

**THE ZONING BOARD OF APPEALS OF THE VILLAGE OF NEW HARTFORD
HELD A PUBLIC HEARING ON AUGUST 12, 2014
AT BUTLER MEMORIAL HALL,
48 GENESEE ST., NEW HARTFORD, NY,
REGARDING PREMISES AT
22 CAMPION ROAD, NEW HARTFORD, NY.**

1. Mr. Saunders called the public hearing to order at 6:30 pm.

Zoning Board Members Present:

Chairman, Jef Saunders
Member, Jan Swartwout
Member, Richard Jordan

Officials Present:

Recording Secretary, Janet M. Durr

Others Present:

Applicants Salvatore Raspante and Enessa Carbone of 18 Westwood Lane,
New Hartford, New York, and Applicants' representative, Julian Clark.

Mr. Saunders noted that Applicants have proposed to demolish an existing structure located on premises situate at 22 Campion Road, New Hartford, New York (the "Premises") and then build a Jimmy John's Gourmet Sandwich Restaurant and related improvements thereon. Mr. Saunders noted that the Premises are located within the Village of New Hartford's M-1 Manufacturing District (the "M-1 District") and that the M-1 District is a "design review area" pursuant to Section 126-29 of the Village's Zoning Law (the "Zoning Law"). Mr. Saunders further noted that the restaurant proposed by Applicants would have both enclosed dining facilities as well as drive-thru facilities. Mr. Saunders indicated that, to the extent that the proposed restaurant comprises an "enclosed restaurant", the same would constitute a "retail store", as such term is defined in Section 126-4 the Zoning Law, and that a "retail store" is a permitted use in the M-1 District. Mr. Saunders also indicated that, to the extent that the proposed restaurant contains drive-thru facilities, the Zoning Law would require the issuance of a special use permit in order for Applicants to operate the same as a "drive-in restaurant". Finally, Mr. Saunders noted that, as presented, the Applicants' proposed project would appear to require an area variance with respect to the 25 ft. sideline requirement (applicable to the north boundary of the Premises).

Mr. Saunders noted that notice of this public hearing had been duly published in the Utica OD.

Mr. Saunders then administered the oath to Mr. Raspante, Ms. Carbone and Mr. Clark.

Mr. Raspante then made a detailed presentation with regard to Applicants' proposed project and stated the reasons for Applicants' request for a special use permit and area variance of the 25 ft.

sideline requirement. During the course of their presentations, Applicants and/or Applicants' representative testified, among other things, that:

- A. **Parking:** There will be 16 parking spaces and there are 2 existing curb cuts, and that William Virkler, owner of the property adjoining the Premises on the south side, 2 Campion Road, has granted them an easement to use 3,808 sq. ft. of his property (0.09 Acres) for parking.
- B. **Dumpsters:** The dumpsters for the restaurant will be located in the back of the Premises. Mr. Virkler, owner of the property at 2 Campion Road, has granted Applicants permission to use 20'x 20' concrete pad, enclosed with a wood fence on leased land.
- C. **Ownership:** Applicants are purchasing the Premises from Mr. Virkler Beaver Prop., LLC
- D. **Flood Zone:** The Premises are not located in a flood zone or wetlands area.
- E. **Storm Water:** Provisions will be made for containing and/or draining excess water as required by applicable law.
- F. **Snow Removal:** There is plenty of room to plow and store snow in the back of the Premises. Snow will be hauled away when necessary.
- G. **Deliveries:** There will be approximately 4 delivery trucks arriving at the Premises each day and they will arrive early in the morning so as to minimize interference with traffic.
- H. **Trees:** Applicants are planning on cutting down the trees located in the back (east) portion of the Premises so that there will be more visibility from Route 8.

THE FOLLOWING DOCUMENTS AND/OR MATERIALS WERE PRESENTED TO AND CONSIDERED BY THE BOARD AND INCLUDED IN THE HEARING RECORD:

- A. A short Environmental Assessment Form (EAF) indicating that the Applicants' proposed project would have no adverse effect on the environment.
- B. Letter from the Oneida County Department of Planning.
- C. Letter from the Oneida County Department of Transportation offering the following concerns for consideration:
 - 1. Two curbs exist, one on an existing lawn.

2. Existing parking area is connected to a neighboring parking lot.
 3. High traffic volume during peak morning, afternoon and Saturday mid- day times.
 4. Campion Road has numerous driveway access points on both sides of the roadway.
- D. Letter from the New York State DOT offering the following recommendations:
1. Neighboring parking lot should be maintained.
 2. Drive-thru exit curb cut should be clearly marked with "Do Not Enter" signage.
 3. Existing sidewalk connectivity and pedestrian accessibility needs to be maintained.
- E. Affidavit of mailing of notice of public hearing to property owners located within 500 ft. of the Premises.
- F. The following government departments/agencies submitted letters indicating that they had no objection to the Applicants' proposed project:
1. Police
 2. Fire
 3. Public Works Department
 4. Planning Board
 5. Codes Department

APPLICATION FOR SPECIAL USE PERMIT

Mr. Saunders noted that, under the Zoning Law, no "special use shall be authorized by the Board of Appeals unless it finds that the use for which such permit is sought will not, in the circumstances of the particular case and under any conditions that the Board considers to be necessary or desirable, be injurious to the neighborhood or otherwise detrimental to the public welfare". Zoning Law § 126-42. B. Mr. Saunders also noted that in the case of a "drive-in restaurant", Zoning Law § 126-42. B(4) provides as follows:

- (4) Drive-in restaurant or refreshment stand. In addition to meeting the minimum yard and lot coverage requirements, such business where persons are served in automobiles or out-of-doors or which are primarily of a carry-out nature shall be subject to the following regulations:

(a) Such use shall be not closer than two hundred (200) feet to a residential district and shall have frontage on a public street.

(b) Ingress and egress shall be so designed as to minimize traffic congestion, and, for this purpose, the number and location of driveways shall be subject to review and approval of the Board of Appeals.

(c) Such use shall be adequately fenced and screened from any adjacent residential property, and lighting shall be directed away from adjacent property.

Mr. Saunders noted that the Premises are not located adjacent to or within 200 ft. of any existing residential district and do have frontage on a public street, to wit: Campion Road. Applicants and Applicants' representative testified that ingress and egress for Applicants' proposed project would be designed so as to minimize traffic congestion and that lighting would be directed away from adjacent property.

Mr. Saunders indicated that order for Applicants' proposed project to move forward, the Village Planning Board first needs to conduct a design review of Applicants' proposed project including, without limitation, matters relating to lighting, signage, and ingress/egress (driveways) and any other matters that the Planning Board deems relevant.

Based on Applicants' testimony and the documents and/or other materials submitted to the Board by Applicants and others, and conditioned upon design review and approval of Applicants' proposed project by the Village Planning Board, Mr. Saunders noted, and the other Board members concurred, that the hearing record contains substantial evidence that, in the circumstances of this particular case, the Applicants' proposed project would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

APPLICATION FOR AREA VARIANCE

Mr. Saunders noted that the north face of the restaurant building proposed by Applicants would be located 17.5 ft. from the north boundary (sideline) of the Premises and, thus, an area variance of the applicable 25 ft. sideline requirement would be necessary.

Mr. Saunders then noted that the Zoning Law § 126-42.C(1) provides as follows with respect to area variances:

(1) Area variance. An area variance is a variance involving dimensional deviations from the standards set forth in this chapter. Because of exceptional narrowness, shallowness, shape or area of the specific parcel or because of extraordinary topographic conditions or other physical conditions or location of the specific parcel, the strict application of the provisions of this chapter

actually prohibit or unreasonably restrict the use of the land or building for which such variance is sought, that the granting of the variance is necessary for the reasonable use of such property, and that the variance granted by the Board is the minimum variance that will provide for the reasonable use of the property. Practical difficulty is the test for an area variance, The Board shall address each of the following criteria in making a determination for an area variance:

- (a) How substantial the variance is in relation to the zoning requirements.
- (b) The effect of the increased population density or land use intensity on available government facilities. This could include fire and police protection, schools and utilities.
- (c) Whether a substantial change will be produced in the character of the neighborhood or whether a substantial detriment to adjoining properties will be created.
- (d) Whether the difficulty can be eliminated by some method other than a variance which is feasible for the applicant to pursue. In the case of side yard variances in particular, it is frequently feasible, proper and possible for the applicant to alter the plot plan to locate a proposed structure or addition in a new location which does not require any variance.
- (e) Whether, in view of the manner in which the difficulty arose and in consideration of the above factors, the interests of justice will be served by allowing the variance.

Mr. Saunders indicated that the Village Planning Board needs to conduct a design review of the Applicants' proposed project including, without limitation, matters relating to lighting, signage, ingress/egress (driveways) and any other matters that the Planning Board deems relevant.

Mr. Saunders also mentioned that a demolition permit must be obtained from the Village's Codes Enforcement Officer, Joe Booth, prior to demolishing the existing structure on the Premises.

Mr. Saunders noted, and the other Board members concurred, that the hearing record contains substantial evidence that, under the circumstances present in this case:

- (a) the 7.5 ft. variance sought by Applicants would be insubstantial in relation to the 25' sideline requirement set forth in the Zoning Law.
- (b) Applicants' proposed project would not materially increase population density or land use intensity and, thus, would have no material effect on available government facilities and/or

services including the facilities and/or services provided by the Police Department, the Fire Department and the Department of Public Works and other governmental agencies.

(c) The Premises are located in an area which is already primarily commercial in character and, thus, Applicants' proposed project would not produce a substantial change in the character of the neighborhood or substantial detriment to any adjoining properties.

(d) Due to the physical characteristics of the Premises, traffic considerations and design requirements applicable to Applicants' proposed project, it does not appear that the Applicants' difficulty can be eliminated by some method other than an area variance.

(e) Based on the totality of the circumstances, as set forth in the hearing record, and the manner in which the difficulty has arisen, the interests of justice would be served by allowing the requested variance conditioned upon design review and approval by the Village Planning Board of the Applicants' proposed project including, without limitation, matters relating to lighting, signage and ingress/egress (driveways) and any other matters that the Planning Board deems relevant.

VOTE ON SPECIAL USE PERMIT

Mr. Saunders noted, and the other Board members concurred, that, the statutory criteria for granting the requested special use permit in this case appear to have been met.

Mr. Swartwout then made a motion to approve a special use permit for Applicants' proposed project (for a drive-in restaurant), conditioned upon design review and approval by the Village Planning Board of the Applicants' proposed project including, without limitation, matters relating to lighting, signage and ingress/egress (driveways) and any other matters that the Planning Board deems relevant. The motion was duly seconded and thereafter the following roll call vote was taken:

Member Jordan	Aye
Member Swartwout	Aye
Chairman Saunders	Aye

Thus, Applicants' request for a special use permit was unanimously approved, subject to the aforesaid condition.

VOTE ON AREA VARIANCE:

Mr. Saunders noted, and the other Board members concurred, that the statutory criteria for granting the requested area variance in this case appear to have been met.

Mr. Jordan then made a motion to approve a 7.5 ft. area variance of the sideline requirement on the north side of the proposed building, conditioned upon design review and approval by the Village Planning Board of the Applicants' proposed project including, without limitation, matters relating to lighting, signage and ingress/egress driveways and any other matters deemed relevant

by the Planning Board. Mr. Swartwout seconded the motion and the following roll call vote was taken:

Member Jordan	Aye
Member Swartwout	Aye
Chairman Saunders	Aye

Thus, the requested 7.5 ft. area variance of the sideline requirement was unanimously approved, subject to the aforesaid condition.

SEQR DECLARATION

Finally, Mr. Saunders noted that the Board had reviewed the short Environmental Assessment Form (EAF) and otherwise taken a "hard look" at the effect the Applicants' proposed project might have on the environment. Mr. Saunders moved that the Board adopt a "negative declaration", *i.e.*, make a determination that the action will not result in a significant adverse environmental impact. The motion was seconded and thereafter the following roll call vote was taken:

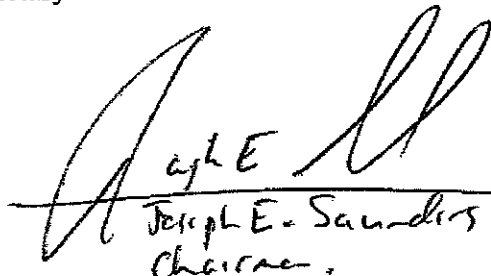
Member Jordan	Aye
Member Swartwout	Aye
Chairman Saunders	Aye

Thus, the "negative declaration" was unanimously adopted. The action is an unlisted action.

There being no further business to come before the meeting, the same was adjourned at 7:17 pm.

Respectfully submitted,

Janet M. Durr, Recording Secretary


Joseph E. Saunders
Chairman.