

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

February 25, 2014

Present: Chairman Frank Thiel, Ruth Fisher McCarthy, Kris West, Jay McKendrick, Jody Allen

Absent: Susan Fontaine

Guests: David Smith, Dan Lapp, 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.

Minutes of the January 28, 2014 meeting were approved as corrected by unanimous consent.

- 1. Request from Wal-mart/Subway for an Area Variance at 3217 Silverback Lane to allow a wall sign of 488.8 sq. ft. where 150 sq ft is allowed. Variance of §130-71.B.3.d and Table 130-81-1 is requested. With Public Hearing.**

Notification of this action was sent to 16 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on February 16, 2014, and in The Leader on February 18, 2014.

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 District.

Wal-Mart has authorized Mr. Smith to be the applicant and represent Wal-Mart in this application, which will affect the approval of all Wal-Mart signage.

Mr. Smith is seeking to erect one additional wall sign of 15.8 sq ft. This would bring the total sq ft of wall signage to 488.8 where 150 sq ft is allowed.

On August 28, 2012, the ZBA granted a variance to permit 9 wall signs totaling 473 sq ft on the condition that there shall be no more than 9 wall signs not to exceed 473 sq ft on the basis that such approval would reduce the overall signage on Wal-Mart.

This request is an increase of 15.5 sq ft or 3.3% over what was previously granted. The total signage of 488.8 sq ft is an increase of 325% over the permitted 150 sq ft.

If this variance request is granted, then there will be a total of 10 wall signs for a total of 488.8 sq ft. If this request is denied, the existing Wal-Mart signage remains as approved in August 2012.

Mr. Smith indicated that he needed the sign so that customers would know that there was a Subway in the Wal-Mart store. He stated that he has interviewed customers who only enter the Pharmacy side (east entrance) of Wal-Mart don't know that there is a Subway.

The Board noted that traffic entering from Chatfield (east ingress) would not see the requested wall sign. The Board suggested that to reach the target population a sign inside the Wal-Mart store was needed.

Mr. Smith countered that traffic entering from Silverback (west ingress) would see the sign.

Board Chairman Frank Thiel indicated that the applicant could install window signs, which would comply with the Town Code and not require a variance.

Mr. Smith stated that the window frames cut up the sign. That the Subway sign doesn't fit.

Board member Kris West recommended the applicant ask Wal-Mart to remove one wall sign to accommodate this new sign.

Mr. Smith stated that given his other dealings with Wal-Mart he did not think Wal-Mart would agree, but he has not requested it. MR. Smith stated that he had been working since 2008 to get a sign. He noted that Taco Bell has signs all over. The purpose is to advertise to outside people. He does not expect the sign to be visible from S. Hamilton Street. He intends to wire the sign to the switch that operates the inside Subway lights that is only turned on when the Subway store is open. The sign will not be lit all the time.

Board member Ruth McCarthy asked if there was any data to demonstrate the loss of business attributable to not having a wall sign.

Mr. Smith stated that his net sales were flat so there had to be no growth because his prices went up. He estimated the sign would increase business 10% and create the need for one additional part time person for lunch and evenings. Mr. Smith stated that he has canvassed people who only enter the pharmacy and don't know there is a Subway, but that most of the traffic enters the plaza through the Silverback entrance. His other stores have more sales than this one. He has seen a reduction in business since Taco Bell opened and Taco Bell has signs all over.

Mr. Smith was asked if his other stores were in a Wal-Mart. He stated that his other stores were stand alone.

Board Member Kris West asked how Mr. Smith chose the sign size; did he pick the biggest one.

Mr. Smith indicated that Wal-Mart limits the size he can have.

Mr. Smith stated that he had done everything the Board had asked him to do at the last meeting; that he had to jump through hoops and go to the "Towers" people who help him argue with Wal-Mart and got all the paperwork the way the Board wanted it.

The Chairman opened the Public Hearing at 7:30 pm.

Dan Lapp, 50 Canada Road, stated that while he did not feel that one more sign would affect the character of the neighborhood, he was concerned about the number of signs and the precedent it would set. He noted that each additional business could ask for a new wall sign. He cited other options available to the applicant such as an inside sign, signs taped to the floor that might have to be replaced weekly, a window sign. He felt the Board needed to draw the line somewhere.

All members from the public wishing to be heard, the Chairman closed the hearing at 7:32 pm.

The Zoning Board of Appeals considered whether the benefit to the applicant, which the applicant defined as marketing to customers using the east entrance, 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 produce an undesirable change in the character of the neighborhood. This will set a precedent that would allow additional signs to be requested. There are other businesses inside Wal-Mart which rent space, and similarly could request additional wall signs. The Board approved a variance that limited the number of wall signs on the Wal-Mart building to nine signs. Approving an additional sign would erode the authority of the Board and discredit the Board's integrity when imposing limits on variances. The Board noted that the Subway business differed from Taco Bell and was not unique in the same manner as Taco Bell, since Taco Bell is a stand-alone business, oriented to the interior of a plaza and not visible from the entrance road. One Board member finds that the requested variance will not produce an undesirable change in the character of the neighborhood.

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

The Board finds unanimously that the requested variance will not 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.

The Board unanimously finds that there are several alternative methods to achieve the benefit of identifying the Subway business and especially as emphasized by the applicant, making it known to Wal-Mart patrons who only use the east road ingress and east (pharmacy) entrance to Wal-Mart of the existence of the Subway. Feasible alternatives, which are less costly than the exterior wall sign, include window signs and interior signs within the Wal-Mart store. Also, Wal-Mart could reduce the number and area of wall signs to accommodate this sign.

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

A majority of the Board finds that the addition of one wall sign of 15.8 sq ft to the existing wall signage is not substantial. Two Board members find that the request is substantial because it requests 488.8 sq ft of signage where 150 sq ft is allowed.

(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 variance will not have an adverse effect or impact on the physical or environmental conditions. The sign would not flash and would not be lit 24 hours/day.

(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 finds unanimously that the alleged difficulty was self-created. The applicant stated that he has been trying to get a sign since 2008. This request should have been included in the August 2012 variance request where the limit of nine signs was established.

RESOLUTION TO DENY APPLICATION 2014-03 FOR A WALL SIGN INCREASE BASED ON THE FINDINGS OF THE BOARD.

MOVED BY: RUTH FISHER-MC CARTHY SECONDED BY: KRIS WEST
DISPOSITION: 5-0

The applicant stated he did not understand why everyone else in the area got a sign and he didn't, especially since he had done everything the Board asked.

The Chairman advised the applicant that he could appeal the decision within 30 days through an Article 78 proceeding.

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

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy