

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
NOVEMBER 16, 2015**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Taras Tesak, Byron Elias, John Montrose, Lenora Murad, Fred Kiehm, and Karen Stanislaus (arrived at 6:15 P.M.). Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Assessor Darlene Abbatecola, Councilman David Reynolds, 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.

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The application of **Victory Sign, Inc. for Sunset CMB, LLC for proposed Denny's Restaurant, 8548 Seneca Turnpike, New Hartford, New York (former Ponderosa Restaurant)**. The applicant is seeking an interpretation as to whether the portal proposal is a sign or an architectural feature. Pending this decision, the applicant is seeking either a quantity Area Variance for the signs on the front elevation of 3 or 4 signs; a square footage Area Variance for either 28 sf or 378 sf on front elevation. Tax Map #328.012-2-14; Lot Size: 1 Acre; Zoning: C2 Commercial-Retail Business. Mr. Anthony DePerno of Victory Sign, Inc., appeared before the Board.

Codes Officer Booth is looking to the Zoning Board as to whether this application is for a sign or an architectural feature. He distributed language explaining Signs to the Board Members. Mr. DePerno submitted colored renderings of the proposed Denny's building. Everything in white on the photo is the architectural feature sign – the yellow rendering is the actual signs. Chairman Bogar asked if the words America's Diner is attached to the white part at all – answer: yes.

Board Member Tesak asked if the Denny's sign is above what we are trying to determine or separate – Mr. DePerno said separate.

Town Attorney Cully stated this Board has to determine whether the "portal" is a sign or not then proceed.

Codes Officer Booth to Mr. DePerno: is it a portal or useable feature – is the highlight an entrance way – Mr. DePerno said some locations use it as a portal. The portal is the main focus. Since the application was submitted, they eliminated one sign from the package on the brick. The existing pylon sign is fine. He feels this fits the commercial structure.

Board Member Stanislaus joined the meeting at 6:15 P.M. and was brought up-to-date on what has transpired.

Board Member Montrose referred to the Best Buy sign as an example. Board Member Tesak asked if they are doing the façade (portal) and signage – yes. He asked if they had or looked into any other structures locally or through the County like this. Town Attorney Cully said that we are bound by the Town of New Hartford Codes – other districts may differ.

Mr. DePerno said he doesn't feel this is a sign – he feels it is an entryway. If this was a new building, it would be done as framing – it is only because it is an existing building that they have to work with it. The red as shown on the photo top, Denny's and America's Diner would be lit – just the letters.

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

-Vivienne Holland, 48 Imperial Drive. She feels a sign is just words.

There being no further input, the Public Hearing closed at 6:15 P.M.

Board Member Murad emphasized the language written for Signs (see attached). She feels it is a sign. Board Member Stanislaus feels it is an architectural feature. The Board Members referred to this existing building compared to new construction and what they have to work with for this project. This is an interpretation not a variance.

Motion was made by Board Member Taras Tesak that it is his Interpretation that this is a structure and not a sign; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes	Board Member Taras Tesak – yes
Board Member Fred Kiehm – yes	Board Member Lenora Murad – no
Board Member Byron Elias – yes	Board Member John Montrose – yes
Board Member Karen Stanislaus – yes	

Motion **approved** by a vote of 6 – 1.

Discussion was held regarding the variance, which is less because they eliminated one sign. He referred to the sign America's Diner in maroon on the plans, which eliminated square footage. The Variance is now approximately 15 sf. Board Member Tesak asked if the two remaining signs can be reduced – Mr. DePerno said no. Codes Officer Booth explained sign requirements.

Mr. DePerno was asked if this would be open 24 hours like the one located in Utica. He did not know.

It was stated that America's Diner is clearly a sign. Chairman Bogar asked if the Denny's sign on the side is needed – yes. It is the entrance.

Board Member Tesak asked what else can be done to eliminate signage – are five signs really needed. Reference was made to Sign B on the plan, which could be eliminated and which would resolve everything. Mr. DePerno was not opposed to this. It was mentioned that if they removed the Sign B and put it on the eastern side, would he have to be at this meeting. Answer; once the Interpretation cleared, he would still need the variance.

Chairman Bogar opened this part of the meeting up to the public again – no response. This part of the Public Hearing ended at approximately 6:40 P.M.

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: 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 – possibly.

Motion was made by Board Member Byron Elias to approve the application WITHOUT SIGN B; and a Building Permit be obtained within one year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes	

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

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The application of **Mr. Ben Aronson, c/o Gerald J. Green, Esq., for York Pinnacle LLC, Nigro Companies, for Hannaford Plaza, 44-54 Kellogg Road, New Hartford, New York**. The applicant is requesting a Use Variance to allow the construction of individual storage units inside the existing plaza structure behind existing retail stores. Self-storage units or storage is not a permitted use in a C2 Commercial Retail Business zone, thus, the request for a Use Variance. Tax Map #339.015-2-2; Zoning: C2 Commercial Retail Business. Attorney Gerald Green appeared before the Board.

Attorney Green addressed the Board stating that he spoke with almost everyone on this Board that they could view the property for this Use Variance. He referred to this application as Hannaford Plaza, which is zoned C2 and permits five uses, which one is an accessory use. He explained if an existing tenant seeks additional space for storage, that would be permitted as an accessory use. However, if he or someone wanted to lease the same space to store anything, it is not permitted. He referred to the number of allowed uses in a C2 zone and also additional uses allowed under Site Plan Review.

Statement from Attorney Green, in which he addresses this application, and also the criteria for the granting of a Use Variance, has been made a part of the file.

Board Member Elias stated that this is a unique parcel, but the law is very explicit – you have to show dollars and cents and he feels this hasn't been shown. He suggested tabling this and have the applicant supply the necessary information. You have to show no practical return. In absence of this, he doesn't feel the application is complete. Board Member Elias referred to the Department of State, which addressed this particular issue.

Attorney Green will address this further with the applicant. The applicant is not maximizing his return – there was enough there to move forward with the purchase and it is showing some profit. He made this investment and is trying to find a suitable tenant.

Board Member Kiehm questions the quality of the marketing and referred to other new businesses in the area that have moved into vacant spaces. He is also concerned about monitoring what will be placed in the storage units. He does not feel any one person can monitor everything that goes into a unit.

Board Member Murad agrees. She also referred to the residents that live behind this plaza and what concerns they may have. Further, she also referred to permitted uses and what could be placed at this location, which is a considerable list. She also questioned the recent purchase of this property. She mentioned perhaps one of the other stores can use this space as storage. She needs more information. Attorney Green stated this property was purchased with one thing in mind, reality is something else.

Board Member Tesak referred to the turnover in this plaza. This is the backside of a building. He is not against it at this point, however, he is concerned about hazardous materials being stored in the units, and the monitoring of this. It can be very dangerous. He would like to see a little more input on security, and monitoring. Also, he would like to see more of some type of documentation that they did market this.

A question arose as to how long this owner has actually owned this property.

Board Member Stanislaus agrees with the others. They need to show specific dollars and cents from an expert regarding reasonable return. Also, 1 ½ years isn't a long time to market this property.

Chairman Bogar summed it up as concerns regarding quality of marketing, property owned a short time, purchased with less than desirable floor plan, storage concerns, proof/ reasonable return. The criteria for a Use Variance is much more than an Area Variance.

Attorney Green asked if there is a time frame in which this application has to come back – answer: no. Chairman Green asked Attorney Green how long he would need to come back – answer: 120 days.

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

-Ms. Joan Shaw, 55 Imperial Drive. Is this two facilities. Where do you drive up to. She feels there will be more traffic. The noise level has increased. There are trucks coming from the back entrances, garbage and delivery trucks as well.

Answer: It is one and there is a space between it. There are two entrances and you drive to either rear entrance.

-Mr. Chovdari Vallabhaneni, 49 Imperial Drive. Noise is a concern. He has gone into the store at times very early in the morning asking to have the trucks stop making noise without any luck. He is also concerned about storage – how can it be monitored.

-No Name Given. She and her husband own the Liquor Loft. They adjust their inventory and make changes according to the times. She is concerned about the storage of items, and feels you

can't use the back because of deliveries, etc. She did not say whether she is against this or not, but expressed her concerns. Also, snow removal concerns.

Mention was made as to whether the Fire Department has been advised of this application.

Attorney Green will contact his applicant and address concerns.

-Ms. Cathy Lawrence, 67 Imperial Drive. She has concerns regarding storage also. People can go in at any time, unless there are restricted hours. It is a noisy area now and it will be worse. She asked if they get a Use Variance for storage, does that mean any place on that property they can put storage. It was stated that it is specific to the square footage and location as shown on the application. The Use Variance, if granted, goes with the land but only delineated as specified on the application. If approved, that part would be forever.

-Darlene Abbatecola, Assessor. She is assuming they would have to have contracts to rent the units. Wouldn't it specify specific hazardous materials – and who is responsible.

There was a list of prohibited materials that Attorney Green submitted with the application – see file.

Board Member Tesak referred to chemical spills as there is a stream there. He is more concerned about explosives, chemicals, paints, pesticides, etc. He would like to limit times entering the units.

Attorney Green feels there has to be someone on premises to monitor the units. He is looking to move this property forward. If this isn't the use, maybe another type of use but his market analysis so far so far storage seems to be what anyone is interested in. He even went to the existing tenants on that side. Attorney Green doesn't know what the original intent was for this property.

Motion was made by Board Member Byron Elias to table this application and give the applicant 120 days to come back before this Board; seconded by Board Member John Montrose. All in favor.

The public will be re-notified when this applications comes back.

Minutes of the October 19, 2015 Zoning Board of Appeals were approved by motion of Board Member Byron Elias; seconded by Board Member Karen Stanislaus. All in favor.

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There being no further business, the meeting adjourned at 7:55 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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