

# TOWN OF ERWIN

## Zoning Board of Appeals

### MINUTES 10/25/16 MEETING

**PRESENT:** Chairman Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Bridget Ackerman, Mariana Huber, Ralph Truitt  
**ABSENT:** Angela Narasimhan  
**GUESTS:** Matthew Briggs, Mike Dean, David Lineman, Jared Vieselmeyer, Woody Swan, Tom Dobrydney, Janis Bierwiler, Pete Bierwiler, Rita McCarthy, Barbara Lucas

#### CALL TO ORDER:

At 7:00 PM, Chairman Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY, 14870.

#### MINUTES:

Minutes of the 6/28/16 meeting were approved 3-0-3.

## 2016-07

### **REQUEST FROM BEARTOWN ALLIANCE CHURCH FOR AN AREA VARIANCE AT 21 BEARTOWN RD TO ALLOW LOT COVERAGE OF 53.9% WHERE 33% IS ALLOWED. VARIANCE OF §130-14 AND APPENDIX B, DENSITY CONTROL SCHEDULE, IS REQUESTED. WITH PUBLIC HEARING**

Notification of this action was sent to 98 adjacent property owners. A legal notice of this action will print in the Town's official newspaper, the Star Gazette on October 16, 2016, and in The Leader.

The application is the subject of a Planning Board action. The Planning Board will declare itself Lead Agency under the State Environmental Quality Review Act. *No SEQR action by the Zoning Board of Appeals is required.*

The property is located in R7.2 Residential Zone.

The lot with the existing building is currently 38.8% covered. The Density Control Schedule allows 33% coverage in this residential zone. A church is a permitted use in a residential zone.

The applicant is seeking to expand the church in two phases. Phase I will connect the existing gym and church structures, construct an addition to the gym, and expand the gravel parking lot accessible from Mills Ave. Total additional building sq ft is 6,973, total additional parking is 1,500 sq ft. Phase II will be an expansion to the chapel and a second parking lot expansion.

Phase I will bring lot coverage to 45.5%, Phase II to 53.9%. Total relief sought is 20.9% coverage.

Tom Dobrydney of Fagan Engineers, Planner for the applicant, Jared Vieselmeyer of Elmira Structures, and Woody Swan representing the church, presented the application. Planner Dobrydney noted that the preexisting, non-conforming 38% lot coverage exceeds the 33% maximum allowed by code. The excess is due in part to a change in the zoning code which now includes impervious areas in the lot coverage calculation and in part to the redefinition of gravel parking as impervious.

Planner Dobrydney noted that the variance requested includes the total necessary for the entire project. The project is divided into two phases. Phase I includes additional classroom space to be attached to the gymnasium and a net gain of 7 parking spaces after removing parking in the construction area. Phase II includes expansion of the chapel area to increase the seating capacity from 325 seats to approximately 425 seats and additional parking to accommodate the larger seating capacity. The applicant is seeking variance for the total of Phase I and II.

Chairman Thiel questioned the timing of Phase II and it was stated that Phase II would take place within 5 years. Chairman Thiel noted concern that the ZBA is required to give the minimum variance necessary and questioned the idea of granting the additional variance necessary for Phase II due to the timing and the fact that there is a possibility that Phase II may never be constructed.

Planner Dobrydney noted that the project was divided into two Phases to allow for fundraising. Completion of Phase I would provide the church with classroom space designed to correlate with the number of members that the Phase II chapel and parking lot expansion would accommodate.

Church member Woody Swan noted that church membership has grown 15% annually for several years and forecasts continued growth. The church added a second service on Sundays in order to accommodate the growth however it is predicted that full capacity will be reached within the next two or three years.

Town Manager Rita McCarthy noted the Town of Erwin had previously contacted the church regarding complaints from neighbors about church members parking along the streets.

Planner Dobrydney noted that construction of Phase II is not a question of "IF" but "WHEN". It is strictly a matter of fundraising. The variance requested, which includes both phases, is the minimum required. He noted that NYSDEC does not allow segmenting of projects in regards to SEQR and the SWPPP and aspects of Phase I are designed around the scope of the complete project. He also noted that if the portion of the variance necessary for Phase II was considered separately and possibly denied in the future then the church would not want to construct Phase I as designed and possibly not at all.

Zoning Board member Mariana Huber noted that based on the projected growth the church could potentially face the same problems within the next 5 years, before the project is even completed.

Woody Swan said that the church has considered the possibility that if growth continues at the current rate it will be necessary to expand at another location as a satellite operation. The project as presented is considered the maximum for the current location.

#### **CHAIRMAN THIEL OPENS THE PUBLIC HEARING AT 7:45 PM.**

Mike Dean, 10 Birch Circle:

Mike Dean noted that as a neighbor he is not happy with the church expansion. His property abuts the southwest corner of the church property. Based on previous expansions, the church is expanding toward surrounding properties.

ZBA member Jay McKendrick asked Mr. Dean if he feels the character of the neighborhood is changing. Mr. Dean answered that the character of the neighborhood has changed for him. Instead of open lawn he now looks at a shed. The proposed expansion would be even more intrusive.

ZBA member Jay McKendrick asked Mr. Dean if he considered the church expansion detrimental to his and other neighboring properties. Mr. Dean responded that it is detrimental to a property in terms of property value if the view becomes a gymnasium, a shed or a dumpster.

CHAIRMAN THIEL CLOSES THE PUBLIC HEARING AT 7:50 PM.

THE ZBA CONSIDERS THE AREA VARIANCE APPLICATION AND THE PUBLIC COMMENT AND MAKES FINDINGS ON EACH OF THE AREA VARIANCE CRITERIA:

The requested variance will not produce an undesirable change in the character of the neighborhood.	
FRANK THIEL	NO , NOT REALLY
RUTH FISHER McCARTHY	YES
MARIANA HUBER	NO, NOT REALLY, SLIGHT CHANGE
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	
The requested variance will not create a detriment to nearby properties.	
FRANK THIEL	NO, CHURCH HAS BEEN THERE A LONG TIME
RUTH FISHER McCARTHY	NO
MARIANA HUBER	NO, POSSIBLY NOISE BUT NOT SIGNIFICANT
BRIDGET ACKERMAN	NO
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	
There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.	
FRANK THIEL	NO
RUTH FISHER McCARTHY	NO
MARIANA HUBER	NO
BRIDGET ACKERMAN	NO
JAY McKENDRICK	NO
ANGELA NARASIMHAN	
RALPH TRUITT	
The requested area variance is not substantial.	
FRANK THIEL	YES
RUTH FISHER McCARTHY	YES
MARIANA HUBER	YES
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	
The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.	
FRANK THIEL	NO
RUTH FISHER McCARTHY	NO
MARIANA HUBER	NO
BRIDGET ACKERMAN	NO
JAY McKENDRICK	NO
ANGELA NARASIMHAN	
RALPH TRUITT	

<b>The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance)</b>	
<b>FRANK THIEL</b>	<b>YES</b>
<b>RUTH FISHER McCARTHY</b>	<b>YES</b>
<b>MARIANA HUBER</b>	<b>YES</b>
<b>BRIDGET ACKERMAN</b>	<b>YES</b>
<b>JAY McKENDRICK</b>	<b>YES</b>
<b>ANGELA NARASIMHAN</b>	
<b>RALPH TRUITT</b>	

**RESOLUTION TO APPROVE APPLICATION FROM BEARTOWN ALLIANCE CHURCH FOR AN AREA VARIANCE AT 21 BEARTOWN RD TO ALLOW LOT COVERAGE OF 53.9% WHERE 33% IS ALLOWED**

**MOTION: RUTH FISHER McCARTHY**  
**SECONDED: BRIDGET ACKERMAN**  
**DISPOSITION: 4-1**

## **2016-08**

**REQUEST FROM KAY JEWELERS FOR AN AREA VARIANCE AT 3159 SILVERBACK LANE TO ALLOW TWO WALL MOUNTED SIGNS WHERE ONE IS PERMITTED. VARIANCE OF §130-81.B.3.a, §130-81.B.3.d, §130-81.B.14 AND TABLE 130-81 IS REQUESTED. WITH PUBLIC HEARING**

Notification of this action was sent to 15 adjacent property owners. A legal notice of this action will print in the Town's official newspaper, the Star Gazette on October 16, 2016, and in The Leader.

The sign variance is a Type II action under the State Environmental Quality Review Act. No SEQR action is required.

The property is located in R-S Regional Service Zone.

The store is located in the former Radio Shack, on the northeast corner of the mini-mall.

The applicant, Anchor Sign on behalf of Kay Jewelers, seeks to establish two wall signs, one on the façade facing the plaza parking lot, the second on the northeast façade. The applicant seeks relief of a second wall sign.

Section 130-81 provides that for all businesses, one wall sign is permitted. It further provides that in a shopping mall, the sign "shall be oriented toward and visible from the access road and/or from the parking lot associated with the plaza". It is Applebee's northeast elevation that faces the access road. The proposed sign would face the driveway between the mini-mall and Applebee's.

## 2016-08 continued

In January 2004, Blockbuster, on the southwest corner of the mini-mall, requested a variance to establish three wall signs, one facing the plaza parking lot, one on the side façade and one on the rear façade. The ZBA denied the variance request on the basis that the “variance would have an adverse effect or impact on the physical or environmental conditions of the neighborhood; that the benefit sought by the applicant can be achieved by some other reasonable alternative; the request is substantial, and will set a precedent toward changing the character of the neighborhood”.

In May 2004, Radio Shack, occupying the space which is now the subject of the current variance application, requested a variance to allow a 39.6 sq ft wall sign where 26 sq ft was allowed. The ZBA denied the variance on the basis that the “intended change of neighborhood has to be strictly followed; that there are alternative methods available to the applicant; the request is substantial and self-created”.

The application was presented by Matthew Briggs of Anchor Signs, representing Kay Jewelers. Mr. Briggs noted that the existing sign on the front of the store is difficult to see from the road. They are requesting a 40 square foot sign to be placed on the side of the building facing Applebee’s. He noted that Applebee’s has signs on two sides of their building and every tenant of the mini-mall has a sign over their back door facing South Hamilton Street.

**CHAIRMAN THIEL OPENS THE PUBLIC HEARING AT 8:23 PM.**

**CHAIRMAN THIEL CLOSES THE PUBLIC HEARING AT 8:24 PM.**

**THE ZBA CONSIDERS THE AREA VARIANCE APPLICATION AND THE PUBLIC COMMENT AND MAKES FINDING ON EACH OF THE AREA VARIANCE CRITERIA:**

The requested variance will not produce an undesirable change in the character of the neighborhood.	
FRANK THIEL	YES, REASON FOR CODE TO ELIMINATE EXCESS SIGNAGE
RUTH FISHER McCARTHY	YES
MARIANA HUBER	
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	YES
The requested variance will not create a detriment to nearby properties.	
FRANK THIEL	YES, WILL SET PRECEDENT
RUTH FISHER McCARTHY	YES
MARIANA HUBER	
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	NO

There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.	
FRANK THIEL	YES
RUTH FISHER McCARTHY	YES, WINDOW SIGNS
MARIANA HUBER	
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	YES
The requested area variance is not substantial.	
FRANK THIEL	YES
RUTH FISHER McCARTHY	YES
MARIANA HUBER	
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	YES
The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.	
FRANK THIEL	NO
RUTH FISHER McCARTHY	NO
MARIANA HUBER	
BRIDGET ACKERMAN	NO
JAY McKENDRICK	NO
ANGELA NARASIMHAN	
RALPH TRUITT	NO
The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance)	
FRANK THIEL	YES
RUTH FISHER McCARTHY	YES
MARIANA HUBER	
BRIDGET ACKERMAN	YES
JAY McKENDRICK	YES
ANGELA NARASIMHAN	
RALPH TRUITT	YES

**RESOLUTION TO DENY REQUEST FROM KAY JEWELERS FOR AN AREA VARIANCE AT 3159 SILVERBACK LANE TO ALLOW TWO WALL MOUNTED SIGNS WHERE ONE IS PERMITTED**

**MOTION: RALPH TRUITT**  
**SECONDED: JAY McKENDRICK**  
**DISPOSITION: 5-0**

**MEETING ADJOURNED AT 8:30 PM BY UNANIMOUS CONSENT**