

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
NOVEMBER 21, 2011**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Tim Tallman, John Montrose, Taras Tesak, and Karen Stanislaus. Board Member absent: Lenora Murad. Also in attendance was Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, and Dory Shaw, Recording Secretary. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting.

Draft minutes of the October 24, 2011 meeting were received by each Board Member and approved by motion of Board Member John Montrose; seconded by Board Member Fred Kiehm. Board Member Taras Tesak abstained as he was not present. All in favor.

Mr. Jeff Barron of Pride Signs for BG New Hartford LLC – Applebee's Restaurant, 4755 Commercial Drive, New Hartford, New York. The applicant is seeking a quantity Area Variance to add fifteen (15) additional signs, including awnings, and a 582 square foot Area Variance. Town Code, Section 118-54C only allows two (2) building mounted signs per business. Therefore, the request for the Area Variances. Legal Notice was published in the Observer Dispatch on November 14, 2011 and property owners within 500' were notified. Mr. Brian Gagne of T.L. Cannon Management Corporation/Applebee's appeared before the Board.

He presented photos of the new signage and awning package for Applebee's and also what the signage looks like at the present time. They are upgrading the quality of the signage with LED lighting. The signs are exact placements on the building when first approved and when Applebee's opened. The awnings will be closer to the building – they are streamlined and for ornamental reasons as well. The new logo will be shown also. They aren't adding any additional signs.

Board Member Tesak asked Codes Officer Booth to explain why they are before the Board. Mr. Booth stated the Sign Ordinance has changed significantly since they received approval. If they exceed what is allowed, they need a variance.

Mr. Gagne stated the awnings are now illuminated from underneath rather than on top. Codes Officer Booth stated the awnings have their trademark on them where it wasn't shown before and anything with a logo is considered a sign.

Chairman Bogar asked if there was anyone present to address this application – no response. Responses were received from OC Planning, OCDPW and NYSDOT with no concerns. 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 presented as it met the criteria necessary for the granting of an Area Variance; the applicant acknowledged everything is approximately the same size; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes

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

Mrs. Kristine Putrelo for Grange Hill Realty, 9273 Grange Hill Road, New Hartford, New York. The request is to construct a 70' x 100' building on their property for storage. The applicant is located in an RB4 zone which does not allow construction salvage or storage. Therefore, the applicant is seeking a Use Variance for construction of a new building on the property for said use. Legal Notice was published in the Observer Dispatch on November 14, 2011 and property owners within 500' were notified. Mr. & Mrs. Putrelo and their attorney, Michael Getnick, Esq., appeared before the Board.

Attorney Getnick submitted additional paperwork that had been inadvertently left out of the submittal with Exhibit 10. He would like to ask for a Use Variance of the land. The zoning is such that they cannot have commercial storage. What he tried to do was put together the background of the purchase of the property and what information the applicants were relying on. This is a 3.2 acre parcel. The property was purchased as one (1) parcel. He explained who owned the property previously and what transpired after.

Attorney Getnick explained the storage facility behind the office building which has been there for years. Mr. Putrelo has construction equipment stored outside. It is the desire of the applicants to ask this Board to allow the land to be used for commercial storage – they had thought the

whole property was within that same existence of commercial zoning. He referred to photographs showing the neighborhood. The Putrelo's consider themselves good neighbors and want to continue to be – they feel it is to the advantage of the Town and neighborhood to have this variance. He has tried to go through the criteria for a Use Variance and to give as much financial detail as possible.

It was stated that sometimes the equipment is on a site, but with the economy as it is, he has the equipment on his property more often than not.

Board Member Montrose asked if all the items on the property could fit into the proposed structure and if any of the building would be rented out – the answer is that all equipment and items will be removed from the outside and stored inside, and none of the building would be rented. The storage his neighbors are looking at will be placed inside.

Board Member Stanislaus referred to a storage building located across the street from the Putrelo property – she does not feel this request would alter the neighborhood.

Board Member Tesak referred to correspondence to the Planning Board in April 2002 relating to this site and why it went to them. Town Attorney Cully said it appears that in the process of buying it this came up as correspondence. They probably made an inquiry. Board Member Tesak also asked if there was a change in the parcel, commercial compared to residential. Codes Officer Booth said the zoning hasn't changed and originally this was a one-person office. This is before the Board as there is no use for construction storage in this zone. When Mr. Putrelo applied for a permit for the office and apartments, he had a permitted use in this zone and also the accessory building. They are zoned a neighborhood business and this doesn't comply with their new request. The outside storage is the issue.

Codes Officer Booth read the permitted uses in an RB4 zone. He further stated that because there was always an office and commercial storage in that building, he considered it a continuation of use – a non-conforming use which was acceptable.

Board Member Stanislaus referred to the materials outside that are raised - is that going to be graded down or is the building right there – Mr. Putrelo said right there – it would be a natural topography.

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

-Ms. Judy Cusworth, 101 Woodhaven Road. She has seen the outside storage. A pole barn would not bother her as everything would be stored inside. It would help him and also the neighborhood..

-Mr. Tony DeCarolis – he lives across the street. The Putrelo's have been outstanding neighbors. He feels the storage building would be a benefit. They employ many people in the area and have helped everyone in the neighborhood during the recent rain storms. They have been an asset to the neighborhood. He is willing to live with a pole barn rather than look at

outside storage. Mr. DeCarlo asked if he was going to build it where the concrete forms are – Mr. Putrelo said yes.

-Mr. Paul Toomey, and Mrs. Andrea Toomey, 9286 Grange Hill Road. They feel it would be beneficial to the neighborhood to have the pole barn. They support the application.

-Mr. Mark Kuhn. He is concerned about the value of his own property and supports the pole barn to remove the outside storage.

-Attorney Getnick submitted a letter from Ms. Ann Falvey, 9278 Grange Hill Road who could not attend but is in favor of the application. This has been made a part of the file.

Board Member Tesak asked if this pole barn would be big enough and if they would need another building at some time. Mr. Putrelo said 7,000 square feet is a big building and he is comfortable with this size. He could always go off the back to add on rather than the front.

Ms. Cusworth said there is a creek bed in the back and she doesn't want to see any alteration to that creek.

Mrs. Putrelo said they have a full-time employee who maintains the property. He will make sure everything is kept clean and neat.

Codes Officer Booth asked the Board to be very specific and cover everything from time frame to height of building to setbacks and exterior storage.

Discussion ensued regarding the height of the building and asked if they had any building plans. Attorney Getnick didn't want to take anything for granted and didn't want to spend the money for plans unless the variance was granted. However, they will help with whatever the Board wants.

Mr. Putrelo was asked about driveway improvements. He would like to put one from the lower to the upper part of the property.

Water runoff was also discussed. Further, a Use Variance for construction storage building isn't a prescribed use. If it is granted, it is a building with no criteria.

Attorney Getnick said what they are requesting is whether the land could be used for commercial storage.

Attorney Cully stated if granted for the use of the land, this part could be done then further review by this Board with the submittal of plans to be discussed at another time to review those plans. Attorney Cully addressed a question about continued use of storage outside. If granted, he cannot – it is what we determine with the Use Variance. They have to abide by the height requirements. The regulations are described.

There being no further input, the Public Hearing closed at 6:50 P.M. The Board Members continued discussion and the criteria for the granting of a Use Variance.

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: the documentation is in the packet;
- 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: the Board Members seem not to have a problem with this request;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: it wouldn't alter the neighborhood
- Alleged hardship has not been self-created– response: this is questionable.

Motion was made by Board Member Karen Stanislaus to approve the Use Variance and suggest to them to come back with their specifications in January or February and give us some plans for us to review to check specs, etc. and make sure there is some parameter so it isn't built too high. Further, she feels we should approve the use – it is one parcel and there is a similar structure nearby. *(see below for finalization of this motion).

Board Member Tesak tried to summarize this 1) build something to store the equipment or 2) remove what is outside. Board Member Tallman asked what if this is granted and the building up and he doesn't remove the outside construction equipment. Codes Officer Booth said they have already been Summoned – the Court could rule in favor of the Town or the applicant. The Putrelo's are aware of this.

Town Attorney Cully thought Board Member Stanislaus's motion was proper – grant it subject to them coming back before this Board in January or February with plans.

Motion seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member John Montrose – yes	Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes	Board Member Fred Kiehm - yes

Motion was approved by a vote of 6 – 0.

Attorney Getnick will get in touch with the Codes Officer regarding their attendance at another meeting.

Mr. Anthony Taurisano of Speedy Awards. Mr. Taurisano is requesting to erect a 48 square foot building mounted sign onto their new location at **Crossroads Plaza, 8411 Seneca Turnpike, New Hartford, New York.** Zoning in this area is Retail Business 1 which limits total building signage to 24 square feet. Therefore, the applicant is seeking a 24 square foot Area Variance. Tax Map #328.000-3-16.2; Zoning: Retail Business 1. Mr. Anthony Taurisano appeared before the Board. Legal Notice was published in the Observer Dispatch on November 14, 2011 and property owners within 500' were notified. Mr. Taurisano appeared before the Board.

Mr. Taurisano explained that Speedy Awards is moving to Crossroads Plaza and they need the exposure (he presented a photo of what the sign would look like from the road without a variance and it would be very hard to read). The store front is only 16' wide. The sign will be an LED illuminated.

Board Member Tesak asked the applicant if this sign could be accomplished by any other means – the answer is no.

Chairman Bogar asked if there was anyone present to address this application – no response. Responses were received from OC Planning and NYSDOT with no concerns. The Public Hearing closed at 7:05 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 Fred Kiehm to approve the application as presented as it met the criteria necessary for the granting of 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 Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes

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

Mr. Tony Quirici for Rock Solid Provisions, Inc. Mr. Quirici is seeking an Interpretation of an Accessory Use (two drop boxes are proposed to be located at **3906 Oneida Street, New Hartford, New York (Cristiano property)**). This area is zoned Retail Business 2 and it is the contention that drop boxes are not accessory uses. Therefore, the applicant is seeking an Interpretation of Accessory Use.. Tax Map #339.016-1-64; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on November 14, 2011 and property owners within 500' were notified. Mr. Tony Quirici appeared before the Board.

Mr. Quirici stated this is a non-profit organization (Upton Lake Christian School). He collects clothes and shoe for use in third world countries. Anything that remains gets sold but the money goes to the school. He stated that these boxes are moveable – their goal is not to detract from the neighborhood but give people an opportunity to get rid of their things to be used again. He wasn't aware of the Codes for this in New Hartford as he basically hasn't run into this type of situation where he may need an interpretation or variance. The location wouldn't affect snow removal and doesn't interfere with parking. He collects twice a week. He has two (2) boxes in this location to have as an extra without having any type of overflow. Mr. Quirici has a placement agreement with Mr. Cristiano. He allows them to put the boxes on the property through this agreement. He doesn't pay him anything. It is Mr. Quirici's responsibility to keep the area neat and clean – he carries the liability. If the property owner wants the boxes removed, Mr. Quirici will remove them – it is what the property owner wants.

Board Member Kiehm mentioned the approval of a similar use at a church in Chadwicks but this was a profit-type business. Reference was also made to their boxes in New York Mills. These are not located in the Town of New Hartford – we have no jurisdiction.

Board Member Tesak asked about the exact location. Mr. Quirici said the boxes will be placed at the far rear corner of the lot on the other side of the culvert and on the grass – not on the parking area. They will be about 100' back from the street. Board Member Tesak asked Codes Officer Booth what brought this gentleman to this Board. Mr. Booth said that he drove by and saw this.

Discussion ensued regarding this application. Town Attorney Cully explained that Mr. Booth feels this is not an accessory use and if we grant it as an accessory use, it allows others to do the same. If determined to be an accessory use, they are committed as long as they meet the setback requirement and as long as the property owner permits it. Mr. Booth explained that an accessory use is incidental to the primary use and it is his contention this doesn't have anything to do with the existing business (he read the Code to the members). The Town Attorney was asked if this could be looked at for this site only – Attorney Cully said no if this Board determines that this constitutes an accessory use.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:25 P.M.

Chairman Bogar agrees with Codes Officer Booth's interpretation that it is not an accessory use based on the placement of the boxes not being incidental to the primary use of the property. These boxes should not be there and removed. He has a concern that if we allow this, the boxes would be able to go anywhere in the Town. We can control what happens in the Town of New Hartford – the villages may have their own Codes. Board Members Tesak, Kiehm and Tallman agree with Chairman Bogar.

Board Member Stanislaus disagrees. It is the consensus of the majority of the Board Members that they are in agreement with Codes Officer Booth's interpretation by a vote of 5 –1.

Mr. Quirici asked if he could seek a Use Variance if the property owner permits it – or have the owner seek it. This Use Variance request would allow for a particular location and be for that

property only. Mr. Quirici will discuss this with Mr. Cristiano and advise Codes Officer Booth within a couple of weeks.

Board Member Tesak asked if there is a tax relief for any property owner – Mr. Quirici does not know. He was also asked how many employees he has – Mr. Quirici said about 14-15 people.

Codes Officer Booth said this will stay everything if Mr. Cristiano complies with the Use Variance procedure.

Chairman Bogar read a letter to the Board Members from Mrs. Mary Jo Kelley requesting the Board to rehear their variance request that was presented before the Board on October 24, 2011.

Town Attorney Cully explained why the Kelley's are requesting this as they felt a factor of discussion during the hearing was a variance that they received from this Board, but chose not to pursue. Therefore, that variance did not take place on this property. It was explained further as to why they chose not to proceed with the variance.

The Board Members felt that their recent request created a detrimental effect to the neighborhood and safety issue. The Board felt the previous variance granted was not a major factor in their recent decision.

Chairman Bogar and Board Members Tallman, Kiehm, Stanislaus and Montrose stated that it is their decision not to rehear this application – Board Member Tesak abstained as he was not at this meeting. Therefore, the decision not to rehear this application was granted by a vote of 5 – 1. The Kelley's will be notified.

There being no further business, the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

dbS