar Massoud/Massoud's Tree Farm, 9716 Roberts Road, Sauquoit, New York (/Town of New Hartford)**. Mr. Massoud would like to import products not grown on his premises for resale, which is contrary to the definition of Agricultural use. This property is zoned Agricultural. Tax Map #350.000-3-28; Lot Size: total acreage approximately 113 Acres; Zoning: Agricultural. Mr. Omar Massoud appeared before the Board.

Mr. Massoud stated that presently he sells landscape trees, shrubs, Christmas trees, and pumpkins in season all grown from his property. He has about 300 acres. He would like to put in a farm stand. If business warrants it, he would like to grown fruits and vegetables as much as he could on his own property, but be able to buy and sell from local producers to maintain his inventory. For example, he wouldn't be able to grow watermelons or bananas. Mr. Massoud said his stand would be about 60' long and 20' deep. It is part of the existing structure. Also, it will set about 140'-150' back from the road. Most of their parking is on asphalt and can accommodate up to 160 cars .He will be making no major changes to the building except to have shelving and refrigeration. Mr. Massoud said he used to sell fruits and vegetables years ago but hasn't for a while. He would like to diversify and make use of his family farm. He further stated that Governor Cuomo is encouraging this type of business with family farms.

There are local growers he will do business with, and there is an apple orchard next door to him. He will go to the markets and bring items to his property – it is the only feasible way to do it for him. He wants to keep his prices low. Hours of operation would be 9 AM – 6 PM every day except Sunday. It would be open for example from Memorial Day to the end of pumpkin season.

Chairman Bogar stated that this is an Interpretation and our decision affects the whole Town. He is concerned because the Code states items grown on the subject property. At this time, Codes Officer Booth read the Code for this particular request in an Agricultural zone. It also addressed an agricultural structure wherein they can have a fruit and vegetable stand (in an Ag zone). It clearly states produce has to be grown on the property.

Reference was made regarding greenhouses in the area, which bring in all sorts of goods for sale.

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

-Neighbor wanted to know if Mr. Massoud was going to put up any fences. Mr. Massoud said no fences.

-Neighbor: Mr. Massoud has always been a good neighbor. He believes he will help the neighbors who could provide some products to him. He is pleased to support this.

There being no further input, the Public Hearing closed at 6:30 P.M.

Board Member Elias supports this because it is inside the building. The agricultural structure is there and he can have fruits and vegetables. He doesn't have a problem getting some fruits from the neighbors and also getting them from an outside source.

Chairman Bogar again reiterated that the issue is products grown on the property. If approved, would this be setting a precedent. He referred to a couple of applications with requests of the same nature but not in Agricultural zones. He is aware that each case is reviewed individually.

Board Member Elias again stated that his interpretation of the law is as long as it remains in the building. Town Attorney Cully said if we interpret it in this fashion it takes away from the Codes Officer because products grown on such land means not only that but you can also bring products in.

It was stated that we have to be careful if the statute changes. Discussion ensued regarding Mr. Massoud seeking a Use Variance, which Mr. Massoud does not want to do. It was also stated that Mr. Massoud will grow many of the products on premises and if he runs out, he wants to bring some in. He can also buy some products from neighboring properties.

Discussion again ensued regarding what the Code states. Board Member Stanislaus said this doesn't seem to be supported by the definition. She suggested getting a greenhouse.

Motion was made by Board Member Byron Elias to address this Interpretation as follows:

To approve this Interpretation that this Agricultural use is defined as the sale of products grown on or raised directly on such land, in this case, Mr. Massoud's property wherein in this specific case in an Agricultural district the landowner is raising numerous products on premises including trees, shrubs pumpkins, corn, gourds that he would have the right to bring in additional similar produce items in the interest of his inventory or to provide similar products items that he does not grow. This Interpretation is for this specific piece of property only. This is a unique Interpretation for this specific property.

Town of New Hartford  
Zoning Board of Appeals Minutes  
April 28, 2014  
Page 4

Seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes  
Board Member Byron Elias – yes  
Board Member Tim Tallman – yes

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

\*\*\*\*

Discussion ensued regarding the draft minutes of the March 17, 2014 Zoning Board meeting. Clarification was suggested for the motion of the Michael McCarthy application. Motion to approve the minutes with the suggested change was approved by all the Board Members in attendance.

\*\*\*\*

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

Respectfully submitted,

Dolores Shaw  
Secretary/Zoning Board of Appeals

dbS