

# TOWN OF ERWIN

## Zoning Board of Appeals

MINUTES 04/28/15 MEETING

**PRESENT:** Chairman Frank Thiel, Bridget Ackerman, Jay McKendrick  
**ABSENT:** Ruth Fisher McCarthy, Kris West, Angela Narasimhan (Alternate)  
**GUESTS:** Andy Sprague, Robert Brown, Dan Dillon, Beverly Mahoney, Mike Ranft, J Mechling

### 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.

### MINUTES:

No review of minutes.

## 2015-02

**REQUEST FROM THE LIQUOR FACTORY FOR AN AREA VARIANCE AT 285 S HAMILTON STREET TO ALLOW TWO WALL SIGNS WHERE ONE IS ALLOWED. VARIANCE OF §130-81.B.3.a, §130-71.B.3.d AND Table 130-81-1 IS REQUESTED. WITH PUBLIC HEARING.**

Notification of this action was sent to 12 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on May 17, 2015, 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 a B-1 Business Commercial Zone.

The Applicant seeks to establish two wall mounted signs where only one wall mounted sign is allowed.

Therefore, the Applicant is requesting a variance of one additional wall sign.

The Applicant completed an area variance application for the 9-23-14 ZBA meeting, to allow three wall signs where one is permitted. As no one appeared for the Applicant at that meeting, the application was deemed to be withdrawn without prejudice.

The 9/3/14 Planning Board approval of the Site Plan Application, as a condition of approval, limited the number of signs to two signs.

Andy Sprague, of Studio Mosaic Architecture, presented the application. Mr. Sprague noted that Applicant Treadwell would like to have two wall signs, one facing S Hamilton Street and one on the back of the building facing the rear customer entrance and Interstate 99. No monument sign is planned.

Chairman Thiel noted that the orientation of a wall sign facing I99 would require an additional variance not listed in the application. The code allows for a sign to face the street from which the building is accessed, which in this case would be S Hamilton Street. It was noted that no other neighboring businesses have signs facing I99.

Town Manager Rita McCarthy noted a variance of code section **B14A**, regarding sign orientation would be required.

It was decided to table the existing application until May so that Mr. Sprague could determine whether the applicant would like to seek a second variance or choose an alternative.

**MOTION TO TABLE APPLICATION 2015-02**

**MOVED BY: CHAIRMAN THIEL**  
**SECONDED BY: BRIDGET ACKERMAN**  
**DISPOSITION: 3-0**

## 2015-03

**REQUEST FROM STURDEVANT SIGN FOR A USE VARIANCE AT 845 ADDISON RD (FORMER BROWNIE'S MINI MART) TO ALLOW AN 18 FT FREESTANDING SIGN WHERE 12 FT IS ALLOWED. VARIANCE OF §130-81.B.1.a.i, §130-71.B.3.d AND Table 130-81-1 IS REQUESTED. WITH PUBLIC HEARING.**

---

Notification of this action was sent to **20** adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on May 17, 2015, 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 a B-3 Neighborhood Services Zone.

The Applicant seeks to establish a logo and lettering on an 18 ft high canopy, thus creating a sign 18 ft in height, where the maximum height allowed is 12 ft.

In accordance with §130-81.B.1.a.i, any sign over 12 ft in any district except Regional Service constitutes a Pole Sign, and is prohibited. (The height in Regional Service is 16 ft).

Since this sign would be 18 ft in height, it is a prohibited sign. In accordance with §130-81.E.4.a.iii, a Use Variance is required to allow such sign.

No use variance shall be granted by the Zoning Board of Appeals without a showing by the Applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove that an unnecessary hardship has been caused, the Applicant must establish by competent, financial evidence that application of the Zoning Law will deprive the Applicant of a reasonable return from the property in question, and that the lack of return is substantial.

The Applicant must also prove that the alleged hardship does not apply to a substantial portion of the district or neighborhood.

The Applicant must also show that the variance, if granted will not alter the essential character of the neighborhood. Further, the Applicant must show that the alleged hardship was not self-created.

All of the criteria must be proven in order for the ZBA to grant the Use Variance.

Applications 2015-03 and 2015-04 were addressed simultaneously.

## **2015-04**

**REQUEST FROM STURDEVANT SIGN FOR AN AREA VARIANCE AT 845 ADDISON RD (FORMER BROWNIE'S MINI MART) TO ALLOW TWO FREESTANDING SIGNS WHERE ONE IS ALLOWED. VARIANCE OF §130- 81B.3.a, §130-81.B.3.d AND Table 130-81-1 IS REQUESTED. WITH PUBLIC HEARING.**

Notification of this action was sent to **20** adjacent property owners. A legal notice of this action printed in the Town's official newspaper, the Star Gazette on May 17, 2015, 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 a B-3 Neighborhood Services Zone.

The Applicant seeks to establish a second freestanding sign. If Application 2015-03 is denied, this variance is moot.

Section 130-81.B.3.a allows for one freestanding sign. The applicant seeks to establish a second freestanding sign in addition to the logo and lettering on the canopy requested in Application 2015-03, which constitutes one freestanding sign.

Therefore, the Applicant is requesting a variance of one additional freestanding sign.

Mike Ranft, of Sturdevant Signs, presented applications 2015-03 and 2015-04. He noted that the applicant seeks to replace lettering and graphics on existing signs and canopies with Kwik Fill lettering and logos. Specifically they wish to replace "Sunoco" with "Kwik Fill", the "Official Fuel of Nascar" logo with the "Driving America" logo and the word "DIESEL" with the word "DIESEL" in different lettering and colors.

Chairman Thiel noted that, regarding application 2015-03, there are no existing laws in the Town of Erwin zoning code pertaining to filling station canopies and therefore there is no code to seek a variance against. Regarding application 2015-04, it was determined that the area variance sought does not apply.

Chairman Thiel noted that filling station canopies exist throughout the Town of Erwin, however there is no case on record where the Zoning Board has acted on a variance request related to filling station canopies.

Chairman Thiel quoted the Zoning Code as stating “The Zoning Board of Appeals shall hear and decide appeals from, and review any order, requirement, decision, interpretation or determination made by the Code Enforcement Officer under the Zoning law.” The presentation of an application regarding signs on filling station canopies to the Zoning Board of Appeals indicates that it is a determination of Code Enforcement that variances are required. However, since there are no provisions in the Zoning Code concerning signs on filling station canopies, it is under the authority of the Zoning Board of Appeals to interpret the situation.

Chairman Thiel noted that no variances are required and none can be given because there is no code related to canopy signs which exists to be varied. In order to resolve the situation, he proposed that the Zoning Board of Appeals should create a resolution to set precedents for any future cases involving filling station canopy signage. The precedents established regarding the resolution of variance requests 2015-03 and 2015-04 would be interpreted as code in lieu of actual code unless or until the actual code was modified to address the issue.

**MOTION THAT IT IS THE INTERPRETATION OF THE ZONING BOARD OF APPEALS THAT THE PRECEDENTS SET IN RESOLVING ISSUES RELATED TO FILLING STATION CANOPY SIGNAGE SHALL BE USED AS IF THE PRECEDENTS WERE IN THE CODE UNLESS OR UNTIL THE CODE IS CHANGED. IT IS FURTHER RESOLVED THAT NO VARIANCE IS REQUIRED AND NO BUILDING PERMIT IS REQUIRED RELATED TO FILLING STATION CANOPIES AND THAT REPLACING LETTERING AND LOGOS ON EXISTING CANOPIES IS ALLOWED.**

MOVED BY: JAY McKENDRICK  
SECONDED BY: CHAIRMAN THIEL  
DISPOSITION: 3-0

**THE MEETING WAS ADJOURNED BY UNANIMOUS CONSENT AT 7:30 PM.**