

## MINUTES

**Town of Wappinger  
Zoning Board of Appeals  
October 12, 2010**

**Town Hall / 20 Middlebush Road  
Wappinger Falls, NY  
Time: 7:30pm**

### Summarized Minutes

#### Members:

Mr. Prager,	Chairman
Mr. DellaCorte,	Member
Mr. Kuzmicz,	Member
Mr. McVeigh,	Member

#### Absent Members:

Mr. Casella,	Member
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#### Others Present:

Mr. Horan,	Attorney
Mrs. Roberti,	Zoning Administrator

Minutes taken by Ms. Brunello, and transcribed by Mrs. Dao

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## SUMMARY

### Public Hearing:

#### Richard Finnerman

-Variance Granted.

#### Stage Door Furniture

-Variance Granted upon contingent License 30 days.

### Discussions:

#### Nathan's Famous:

-Public Hearing for January 26, 2010

**Appeal No. 10-7427**

**Richard Finnerman:** Seeking a variance of Section 240-29 (5) of District Zoning Regulations for GB Zoning.

-Where **No more than one temporary sign is permitted and shall not exceed 6 sq. ft. in area, whether it is for construction or sales,** The **applicant is proposing a temporary “For Lease” sign of 24 sq. ft.,** thus **requesting a variance of 18 sq. ft. for the sign.**

The property is located at **1515-1525 Route 9** and is identified as **Tax Grid No. 6158-04-572057** in the Town of Wappinger.

Mr. Prager: Are the mailings in order?

Mrs. Roberti: Yes they are.

Mr. DellaCorte: **Motion to open the public hearing.**

Mr. McVeigh: Second the motion.

Vote: All present voted aye.

Mr. Prager: Mr. Finnerman is not here. We will have to put that one off to the side and start the next one.

**Appeal No. 10-7428**

**Stage Door Furniture:** Seeking variances of Section 240-29 (5) of District Zoning Regulations for HB Zoning.

-Where **No temporary sign shall exceed 6 sq. ft. in area, whether it is for construction or sales,** the **applicant is proposing (2) temporary signs of 240 sq. ft. each and (1) freestanding sign of 28 s.f.,** thus **requesting a variance of 490 sq. ft. for the three temporary signs.**

-Where **No more than one temporary sign is permitted on each street frontage,** the **applicant is proposing (2) temporary wall signs and (1) temporary freestanding sign,** thus **requesting a variance of 2 temporary signs.**

The property is located at **1 Stage Door Road** and is identified as **Tax Grid No. 6156-02-777824** in the Town of Wappinger.

Mr. McVeigh: **Motion to open the public hearing.**

Mr. DellaCorte: Second the motion.

Vote: All present voted aye.

Mr. Prager: Are the mailings in order?

Present Jed Ackerman Applicant

Mrs. Roberti: Yes they are.

Mr. Prager: Can you please come up and explain what you're doing and why you

need it.

Mr. Ackerman: We are closing the store down. We are having a store closing. Our plans are to consolidate and bring all employees to our store in Pawling. It's a big building. It's three hundred feet long and a little tiny sign on the building according to code wouldn't do any good. You wouldn't really see it. It's also a big setback. I think it's about one hundred to one hundred fifty back from the road, and people come by the road pretty fast. There are no lights there to slow people down. The signs are up. They are not garish. They're just up against the wall. It is a temporary sign.

Mr. Prager: How long do you think these signs are going to be up?

Mr. Ackerman: They'll be down by the end of the year.

Mr. Prager: December 31<sup>st</sup>.

Mr. Ackerman: Yes.

Mr. Prager: In the mean time I got some information from our town attorney. It states that actually in order to do this, going out of business, you're going to need a going out of business state sale license that you have to get from the town clerk.

Mr. Ackerman: Ok. I don't know the details about this. I will have my lawyer contact the town and do whatever I have to do.

Mr. Prager: Mr. Horan.

Mr. Horan: Just for the record Mr. Paul Valardi represented Morris, Mack and Max LLC. He sent the town clerk's fax with a question requiring the applicability of Article 29F of the General Business Law. As we discussed briefly last time, that is the state requirement for going out of business sales. Article 29F of the General Business Law was adopted approximately 1969. The intent is to stop deceptive practices where someone would advertise they are going out of business then not go out of business. The way the article set that up is that certain sales are covered by the section. The term in the code is Section 581 Subdivision (a) "Term Closing Out Sale" That would refer to all of the businesses going out, or one branch store. A branch store discontinuous sale, based on Mr. Ackerman, seems to be what is contemplated. Basically it says you can't advertise without a license from the town. There is a requirement that states you can't take merchandise from other locations and bring it to that store location. The license is for a period of 30 consecutive calendar days

and may be renewed for one consecutive period not exceeding 30 consecutive calendar days. That is provision 590 how long a sale can take place. Also provision 591, opening of a similar business..... within one year shall constitute a violation of the article. Recorded keeping under provision 592 is also in effect. The town clerk has created a going out of business license. It was given to Mr. Valardi.

Mr. Prager: Have you spoken to Mr. Valardi?

Mr. Ackerman: I'm not a lawyer; I don't know any of these things you are saying. We were contacted by the town about a month ago and I gave it to my attorney.

Mr. Prager: One of the things I'm seeing now is this duration of the sale. It looks like the most that it could be done is for sixty days.

Mr. Ackerman: Right.

Mr. Prager: If I'm reading this correctly, December 31<sup>st</sup> is out. It seems Mr. Ackerman needs this license, which we're not sure what the cost of it is.

Mr. Horan: It is set forth in here. It is five hundred dollars.

Mr. Prager: Where is that?

Mr. Horan: Section 590 (b).

Mr. Prager: So it is five hundred dollars.

Mr. Kuzmicz: A renewal fee of fifty dollars.

Mr. Prager: You should get this license first.

Mr. Prager: We could vote on the variance contingent of you getting a license.

Mr. Kuzmicz: **Motion to close the public hearing.**

Mr. Dellacorte: Second the motion.

Vote: All present voted aye.

Mr. Kuzmicz: **Motion to grant variance contingent on receiving a license. I don't see it changing the character of the neighborhood. It is not substantial and will not cause a detrimental impact on the environment.**

Mr. Dellacorte: Second the motion.

Vote: All present voted aye.

Mr. Prager: I want to add I think this is very substantial. You must receive a license in one week.

**Appeal No. 10-7427**

**Richard Finnerman:** Seeking a variance of Section 240-29 (5) of District Zoning Regulations for GB Zoning.

-Where **No more than one temporary sign is permitted and shall not exceed 6 sq. ft. in area, whether it is for construction or sales.** The **applicant is proposing a temporary "For Lease" sign of 24 sq. ft., thus requesting a variance of 18 sq. ft. for the sign.**

The property is located at **1515-1525 Route 9** and is identified as **Tax Grid No. 6158-04-572057** in the Town of Wappinger.

Present Sam Finnerman Hudson Commercial Realestate

Mr. Prager: We already opened the public hearing. Briefly explain what you need.

Mr. Finnerman: My brother Richard Finnerman owns the property. Pizza Hut currently leases the property. They will be out at the end of February 2011. We need a sign to market the property. We have permission from Pizza Hut to place a sign.

Mr. Horan: Barbara, what are the requirements of the sign.

Mrs. Roberti: Six months and 6 square feet.

Mr. Prager: Is there anyone in the audience that wants to speak?

Mr. John Bashir: I own property right next door. Is the sign lit?

Mr. Finnerman: No it is not lit. It is not a permanent sign. It's a typical real estate sign.

Mr. John Bashir: This sign will be up for six months?

Mr. Prager: Hopefully it won't.

Mr. Kuzmicz: **Motion to close the public hearing.**

Mr. Dellacorte: Second the motion.

Vote: All present voted aye.

Mr. Horan: One Condition. The sign should be placed where the plan it shows. It should be within the Town of Wappinger not in the Village of Wappinger side.

Mr. Kuzmicz: **Motion to grant variance. Based on the evidence presented, I don't see it changing the character of the neighborhood. You can't reach the result in any other way. It is not substantial and will not cause a detrimental impact on the environment.**

Mr. Dellacorte: Second the motion.

Vote: All present voted aye.

**Appeal No. 10-7429-** At the request of **Nathan's Famous** who are seeking area variances of Section 240-29(F)(2)(a) of District Zoning Regulations for HB Zoning.

-Where a **freestanding sign may not be taller than 10 ft. in height**, the **applicant is proposing 14 ft. in height for a portion of the freestanding sign**, thus **requesting a variance of 4 ft.**

-Where **the freestanding sign shall not exceed 25 sf. in area**, the **applicant is proposing 66.9 sf.** thus **requesting a variance of 41.9 sf.**

The property is located at **1491 Old Route 9** and is identified as **Tax Grid No. 6157-02-600971** in the Town of Wappinger.

Mr. DellaCorte: **Motion to open the public hearing.**

Mr. McVeigh: Second the motion.

Vote: All present voted aye.

Mr. Prager: Are the mailings in order?

Mrs. Roberti: Yes they are.

Mr. DellaCorte: Present is Mr. Steven LaBarbara speaking on behalf of Nathan's Famous.

Mr. LaBarbara: Steven LaBarbara

Mr. DellaCorte: Please come forward and raise your right hand. Do you affirm under penalty of perjury, to tell the truth?

Mr. LaBarbara: Yes.

Mr. DellaCorte: Please tell us one more time what you would like.

Mr. LaBarbara: Please we have photographs as well. We are looking to put a road side sign, a pylon sign that looks like the existing sign. (Applicant shows pictures to the ZBA). It is all staying the same. What we are proposing is changing this piece to that one (pointing to pictures). The actual sign is 8 feet by 6 feet; this is 12 feet by 4 feet. It is approximately the same square footage. We are looking for both the visibility as well as trying to get

attention of passer by.

Mr. DellaCorte: Is there anything else that was attached to this.

Mr. LaBarbara: We are going to fill in the letter box and put a solid piece stating Arthur Treachers. It will not say Arby's. It is just a pylon the Arby's hat will be replaced with Nathan's logo.

Mr. DellaCorte: Does anyone have any questions on the Board or in the audience? Let the record reflect there are no comments from the audience. I don't have any more questions. Do we have a motion to close the public hearing?

Mr. Kuzmicz: **Motion to close the public hearing.**

Mr. McVeigh: Second the motion.

Vote: All present voted aye.

Mr. DellaCorte: Can I have someone motion to grant or deny the variance?

Mr. Kuzmicz: **I make a motion to grant the variance. The variance requested is not an undesirable change to the character of the neighborhood. It's not a substantial detriment to the nearby properties. It's not substantial in that the free standing sign that they are proposing will be only four feet higher than the existing sign. It is not unique to the area of Route 9, that is a commercial area and has many properties with such signs. Therefore. I make a motion to grant the variance.**

Mr. McVeigh: Second the motion

ZBA Roll Call: Mr. McVeigh: Aye.

Mr. Kuzmicz: Aye.

Mr. DellaCorte: Aye.

Mr. LaBarbara: Thank you.

Mr. Kuzmicz: When are you scheduled to open?

Mr. LaBarbara: December 6<sup>th</sup>.

Discussion of types of fast food businesses and history of same.

Mr. Kuzmicz: **Motion to adjourn.**

Mr. McVeigh: Second the motion

Vote: All present voted aye.

Respectfully Submitted,

Susan Dao, Secretary  
Zoning Board of Appeals