

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

September 24, 2013

Present: Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Susan Fontaine, Kris West, Jody Allen (alt)

Guests: Jeff Evans, Rita McCarthy

Call to Order:

At 7:00 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 the August 27, 2013 meeting were approved as corrected by unanimous consent.

- 1. Request from Gibraltar Management Company Inc for an Area Variance to allow a 16' x 12' sign where 12' x 10' is allowed. Variance of §130.81.B3.d, and Table 130-81-1 is requested. With Public Hearing.**

Notification of this action was sent to 37 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, The Leader, and in the Star Gazette on September 15, 2013.

This 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 District.

The application was represented by attorney Jeff Evans.

Sections 130-81.B.1 and 130-81.B.1a state:

The following signs as defined in §130-5 are prohibited in the Town of Erwin:

Free Standing High Rise Signs (previously referred to as "Pole Signs or "Pole Mounted Signs in previous amendments:"

- ii. Over 16 ft. in height in RS/I-1 and I-2.

Therefore, a sign height of 16 ft in Regional Service District requires an Area Variance.

The existing sign is non-conforming and has been the subject of ongoing code enforcement since 2004. Another non-conforming sign (Valu Home) exists on Gibraltar property and has also been the subject of ongoing enforcement.

The applicant now seeks to erect a sign 16 ft high by 10 ft wide. Table 130-81-1 allows sign dimensions of 12 ft by 10 ft. Therefore, the applicant is seeking relief of 4ft in height and 2 ft in width.

The applicant explained that the current sign is 32 ft in height and the request is for a new sign half as tall. Given the context of a shopping mall with multiple tenants and a movie theater, a sign height of only 12 ft makes it very difficult to accommodate all the uses. The applicant noted that in accordance with Town regulations, a movie theater is allowed additional signage. In addition, the movie marquee adds complexity to the sign issue.

The new sign will be in the same location as the existing sign. It will not impact sight distance nor have any traffic impacts.

The Chairman opened the Public Hearing at 7:15 pm.

No one from the public wishing to be heard, the Chairman closed the hearing at 7:16 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 proposed sign is an improvement over the existing sign, and more compliant. It is a desirable change in the character. It is acceptable due to the type of road and traffic and it is only 4 ft higher and 2 ft wider than allowed. One Board member finds that it is a change from what was envisioned in the Comprehensive Plan and therefore is a detriment.

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

The Board unanimously finds that the requested variance will not create a detriment to nearby properties, since it does not interfere with sight distances. It is more in keeping with the vision of the Comprehensive Plan and therefore is an improvement.

(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.

The Board finds unanimously that the benefit being to advertise the multiple businesses in the plaza and display the movies being screened, there is no other feasible method available. Other alternatives were explored but none achieve the benefit. The movie theater is a unique circumstance to this property. Additional height is caused by the base support, which is more attractive than the sign sitting on the ground. The sign is a good balance between meeting the zoning law and providing the information to the public for the movies and the stores.

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

A majority of the Board finds that the variance is not substantial. It is 4 ft higher, 30% and 2 ft wider, 20%. It is a gray area in that it is not de minimus, but it is not substantial. It is bigger than allowed but still within the requirements to be an area variance, not a use variance. One Board member finds it is substantial but not detrimental.

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

The Board unanimously finds that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood, as long as the lighting is steady. The law does not allow for intermittent/pulsating lighting, and the variance does not ask for the lighting to be intermittent. It is an improvement over what is there currently.

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

A majority of the Board finds that the difficulty was not self created since the existing sign was legal when it was erected and the law was changed subsequent to the initial installation of the sign. Two Board members find that since the applicant could install a compliant sign, the difficulty is self created

This variance is conditioned upon:

The Board discussed three conditions: 1) the size of the sign is dependent on a movie theater operating within the plaza; 2) the sign lighting must be constant and not intermittent; and 3) that the adjacent, non-compliant "Valu Home" sign be removed. A majority of the Board accepted the first condition; the Board unanimously accepted the second condition; but the Board unanimously rejected the third condition on the basis that the "Valu Home" sign is subject to enforcement action by the Town. Those Board members opposed to the condition relating to the movie theater operation felt that it was excessively burdensome to the applicant to incur the cost of reestablishing the sign in the event that the movie theater went out of business and another theater operator could not be recruited by the applicant.

RESOLUTION TO APPROVE APPLICATION 2013-08 TO ALLOW AN ADDITIONAL 4 FT HEIGHT AND 2 FT WIDTH ON THE CONDITIONS THAT THE SIGN LIGHTING IS TO REMAIN CONSTANT AND THAT IF A PERIOD OF ONE YEAR PASSES WITH NO THEATER OPERATING IN THE PLAZA, THE SIGN MUST BECOME COMPLIANT AT THE END OF THAT YEAR'S PERIOD.

MOVED BY: KRIS WEST SECONDED BY: SUSAN FONTAINE
DISPOSITION: 3-2 (Thiel, Fisher McCarthy)

Meeting was adjourned by unanimous consent at 7:50 pm.

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy