

MINUTES OF THE REGULAR MEETING
APRIL 21, 2008

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Steve Welty, John Montrose, Fred Kiehm, Kristen Shaheen, Bob Schulman and Tim Tallman. Also in attendance were Councilwoman Christine Krupa; Codes Enforcement Officer Joseph Booth; Assistant Codes Enforcement Officer Tom Rowlands; Town Planner Kurt Schwenzfeier, 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.

INTERPETATION: Request by Mr. Peter Bolos/Big Apple Music, 4452 Commercial Drive, New Hartford, New York of Codes Enforcement Officer Joseph Booth's interpretation regarding a proposed video display sign on his building that would constitute violations of the Town of New Hartford Code. Tax Map #341.005-2-49; Lot Size: approximately 1.5 Acres; Zoning: Retail Business 1. Mr. Bolos appeared before the Board with his attorney, Herbert Cully, Esq.

Attorney Cully asked that this interpretation be addressed after the reapplication or new application as it may not apply (see statements below).

****.

The reapplication of Mr. Peter Bolos, Big Apple Music, 4452 Commercial Drive, New Hartford, New York to have the Zoning Board of Appeals reconsider their motion of November 19, 2007 for denial to replace an existing panel with a message board for the free standing pylon sign on Seneca Turnpike. Tax Map #341.005-2-49; Lot Size: approximately 1.5 Acres; Zoning: Retail Business 1. Mr. Bolos appeared before the Board with his attorney, Herbert Cully, Esq.

Attorney Cully explained that Mr. Bolos will have a power point presentation to define what he is seeking. He further explained why the reapplication and new application were submitted.

Chairman Bogar stated it is his understanding that the new application is different than the reapplication – Attorney Cully said yes; but he would like to go forward with the reapplication with the new modifications. Attorney Cully referred to the November 2007

minutes of this previous application and addressed the amendments in light of those minutes and if necessary, reopen the reapplication or address the new application in conjunction and then perhaps the interpretation is not necessary. If Mr. Bolos gets the free standing sign approval, then the application is finished – Mr. Bolos said he would like to go forward with the reapplication first.

Board Member Shaheen asked Attorney Cully, if there were to be some vote in favor of either the reapplication or new application, your client would accept the interpretation made by the Codes Officer on the other sign – he said yes.

At this time, Chairman Bogar asked the Board Members if they would like to address the reapplication process of Mr. Bolos being that there is additional information. Motion was made by Chairman Randy Bogar to reopen the reapplication of Mr. Bolos/Big Apple Music; seconded by Board Member Bob Schulman. Vote was unanimous to proceed.

Attorney Cully stated that he represents Mr. Bolos who is a local businessman in the Town of New Hartford. Mr. Bolos has been faced with difficult business decisions because of competition from large national firms who have large advertising budgets. Mr. Bolos needs to draw more attention to his site. This Board previously approved the free standing sign, but it was not complete as to detail and he came back on November 19, 2007 on a reapplication and this Board agreed to reopen it because he had more details. As a result of some lengthy discussion, motion was made regarding color, signage change, scrolling, the Valley Brook sign on the roof, etc. and as a result a vote was taken but not approved. He wants to make sure everyone understands now what he would like. Mr. Bolos made a lot of improvements to this land, as he will show in the power point. After he got denied, he then went to the Codes Officer in February 2008 to move a sign on the building and he put in an application to place a video display on the building. However, the application was denied. Mr. Bolos' preference now is to get the free standing sign and he wants to work with the Board on this.

Mr. Bolos started the power point presentation. He stated that he has been with Big Apple for 29 years. There has been a lot of changes on Commercial Drive in those years. He wants to stay in New Hartford. He feels he is the only local hi-fi business left in this area. His business is strong and he wants to keep it that way. He also contributes to the other businesses in his complex. He feels the sign is a reasonable request. Mr. Bolos bought the complex in 2000 and has made many repairs to the buildings and properties. He referred to three (3) building signs on the Commercial Drive side. He would like to move the two (2) Big Apple Music signs (one with the guitar) to the opposite side of the building – the Seneca Turnpike side. He would like to remove the Cool Vision sign and move it to the rear of the property on Seneca Turnpike; and also remove the Valley Brook sign off of the top of the building. The proposed LED panel display on the free standing

sign would be multi-colored and he would make new placards for all businesses on the main site. (The LED was voted on previously and already there). There will be a space available sign for any new business going in to replace where Cool Vision is presently located on Commercial Drive.

Chairman Bogar asked Codes Officer Booth if he is aware of what Mr. Bolos wants to do – Mr. Booth said he wasn't aware.

Attorney Cully asked Codes Officer Booth, as far as the placard signs on the building – are they okay – Mr. Booth said right now there is a moratorium for building signage. The amendment to the Code will be one square foot for each lineal foot on frontage on the building not to exceed 80 square feet – this is for building mounted signs. If you are asking for signage on that side of the building, it would be subject to the Board's approval. After this meeting, it would be subject to the new Code.

Board Member Shaheen asked, after the new Sign Ordinance goes into affect there wouldn't be any problem up to 80 square feet per business – as long as the business has 80' of building frontage.

Mr. Bolos would like to keep the "space available" sign to match the others. If the Board agrees with it tonight, it would be okay.

The only sign that would be permitted if the Board grants this variance is that placard to the top that says "space available". The Codes Officer doesn't think it would be a problem with the new signage at this location.

Board Member Montrose commented on any new prospective business and how the signage would affect them. The Codes Officer referred to what would be allowed at that site and if there was a different type use other than what is there now, it would have to be referred to the Planning Board, but it doesn't affect the signs. The Codes Officer explained to the Board that the way the Zoning Ordinance is being drafted it would be an unobjectionable sign.

Mr. Bolos referred to the front of the building. He said Big Apple Music sign will remain and the placards will also remain. The existing windows had glass that were previously boarded over. When he moved in the windows were painted over with messages on them. The Valley Brook sign on the roof will come down and that is the only change at that corner.

Mr. Bolos referred to the rear of the building. He displayed images of what the buildings looked like previously and what he is transforming them into new windows and tinted,

and windows that will be tinted, canopies, moldings, brick, new entrances, and plantings. The Big Apple Music sign moved from Commercial Drive will be placed to the rear over his entrance on Seneca Turnpike. The sign with the guitar would be to the right rear.

Attorney Cully and Mr. Bolos displayed the approved free standing sign. They would like to replace the placards and put the appropriate signage up with see-thru vinyl. This free standing sign will have definitive signage. Cool Vision will have one placard on the free standing sign and one near the entrance of their business. Plaza 5 sign will be replaced with the message board. It does not flash and won't scroll – there is no audio. The message will come up and fade out with another message similar to what is now at the Stanley marquee. There is no time frame for the message. This is a better quality than the original proposed LED - much easier to read. Mr. Bolos feels the sign would have appeal - anyone driving by won't have to stare at it – it is very professional looking.

Board Member Montrose questioned whether this LED sign would take away from the other businesses. Mr. Bolos mentioned how he himself assists the businesses there.

Board Member Schulman suggests a longer period of time on the message board, i.e., about 30 second to a minute for people to read it. Mr. Bolos said there is software that comes with the sign with recommendations. Chairman Bogar referred to the November 2007 motion for this sign where timing and color were addressed.

Codes Officer Booth asked the Board to find out what signs this Board is allowing on the building that wouldn't be in agreement with our proposed Code and ask specifics on, i.e., brightness and dimmer controls as our new Sign Ordinance is addressing this. A lot of signs on the building may or may not need variances. Whatever is approved tonight is with a variance if it is the sign of the current Ordinance. Right now everything there and moving is within the existing Code. The signs in the back would need a variance if he applies for permits after this meeting. This is not law yet, it has to go through the process -he just wanted the Board to be aware. Board Member Shaheen asked, with the new Code, would Mr. Bolos be able to have the free standing sign and building signs – yes.

Board Member Tallman wanted to know what size the Big Apple sign is in the back. Mr. Bolos said he felt it was approximately 76.9 square feet. Codes Officer Booth wanted

Mr. Bolos to advise this Board regarding everything on the building tonight because later on it wouldn't meet the Code. 76.9 square feet falls within the Code now.

The Board Members discussed what is being reviewed:

- West side - five (5) signs: the caricature, Big Apple, three (3) window signs, and the removal of the Valley Brook sign;
- South side – two (2) signs – Big Apple Music, 76.9 square feet, and the guitar sign to be at the rear of Seneca Turnpike side;
- Big Apple signs on Seneca Turnpike side. Chairman Bogar asked how big the “Apple” sign was – Mr. Bolos said approximately 49 square feet.

Mr. Bolos stated that the Cool Vision sign will be under 80 square feet. Chairman Bogar asked, what if we deferred that to what the new Code is – Mr. Booth said he doesn’t see it as a problem - Cool Vision would need a permit. Mr. Bolos is comfortable with this. It was decided that Cool Vision isn’t a problem.

Mr. Bolos said the only thing different about the pylon sign is the LED display.

Mr. Bolos referred to the proposed changes to the building at 8451 Seneca Turnpike across from Jay-K. He wanted to just update the Board Members as to the progress being made on the condition of the buildings and properties.

Mr. Bolos referred to the Valley Brook Motel free standing sign at 8463 Seneca Turnpike. This sign has been there for many years and it is in the State right-of-way. He is proposing to tear the sign down. He proposes to move it 10’ back off the right-of-way with a new sign that meets the Codes except he wants to keep the signs on the parcel but replacing it with a new Valley Brook sign. This sign would consist of placards with a small orange letter LED to replace the existing arrow on the sign. The arrow now is lit. The size of the new sign would not exceed the Code and it is a second free standing sign.

Codes Officer Booth wants to know the size of the proposed sign. Mr. Bolos said he has the plans, but doesn’t know the exact size other than it is under the maximum allowed.

Discussion ensued between Board Members whether the review of this new LED sign would require a separate application. It was decided that this was covered under the new application but it didn’t have the specifics.

Board Member Tallman said it is under what is allowed but you need a variance for the second pole because he is taking it down.

Chairman Bogar asked if the new Code is going to allow this LED sign. Codes Officer Booth said the new Sign Ordinance is going to allow video displays with strict criteria and the requirement of a Special Use Permit from the Planning Board. Board Member Shaheen asked if we could grant the variance tonight but contingent upon the Planning Board – the answer is no.

Attorney Cully said Mr. Bolos is not applying for the variance because of the new Code, he is applying because he will have two (2) free standing signs on one parcel.

Attorney Cully said he wanted to deal with all of the signage on the entire site.

Chairman Bogar asked if there was anyone in attendance to address this application – there was no response. County Planning 239 was received with no comments. The Public Hearing closed at 7:50 P.M.

Board Member Schulman asked if we wanted to consider additional information on signs making a motion to deny the reapplication in lieu of considering the new application – there was no response or further discussion on this statement.

Board Member Tallman asked to reopen the Public Hearing, which was at 7:55 P.M. He referred to the video message board sign – is it a video or regular – Mr. Bolos said it can be whatever you feed into it – there would be no sound, just a color message display sign – he doesn't know how bright, there are no published specs. The Public Hearing closed again at 8:00 P.M.

Chairman Bogar went through the list of proposed changes that addressed signs of this type (this list has been made a part of the file). Codes Officer Booth reminded the Board that this application is for the building signs and existing pylon – the new pylon is separate.

The Board had gone through the criteria necessary for the Area Variance.

Motion was made by Chairman Randy Bogar to approve this application as follows:

Part 1 of motion:

- the proposed change to replace the existing Plaza 5 pylon sign with the new proposed LED sign;
- that the proposed sign meets the items as follows:
 - brightness: the sign is not to exceed a maximum illumination of 5000 nits – 500 dark to dawn
 - dimmer control – automatic
 - no audio – pyrotechnics
 - images are static in nature
 - no image or message will be displayed at less than 3 seconds
 - no image or message shall change without a 3 second pause between images or messages
 - no off site advertising

Part 2 of motion:

- all signs related to Big Apple Music on Commercial Drive side and Cool Vision will be removed and a new Big Apple sign approximately 76.9 square feet on the Seneca Turnpike side (south on Seneca Turnpike) be allowed;
- the guitar sign is moving also to the south side of Seneca Turnpike – 125 square feet (same size of existing).
- just the “Apple” size sign, which is approximately 49 square feet would be located on the Seneca Turnpike side near the entrance of the store
- Valley Brook sign on the roof would be removed and remove Plaza 5 sign – roof mounted.

Motion seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member Kristen Shaheen – yes	Board Member Fred Kiehm – yes
Board Member Bob Schulman – yes	Board Member John Montrose – yes
Board Member Steve Welty – yes	

Motion **passed** by a vote of 7 – 0.

The new application of Mr. Peter Bolos/Big Apple Music, 4452 Commercial Drive, New Hartford, New York who is requesting to remove panels on existing pylon sign on Seneca Turnpike and install an electronic message sign. This sign was previously approved by the Zoning Board of Appeals on October 25, 2005 without electronic panels, and any change to this would need to be heard before the Board again. Thus, necessitating the new application before the Zoning Board of Appeals for the electronic panels. Tax Map #341.005-2-49; Lot Size: approximately 1.5 Acres; Zoning: Retail Business 1. Notice was published in the Observer Dispatch on April 11, 2008 and residents within 500’ were notified. Mr. Bolos appeared before the Board with his attorney, Herbert Cully, Esq.

Mr. Bolos referred to the Valley Brook sign. Code is 128 square feet for a sign. Mr. Bolos didn’t have the specifications/dimensions to present to the Board at this time.

Codes Officer Booth suggested giving Mr. Bolos a range as to what is acceptable. Mr. Bolos said the sign is conforming except being in the right-of-way and the variance is required because it is another free standing sign.

Discussion ensued regarding the sign size and additional information that the Board Members would like for them to review.

It was the consensus of the Board Members to table this new application until the May 19, 2008 meeting and that this application is not subject to the moratorium.

Interpretation: Codes Officer Booth asked the Board Members for their input regarding an interpretation he is seeking for a proposed application which is an addition to an existing legal non-conforming use. It is a garage with an in-law apartment and the applicant wants to add a 10' x 20' addition to the garage area of the building. He feels because it is a non-conforming use, it would need a variance. However, Mr. Booth stated that the Town Planner felt it did not require a variance as the applicant is not expanding on the non-conforming use, which is the apartment. Mr. Booth cited Section 118-69 of the Code and that is the basis for his request. He feels because it is a legal non-conforming use, it is an accessory apartment that wouldn't be allowed to be built in this zone.

It was stated by one of the Board Members that the apartment is part of the application.

This request was reviewed and it was the consensus of most Board Members that because the applicant wasn't expanding on the apartment, it was allowed and that all other setbacks are being met. They did not feel it was a problem to have the applicant move forward based on their review.

The location of the Zoning Board meetings was discussed. It was the consensus of the Board Members to return to the Community Center Building on Kellogg Road commencing with the May 19, 2008 meeting.

There being no further business, the meeting adjourned at 8:50 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbb