

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
AUGUST 16, 2010**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present were Tim Tallman, John Montrose, Karen Stanislaus, Julius Fuks, Jr., and Fred Kiehm. Board Member absent: Bob Schulman. Also in attendance was Town Attorney Herbert Cully, 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. Minutes of July 26, 2010 approved by Board Member John Montrose; seconded by Board Member Karen Stanislaus. All in favor. Chairman Bogar welcomed newest Board Member, Julius Fuks, Jr., who will complete the term of a vacated position.

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**360 Higby Road LLC, Mr. John Rich for Mr. Anthony Giovinazzo, Higby Road, New Hartford, New York 13413.** Rehearing: when approval was granted by the Zoning Board of Appeals, it was based upon further Site Plan Review by the Planning Board. Since this is a Minor Subdivision, there would be no such review required and accordingly, the Zoning Board members have requested that further review occur regarding issues previously raised before the Board relating to storm water, buffering, landscaping, manner of access and other matters. Tax Map #340.000-2-1.2; Lot Size: approximately 26.75 Acres; Zoning: Low Density Residential. Mr. John Rich appeared before the Board.

Chairman Bogar explained what transpired at the July 26, 2010 Zoning Board meeting and the approval with conditions. However, under further review because it is a Minor Subdivision, it doesn't need Site Plan Review. It is back this evening to take a further look, and this Board may want to place further conditions. He reiterated that this is a Minor Subdivision and not a Site Plan Review.

Town Attorney Cully said we will be discussing screening issues as well as lighting/lighting district, stabilized entrances, hours of operation, etc. This Minor Subdivision will go through Administrative Panel Review not Planning Board Site Plan Review.

Chairman Bogar addressed items 1 thru 7 of Mr. Jerome Donovan's letter to the Zoning Board members dated July 19, 2010 (copy in applicant's file). The Board also referred to Mr. Gustave DeTraglia's letter of August 9, 2010 (copy in applicant's file). Both letters will be attached to the Zoning Board minutes of August 16, 2010.

The driveway will be a shared drive – no public access – a driveway with two (2) houses. Discussion ensued regarding access by emergency vehicles. Town Attorney Cully stated that according to the plan the entrance is sufficient for emergency vehicle access (driveway is 12' – 14' wide), buffering shown on both sides; 50' setback of undisturbed area; and underground utilities – all shown on the map.

Mr. DeTraglia appeared before the Board and referred to his letter of August 9, 2010. He stated several times that he is not objecting to the two (2) lots. His intention is to make sure it is done right. Some issues of concern:

-future salability of property; question of future street /right-of-way/driveway (Town Attorney Cully said this was addressed at the last meeting for the definition of a street- he does not feel it should be abandoned – it is clearly defined) – Mr. DeTraglia still feels we need to abandon the paper street; proper construction of 200' long driveway (this will be given to Codes Officer Joe Booth and Town Engineer John Meagher to review); subdivision restrictive covenants applied to these two (2) homes to protect character of the neighborhood; former corporation is dissolved; plowing and maintenance will depend on the homeowner – is there a designated area for snow; underground utilities – he would like to see some indication from the Water Board and National Grid on what will be done; lighting district, drainage and septic – he doesn't see where they have been addressed; Planning Board review – what would they look at; sewage disposal, height of buildings, perk testing, nearest hydrant; and title of property.

Town Attorney Cully explained again why this application is back before this Board. The Administrative Review Panel and Chairman of the Planning Board will review this in detail with the contractor – the administrative review is mandatory.

Mr. Jerome Donovan addressed the Board stating that in terms of the Planning Board, this wouldn't come before them under Site Plan Review. Town Attorney Cully said it would depend on the administrative review. If the chairman of the Planning Board wanted to present it to the members, it could be done. Mr. Donovan had a difference of opinion. Discussion ensued regarding Minor Subdivision review and the rules/procedures of the Administrative Review Panel. Town Attorney Cully again explained the procedure for Minor Subdivisions. Mr. Donovan asked if there is a filed subdivision on the former 32-lots – Attorney Cully said no, the 32-lot subdivision was proposed but not approved – it never went forward.

Mr. Donovan wanted to thank Mr. Rich for including on the plot Lots 6 and 7 with conditions he requested. However, he addressed the South Woods Lighting District and believes the proposed homes should be in that Lighting District, boundaries be amended and if so, a process to be undertaken. He also addressed work hours that weren't addressed on the plot. He referred to Town Code Section 65-4 (0) – hours of operation 7 AM to 7 PM. He wonders if this Board has the authority to supersede the Code in this regard. Chairman Bogar believes we do.

Mention was made of garbage pickup at the main road or driveway.

Chairman Bogar referred to Mr. Donovan's letter of July 19, 2010 and his condition #5. Mr. Donovan felt that the developer incorporated it on the plot to be filed with the County.

Their being no further public input, the Public Hearing closed at 6:40 P.M.

Board Member Tallman asked Town Attorney Cully about the quality of construction of the driveway as some Board Members have concerns. Discussion ensued about the width, turnaround adequacy and emergency access. Board Member Tallman also referred to lighting

installation so as not to bother the adjacent neighbors. It was mentioned that there would be no new lighting along the driveway. Board Member Fuks stated driveway lights must be built and constructed/designed with the character of the neighborhood and leave it to the homeowners who bought the property. Board Member Fuks addressed the driveway stating the Town should be looking at it for specifications by the Engineering Department to make sure it is adequate for emergency vehicles. Board Member Stanislaus agrees with Board Member Fuks. She also stated that the other homeowners and members of the subdivision were bound by restrictions and they should also be bound to keep the character of the neighborhood intact.

The Board Members discussed the following conditions:

- A.
- driveway width to be 12' – 14'
  - hours of operation 7 AM – 7 PM with no heavy construction after 7 PM seven (7) days a week and no heavy construction outdoors on Sundays
  - attach submissions from Mr. DeTraglia and Mr. Donovan on comments for the Administrative Review Panel
  - address restrictive covenants. Town Attorney Cully said this is a different subdivision. It was mentioned that these lots are much bigger in size than the existing lots.

At this time, Board Member Stanislaus read through the South Woods deed restrictions and the Board Members addressed each as to whether or not to incorporate into the approval (these deed restrictions and their explanations are filed with the application):

- B.
- 1) Architectural & Aesthetic Control: do not include
  - 2) Building Location: do not include
  - 3) Temporary Living Quarters: include as condition
  - 4) No animals, livestock or poultry as explained: include as condition
  - 5) Trash & Garbage: include as condition
  - 6) No fence, etc.: do not include
  - 7) Single Family Dwellings: include as condition
  - 8) Junk or Junk Cars: include as condition
  - 9) Land Use: include as condition
  - 10) Zoning Regulations: do not include
  - 11) Recreation Vehicles: do not include
  - 12) Construction: do not include
  - 13) Swimming Pool: include as condition
  - 14) Term: do not include
  - 15) Enforcement: do not include
  - 16) Severability: do not include

Mr. DeTraglia stated that when there is a Zoning Ordinance for single family, it doesn't include a group home.

It was determined that the criteria had been addressed at the July 26, 2010 meeting. This Minor Subdivision will also be reviewed by the Administrative Review Panel and proceed accordingly.

Motion was made by Board Member Fred Kiehm to approve this application with the condition from Mr. Donovan's letter of July 19, 2010 regarding deed restriction to prohibit further; to include the conditions discussed under letter A above; and also to include the underlined deed restrictions shown above under letter B as part of this motion; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member Fred Kiehm – yes	Board Member John Montrose – yes
Board Member Julius Fuks – yes	Board Member Karen Stanislaus – yes

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

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The application of **Sangertown Square, LLC, Route 5 & 5A, New Hartford, New York**. The applicant is applying for temporary outside wall signage totaling 108.28 square feet in size. This property is zoned Retail Business 1 which limits wall signage to 80 square feet and a single sign. Therefore, applicant is seeking a 28.28 square foot Area Variance for the sign, and also a single quantity Area Variance for another sign. Legal Notice was published in the Observer Dispatch on August 6, 2010 and residents within 500' were notified. Tax Map #328.008-1-12.1; Zoning: Retail Business 1. Mr. Darrin Houseman appeared before the Board.

Mr. Houseman explained that he has an application for a Spirit Halloween sign, which their logo exceeds the allowed square footage. The sign is for two (2) months from September through October 2010. The applicant is seeking better visibility for their business which will be located in the former Circuit City building.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:22 P.M.

Chairman Bogar stated that County 239 Planning and NYSDOT reviews were received with no comments.

The 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 – 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 – no, all in agreement;
- The requested variance is substantial – 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 – 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 – no, all in agreement.

Motion was made by Board Member Fred Kiehm to approve the application as presented; and that 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 Fred Kiehm – yes  
Board Member Julius Fuks - yes

Board Member Tim Tallman – yes  
Board Member John Montrose – yes  
Board Member Karen Stanislaus - yes

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

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**Mr. Brian Gaetano of BPC LLC**, is seeking to place a second free standing sign, 14 square feet, on property located at **102 Business Park Drive, New Hartford, New York**. Section 118-54C-9 prohibits more than one (1) sign per site. Therefore, the applicant is seeking a quantity Area Variance of one (1) sign and an Area Variance of 15 square feet. Legal Notice was published in the Observer Dispatch on August 6, 2010 and residents within 500' were notified. Tax Map #317.000-2-8.4; Lot Size: .91 Acres; Zoning: RB3 Office Business. Mr. Brian Gaetano appeared before the Board.

Mr. Gaetano explained that Merrill Lynch has been the main tenant for ten (10) years, and they do not want another tenant on their existing sign. Therefore, he is seeking a variance for a smaller sign similar to Merrill Lynch. This will be located on Business Park Drive, and it will not be illuminated.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:30 P.M.

County 239 Planning and NYSDOT reviews were received with no comments.

The 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 – 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 – no, all in agreement;
- The requested variance is substantial – 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 – 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 – no, all in agreement.

Motion was made by Board Member John Montrose to approve the application as presented; and that 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 Fred Kiehm – yes  
Board Member Julius Fuks - yes

Board Member Tim Tallman – yes  
Board Member John Montrose – yes  
Board Member Karen Stanislaus - yes

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

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**UPDATE:** Mr. Ned Walker representing Jay-K, Seneca Turnpike, New Hartford, New York – update to Zoning Board of Appeals regarding parking plan for their proposed mercantile occupancy. Mr. Ned Walker of Walker Planning & Design, Mr. Dean Kelly and attorney Dan Cohen appeared before the Board.

Mr. Walker explained that he wanted to update the Board with pictures of the existing condition for existing and future parking and how they will deal with Jay-K parking off the lease hold site. The proposed sketch shows they can get 250 parking spaces. He asked the attorney for the Kelly's, Attorney Dan Cohn, to address the County 239 revised letter which gives this Board clear direction on what County Planning says is appropriate regarding the traffic study issue, and any other questions the Board may have to ask.

Attorney Cohen feels the main concern is the traffic study. He is aware this Board wanted the study before making a determination on the Use Variance. He strongly feels the traffic study is a site review issue to be addressed by the Planning Board. He feels this Board could make the traffic study a condition to send it to the Planning Board. It is critical to them to have the study done at the Planning Board level.

Attorney Cohen addressed what he felt was not a self-created hardship because of the Zoning Ordinance. Also, that this change would not affect the character of the neighborhood as there is retail surrounding them. Further, he feels the hardship is unique because they have a piece of land in a highly retail area.

Chairman Bogar referred to the NYSDOT's suggestion regarding a traffic study. At this time, it was mentioned that we do not have a full Board this evening and that a total of four (4) votes would be needed if a vote was to be taken on this application.

Chairman Bogar asked if they wanted to wait for a full Board – Mr. Walker said yes, but he would like to hear comments with regard to the traffic study. Chairman Bogar understands the request, but there is nothing to say this isn't the appropriate venue to request a traffic study. Chairman Bogar stated a traffic study could show how a tenant such as theirs could actually increase traffic at which is one of the highest accident areas in the Town. Discussion ensued regarding when the traffic study should take place. Board Member Kiehm is concerned about the health and safety of the residents - the traffic study would address this.

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Mr. Patrick Agen, Prudential Real Estate, addressed the Board. He stated that if we had the approval, it is a good possibility the applicant would pay for the traffic study.

Mr. Walker would still like the Board to go forward with this project as he feels it will bring life back into the Town, and that a Use Variance can be conditioned with the traffic study and go forward to the Planning Board. Attorney Cohen agrees and feels the Planning Board has more expertise on this issue.

It was the consensus of most of the Board Members that they did not want to vote on this application tonight. Mr. Walker asked to table this – the Board Members agreed. Zoning Board Secretary Dory Shaw will contact the Board Members for a meeting date in September to try to accommodate the applicant.

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There being no further business, the meeting adjourned at 8:20 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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