

**Town of Erwin
Zoning Board of Appeals Meeting
And
Public Hearing**

December 20, 2016

Present: Chairman Frank Thiel, Jay McKendrick, Ruth Fisher McCarthy, Bridget Ackerman, Mariana Huber, Ralph Truitt (alternate)

Guests: Rick Snavely, Jeff Harmon, David Cox, Brett Bixby, Kevin Konopski, Penny Zonneville, Wayne Kennedy, Chris Nicastri, Diana Miller, Brian Harpster, Lisa Morrissey, Glenn Morrissey, Douglas Cole, Jim Fajardo, Ann Collins, Kelly Adriance, Brian Jones, Clark Johnson, Keith Walton, Dave Sutton, Jay McKendrick, Rita McCarthy, Barb Lucas

Call to Order:

At 7:05 PM, Chairman Frank Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY 14870. As is their usual practice, the Zoning Board of Appeals will consider applications up until 9:00 PM, and will continue any unfinished business to the next regular scheduled meeting.

Prior Minutes:

The minutes of November 15, 2016 were approved as submitted by unanimous consent.

1. **(2016-09A) Request from Rerob LLC for an Area Variance at 891 Addison Rd to allow a gas pump canopy clearance of 16'6" where 13'9" is allowed. Variance of §130-71.A.4 is requested. With Public Hearing**

This application was withdrawn.

2. **(2016-09B) Request from Rerob LLC for an Area Variance at 891 Addison Rd to allow a gas pump canopy height of 19'6" where 17' is allowed. Variance of §130-71.A.4 is requested. With Public Hearing**

This application was withdrawn.

3. **(2016-12) Request from Family Life Ministries Inc. for an Area Variance at 300 Town Center Road to allow a 101,000 sq. ft. building footprint where 10,000 sq. ft. is allowed. Variance of §130-89.D.C.i is requested. With Public Hearing.**

Notification of this action was sent to 45 adjacent property owners. A legal notice of this action was printed in the Town's official newspaper, the *Star Gazette*, and in *The Leader*, on December 11, 2016.

The application is the subject of a Planning Board action. The Planning Board has declared its intent to become Lead Agency under the State Environmental Quality Review Act.

A resolution to allow the Planning Board to become Lead Agency was moved by Ruth Fisher McCarthy, seconded by Jay McKendrick. The resolution was approved unanimously.

Jay McKendrick then recused himself because of being an adjacent property owner and joined the public. Ralph Truitt, alternate, was seated as a member.

The property is located in a TC Town Center Zone.

The applicant seeks to reuse the existing, former Harley building and add an addition. The Harley building was originally built as a 56,000 sq. ft. grocery. The building footprint limitation in Town Center Zone is 10,000 sq. ft. except for a grocery which was allowed 65,000 sq. ft. When the use changed from grocery to the Harley, the building size became pre-existing, non-conforming. The applicant now seeks to repurpose the building and add an addition.

Therefore, the allowable footprint is 10,000 sq. ft., and anything over that, including existing building plus addition, requires a variance.

The application sought a total building footprint of 101,000, relief of 91,000 sq. ft.

The application was represented by David Cox of Passero Engineering, and Rick Snavelly and Jeff Harmon of Family Life Ministries.

The applicant presented their most recent configuration of the building. A shadow study of a previous configuration of the building was presented. There was prolonged discussion of many elements, during which the applicant agreed that they had not yet established the final configuration of the development.

The Chairman recommended that the applicant withdraw the application. Since withdrawal would require resubmittal, and the submittal deadline for the January meeting had passed, the applicant agreed that it would be best if the Board were to table the application.

Ruth Fisher McCarthy moved, Frank Thiel seconded that the application be tabled. The resolution was approved unanimously.

4. (2016-13) Request from Family Life Ministries Inc. for an Area Variance at 300 Town Center Road to allow a building height of 60' where 35' is allowed. Variance of §130-89.D.C.i, §130-14, and Appendix B Density Control Schedule is requested. With Public Hearing

Notification of this action was sent to 45 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on December 11, 2016, and in The Leader.

State Environmental Quality Review Act requirements have been dealt with in the above application.

The property is located in a TC Town Center Zone. The maximum building height in allowed in TC is 35'.

The applicant seeks a portion of the addition to be 60'. Therefore, the applicant is seeking 25' relief.

The application was represented by David Cox of Passero Engineering, and Rick Snavelly and Jeff Harmon of Family Life Ministries.

The applicant explained that the purpose of the development was to establish a 1,900 seat dinner theater, and that the height was necessary to accommodate Broadway type productions. There will also be an estimated 4 large concerts a year. The Performing Arts Center will be a building within a building to contain any noise generated within the theater.

The Chairman opened the public hearing at 7:50 PM.

Luis Zenteno, a neighbor within 500 ft. of the proposed project, is concerned with noise in parking areas, and submitted an email including a technical paper of a published study regarding parking area noise. Chairman Thiel noted that parking area noise was not a zoning board issue.

An email received from Kamal and Meenal Soni of 29 Katie Lane was noted however, it was not read into record because it related to the variance which had been tabled for the footprint of the building.

An email received from Penny Zonneville of 23 Katie Lane was summarized by Chairman Thiel and is attached.

Emails received from Jay McKendrick and Suzi McKendrick of 37 Katie Lane, Marcus Wilson and Shunda Wilson of 31 Katie Lane, and Shawn Alberg of 35 Katie Lane as requested by Jay McKendrick via email, were submitted. It was noted by the Chairman that all of these submittals were almost identical in content. The original email from Jay McKendrick was read and all emails are attached.

Chris Nicastrì, 43 Katie Lane, noted that he fully supports Jay McKendrick's comments.

Jay McKendrick, 37 Katie Lane, noted that the shadow study proves that the project impacts the neighboring area in a negative way.

Ann Collins, 39 Katie Lane, noted that her property would be directly affected by shadows according to the study presented and she is opposed to the project as presented.

Jim Fajardo, 33 Katie Lane, noted concern with the possible effects and high risk to the neighborhood and traffic due to events with 2000 people.

Lisa Morrissey, 44 Katie Lane, expressed concern with the look of the 60' section facing Katie Lane and whether there would be any lighting.

Kevin Konopski, 54 Katie Lane, agrees with other comments and considers the proposal a huge detriment to the area and notes that the lights for the loading area, although not directed at the neighbors will still be visible past the berm and fencing. He also noted that the construction of the hotel adjacent to the project site has resulted in a decrease in his property value due to the 56' height of the building based on comments from realtors and an offer for his property which was far below the assessed value.

Kelly Adriance, 53 Katie Lane, noted that she lives directly behind the hotel adjacent to the project site and while her family supports the Family Life Network and hopes that the project will go forward, she objects to the height of the proposed structure.

Keith Walton, 45 Katie Lane, has lived in the area directly behind the existing building since before it was built and used as a grocery store. He noted that regarding the lighting on the back of the building, the berm and fence are ineffective at blocking the light shining into the second story windows of his house.

With no more members of the public wishing to be heard, the Chairman closed the public hearing at 8:10 PM.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

(1). The requested variance will not produce an undesirable change in the character of the neighborhood:

A majority of the Board finds that the requested variance will not produce an undesirable change in the character of the neighborhood. The height is consistent with the adjacent hotel and is in keeping with the commercial neighborhood. Two Board members find that it will produce an undesirable change due to light and shadow.

(2). The requested variance will not create a detriment to nearby properties.

The Board unanimously finds that the requested variance will create a detriment to nearby properties.

(3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

A majority of the Board finds that there is no other feasible method for the applicant to achieve the benefit of a Performing Arts Center to produce Broadway type shows. Numerous alternatives were discussed such as going underground, which is not feasible due to ADA requirements and accommodating the loading dock. There was also discussion of moving the building, but there is a need to connect to the existing building where the kitchen will be and overflow dinner seating. One Board member finds that there is an alternative method.

(4). The requested area variance is not substantial.

The Board unanimously finds that the requested variance is substantial. It represents slightly over a 70% increase from the allowable height.

(5). The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

A majority of the Board finds that the requested variance will have an adverse effect or impact on the physical or environmental conditions. Two Board members find that it will not have an adverse effect on the environment.

(6). The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance).

The Board unanimously finds that the difficulty was self-created.

The applicant indicated that the documents before the Board did not represent the final configuration of the building. The shadow study may not be accurate since the addition was moved farther from the rear property line. Also, the President of Family Life Ministries believed that the 60 ft high section of the building did not go all the way to the back wall. The applicant agreed that the data before the Board may not be the final design and that there could be errors in the information presented.

The applicant was requested to review the material and present updated, corrected data to the Board.

Ruth Fisher McCarthy moved, Frank Thiel seconded that the application be tabled. The resolution was approved unanimously.

5. (2016-14) Request from Family Life Ministries Inc. for an Area Variance at 300 Town Center Road to allow area lighting 24' high where 18' is allowed. Variance of §130-89.D.C.ii is requested. With Public Hearing.

Notification of this action was sent to 45 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on December 11, 2016, and in The Leader.

State Environmental Quality Review Act requirements have been dealt with in the above application.

The property is located in a TC Town Center Zone. Area lighting in TC is 18' or building height whichever is less. Since the building will be at least 35', the allowable area lighting height is 18'.

The applicant seeks area lighting poles of 24'. Therefore the applicant is seeking 6' relief.

Chairman Thiel noted the only comments from the public regarding the 24' lighting variance request noted an increased visibility of the lights despite the buffering.

The application was represented by David Cox of Passero. Drawings were presented depicting the number of poles and the photometrics of compliant poles and the requested poles with LED lights. He explained that there would be fewer poles, fewer lights, and a smaller light footprint with the requested poles.

The public hearing was opened at 8:50 PM.

Jay McKendrick of 37 Katie Lane raised concerns with when the lights would be on and turned off.

Kevin Konopski of 54 Katie Lane questioned how close the poles would be to the property line and was told the minimum would be 80'. He also felt that the same lighting could be achieved with shorter poles.

The public hearing was closed at 9:00 PM.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

(1). The requested variance will not produce an undesirable change in the character of the neighborhood:

The Board unanimously finds that the requested variance will not produce an undesirable change in the character of the neighborhood. The lights at the adjacent car dealership are 24 ft. The light will not spill off the property. The lights are shielded and are dark sky compliant.

(2). The requested variance will not create a detriment to nearby properties.

The Board finds unanimously that the requested variance will create a detriment to nearby properties, and cites the findings above.

(3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

A majority of the Board finds that there is no other feasible method for the applicant to achieve the benefit of adequately and safely lighting the parking lot. The majority finds that this is the best method of lighting. Two Board members find that compliant lights are an alternative, feasible method.

(4). The requested area variance is not substantial.

A majority of the Board finds that the requested variance is not substantial. It represents a 33% increase from the allowable height. One Board member finds that variance is substantial.

(5). The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board finds unanimously that the requested variance will not have an adverse effect or impact on the physical or environmental conditions. The lights are shielded, dark sky compliant, and there is no spill off the property.

(6). The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance).

The Board unanimously finds that the difficulty was self-created.

The Board wishes to approve the variance on the condition that the lights are turned off when not required, i.e. when there is no activity, no performance, or patrons have left. There was a prolonged discussion of how to describe when the lights will be turned off and what time achieves the benefit of providing safety and lighting for the public.

Frank Thiel moved, Mariana Huber seconded that application 2016-14 to allow light poles 24 ft. in height be approved on the condition that the lights be LED and that when the Performing Arts Center building is closed and locked up, the lights will be turned off.

The resolution was approved unanimously.

Meeting was adjourned by unanimous consent at 9:07 PM.