

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS**

**SEPTEMBER 15, 2008**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Bob Schulman, John Montrose, Kristen Shaheen and Kimberly Carolan-Faga. Board Members absent: Fred Kiehm and Tim Tallman. Also in attendance were Codes Enforcement Officer Joseph Booth, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members, explained the procedures for tonight's meeting, and mentioned that two (2) Board Members were not in attendance in the event applicants would like to postpone - a total of four (4) votes are needed for approval. The applicants chose to proceed.

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The application of **Mr. Michael Lucarelli, Galaxy Communications, 39 Kellogg Road, New Hartford, New York**, who is requesting that the free standing sign be located 2' from the front property line at 39 Kellogg Road. The free standing requires to be set back 5' from the front property line, therefore, the applicant is seeking a 3' front yard setback Area Variance. Tax Map #339.011-3-28; Lot Size: Approximately 1 Acre; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on September 5, 2008 and residents within 500' were notified. Mr. Lucarelli appeared before the Board.

Mr. Lucarelli stated that a 5' x 9' sign has been at that location since 1975. A year ago they bought several radio stations and the sign was changed and reduced to 4' x 12'. The sign contractor had told him he did not need a permit since it was to be located in the same place (this was incorrect and Mr. Lucarelli was advised he needed a permit and an Area Variance). He presented photos for the Board's review. There is a ditch behind the sign and even with an easement from the neighbor, he can't move the sign. Mr. Lucarelli needs the sign for exposure for the radio stations.

County Planning responded with no comment and County DPW had comments, which both letters have been made a part of the file.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Also, no letters or calls received. The Public Hearing closed at 6:40 P.M.

The Board Members discussed the reduced size of the sign, length of time it has been placed at this site, and the necessity for exposure. Chairman Bogar addressed visibility, and also stated the reduction of the size of the sign.

At this time, the Board Members went through 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 – the five (5) Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial –the five (5) Board Members responded no as the sign size was reduced;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no as there is no change in location.

Motion was made by Board Member John Montrose to grant the Area Variance as presented; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Bob Schulman. Vote taken:

Chairman Randy Bogar – yes  
Board Member Bob Schulman – yes  
Board Member Kristen Shaheen – yes

Board Member John Montrose – yes  
Board Member Kim Faga – yes

Motion was **approved** by a vote of 5 – 0.

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The application of **Mr. Robert Giglio, 9529 Mallory Road, New Hartford, New York**, who is requesting a 10' x 20' addition onto the left side of his existing home. Zoning in this area is Residential/Agricultural 1, which requires a 30' front yard setback. The applicant is seeking a 16' front yard setback Area Variance. Tax Map #340.000-4-29; Lot Size: 289' x 162'; Zoning: Residential./Agricultural 1. Legal Notice was published in the Observer Dispatch on September 5, 2008 and residents within 500' were notified. Mr. Giglio appeared before the Board.

Mr. Giglio presented photos of his property and the construction (he has a Building Permit for this project but was advised he needed an Area Variance). He needs additional living space for his family. Mr. Giglio stated that he tried to work this out differently, but he would have to move the deck and pool. Also, Mr. Giglio was asked about a

foundation – Mr. Giglio stated that this would be on piers and they aren't installed yet. This structure will be supported by six 6 x 6's. The materials will match the existing house. It was noted that his house is a legal non-conforming use.

Chairman Bogar asked if there was anyone present to address this application – there was no response. However, Mr. Giglio presented letters from two (2) neighbors: 9515 Mallory Road and 9509 Mallory Road, who are not in opposition. There being no further input, the Public Hearing closed at 6:50 P.M.

At this time, the Board Members went through 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 – the five (5) Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial – the five (5) Board Members responded no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no as it will enhance the property;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no.

Motion was made by Board Member Bob Schulman to grant the Area Variance as presented as long as the materials match the existing exterior siding and roofing; and that it be constructed according to Codes; seconded by Board Member Kim Faga. Vote taken:

Chairman Randy Bogar – yes  
Board Member Kim Faga – yes  
Board Member Kristen Shaheen – yes

Board Member Bob Schulman – yes  
Board Member John Montrose – yes

Motion was **approved** by a vote of 5 – 0.

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**INTERPRETATION:** The application of **Mr. Joseph Hage, 4661 Commercial Drive, New Hartford, New York**, who is requesting an Interpretation from the Zoning Board of Appeals regarding property at 4661 Commercial Drive, New Hartford, New York. Mr.

Hage is seeking an interpretation of the Zoning Enforcement Officer's contention that the semi-trailer is not an allowed use and that the banner situated toward Commercial Drive is a banner and such requires a permit. Tax Map #316.020-1-10; Zoning: Retail Business 1. Dan Burgess, Esq., of Hage &Hage, LLC and Mr. Joseph Hage of J&C Realty, Inc. appeared before the Board.

Attorney Burgess referred to 1) the mobile portable sign – this has been removed; 2) banner sign: that banner has been at this site since 2002. He referred to the Town Code where it specifically gives Mr. Hage ten (10) years to get into compliance from when the date of enactment – this new Local Law is 2008. He feels that because this banner was in existence, Mr. Hage should be given the time to come into compliance. Mr. Hage said this banner is the only sign for Scandinavian Designs (which is Mr. Hage's wife's business) and this is a family-owned business; 3) trailer on the property: Attorney Burgess noted the complaint states the trailer is being used as fixed storage and violates the schedule and he doesn't see this as a violation. Further, the property has been there for over 20 years and he feels it should be treated as a non-conforming use; 4) concern expressed that there has been some selective enforcement of both of these statutes: Attorney Burgess passed out copies of different businesses with banner signs as well as businesses with storage trailers, (photos have been made a part of the file).

Board Member Montrose asked if these trailers have been at the sites a lesser amount of time, i.e. Wal-Mart – the answer is yes. Mr. Hage addressed some other banners that he noticed. Mr. Booth stated that you can use a banner for two (2) weeks (a Building Permit is required) and that has been in effect since 1999. Banners can be on the building. Board Member Faga asked, you can have as many signs on the building as you want? Mr. Booth said under the prior law we were seeing a lot of different signage on buildings – that was acceptable, except for banners.

Board Member Shaheen asked Mr. Booth if they were to put something permanent on the Hage building for Scandinavian design, would it be acceptable to Code – Mr. Booth said yes. Mr. Booth said the Hage sign is painted on the building – in conjunction they would exceed the square footage limitation. A regular sign could be put up with our Ordinance if the square footage limitation is not exceeded. Board Member Shaheen asked Attorney Burgess if his client would be willing to consider this. Attorney Burgess said his client could consider this option but he feels they should have more than thirty (30) days. Board Member Shaheen felt that what Mr. Hage could do is have a permanent resolution without the temporary banner that satisfies the Code requirements and something more desirable.

Mr. Hage referred to the fire his wife had at her former store and how she now has her gift store in his building. To take the banner away, he felt, would hinder her business as

they are using it as a sign and the Christmas season is coming. Board Member Shaheen stated that he is indicating he won't have a sign on the building and also that he is running two (2) businesses out of one (1) building. Attorney Burgess said Mr. Hage would have to reduce the size of his existing sign.

Board Member Montrose wanted the applicant to know that the Codes Department is trying to clean up the Town and that Mr. Hage isn't being singled out – there are new Ordinances in effect and we are working with it. Attorney Burgess understands this but he feels the statute gives them time. Discussion ensued regarding permanent signs vs. banners.

Board Member Shaheen feels this Board's job is to interpret the signage rule to determine if it was enforced properly, and that we don't have jurisdiction over any selective enforcement arguments.

Codes Officer Booth stated that the amortization schedule Attorney Burgess is referring to is for a legally adopted sign. The Ordinance didn't change for banners. It is the same or quite similar. As far as the schedule of use goes on the trailer, nowhere is there a schedule of use permitted or site plan or special use. Nowhere does it allow for a trailer to be used as a permanent storage facility.

Board Member Faga asked Mr. Hage what the trailer is used for – Mr. Hage said carpet, carpet racks and padding and they use it on a regular basis. Board Member Faga referred to the condition of the trailer. Also, reference was made to what is printed on the trailer and suggested it be removed.

Attorney Burgess and Mr. Hage referred again to the schedule of uses for the trailer. They still feel it is a legal non-conforming use. Codes Officer Booth said to refer to the latest revision in 1999.

Mr. Hage had some questions for the Board Members, and the Board addressed those that were applicable to the application.

Chairman Bogar felt this has been an informational meeting for the applicant, attorney and Codes Department to go through this process. Our duty is to get the facts and make an interpretation of what the Codes Enforcement Officer's findings are.

At this time, Chairman Bogar addressed the following after considerable discussion:

Trailer & Banner: based on everything that we have discussed and listened to, does this Board agree that the Codes Enforcement Officer's

interpretation regarding the trailer and banner is correct. The determination is that the five (5) Board Members are in **unanimous agreement** on the Codes Enforcement Officer's interpretation for the trailer and sign.

Mr. Hage addressed the Board with a suggestion about setting a policy for non-compliant signs, time frames, etc.

Board Member Shaheen understands what Mr. Hage is trying to do, but advised Mr. Hage to contact his Councilman as this Board's role is to make a determination – if anyone wants to change it, there is a policy to follow through the Town Board. Mr. Hage was told that Mr. Richard Woodland is his Councilman.

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**INTERPRETATION:** The application of **Mr. George Casale, 22 Wills Drive, New Hartford, New York**, who would like to operate a farm and produce stand on his property. Mr. Casale is requesting an interpretation of the Zoning Enforcement Officer's contention that a farm and produce stand is not allowed in a Low Density Residential zone. A farm and produce stand, specifically, is permitted in an Agricultural zone according to the Town of New Hartford Code. Tax Map #339.011-1-28; Lot Size: 80' x 123'; Zoning: Low Density Residential. Mr. & Mrs. Casale appeared before the Board.

Mr. Casale stated he has a five ± acre farm in Litchfield where they grow produce, corn, strawberries, blueberries and pumpkins. They have small Christmas trees but those won't be ready for a number of years. Their children take care of these vegetables, etc. by hand and bring them to their residence at Wills Drive and share them with their neighbors. They are trying to teach their children responsibility and they enjoy doing this. Mr. Casale explained what happened a couple of years ago and they had to close down due to complaints. They were told that they cannot sell or advertise their produce from this site. The Casale's decided to place a small donation notice (8x11 sheet of paper) and if people wanted to, they could donate or not. They wanted to recoup some of the cost, but if they couldn't that was okay with them. They sold strawberries, blueberries, corn and pumpkins last year but before doing this, they asked their neighbors if there was any concern – the neighbors didn't object.

Mrs. Casale submitted a petition signed by her neighbors who support them.

Mr. Casale said his stand is open from about June through October 31<sup>st</sup>. They have a 10' x 10' tent over the stand to keep the rain off the produce and it is located to the front side of the house. They bring the produce in at night. Board Member Shaheen asked Codes Officer Booth if there was a definition of structure for the temporary sale of farm produce. Mr. Booth said it has to be on display and for sale and his interpretation is that

it is a farm stand, but he is giving them an opportunity to be heard. The Casale's said they just accept donations or it could be free. Mrs. Casale stated that most of their neighbors walk over – there is no traffic at their site, and they don't advertise at all - this is a hobby for them. A suggestion was made to not have the tent but perhaps an umbrella-type table.

Discussion ensued regarding any Town Ordinance regarding stands of this nature. The Board Members felt that this is a farm stand where they aren't selling anything according to what the Code states.

Chairman Bogar stated that the Town wants to maintain certain parameters of rules and regulations and we have supported the Codes Department in interpretations of many things over the years. Mr. Booth has done a good job trying to enforce these rules and regulations.

Codes Enforcement Officer Booth asked for a proper interpretation of what would exist on this site if approved, i.e., umbrella or tent. The only discrepancy is whether the donations constitutes a sale.

After continuing discussion, it was the **unanimous decision** of each of the five (5) Board Members that Mr. Casale would be allowed to stay with the 10' x 10' tent to the side of his home to cover his produce; to have suggested donations only for this produce and vegetables; and there would be no signage or advertising (except for the 8 x 11 sheet of paper stating donations).

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There being no further business, the meeting adjourned at 8:30 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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