

Town of Rockland
Zoning Board of Appeals
November 9th, 2022
#22-2 Area Variance
Catskill Brewery Annex

Members present: Chairman Arthur Riegal, Perry Keuhn, Shelia Schultz, Daniel Smith

The Public Hearing was cancelled due to a lack of notification to the surrounding neighbors within 500ft of the property. *Local Zoning Law 185-43 (H) dictates- The Board of Appeals shall fix a reasonable time, no more than 62 days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.*

The Public Hearing will be rescheduled on December 13th at 7pm at Town Hall, 95 Main St. Livingston Manor, NY 12758

Town of Rockland
Zoning Board of Appeals
Regular Meeting: March 10th, 2022, at 7:16 pm

Chairman Riegal opened the regular meeting with the pledge to the flag.

Approval of Previous Minutes

Previous minutes of March 2nd, 2022

Motioned made by Perry Kuehn and seconded by Dan Smith to accept the previous meetings minutes as presented. The Motion moved unanimously.

Case Review discussion

Continued discussion regarding the clear Town zoning regulations and the applied height restrictions to the sign. After a vigorous discussion regarding the grandfather clause particularly as it relates to the difference in replacing verses refurbishing. The new replacement sign thus triggers the sign to fall under the current Municipal Codes- located within the General Business District, pro's & cons and possible precedents all members felt that this area variance is not possible due to the many concerns that a precedent could be set due to perpetual grandfather of any local zoning regulations.

Chairman Riegal stated that all decisions of the ZBA need to be defensible in a court of law and if an applicant were to approach the board in the future, with the same variance request they would have to be approved if they met the same criteria as the code must be applied equitably:

His decision to vote against the variance was based upon the following:

- 1. The new sign is more than double the 12 sq. ft. maximum in the General Business district. It also exceeds the 6 foot maximum height from grade.
 - The Board denied a similar variance in 2018 regarding a replacement sign that was also out of code and the law must be applied equitably.
 - Failure to apply the code in an equal manner to all cases would open the Town to litigation.
 - The new sign is an improvement and the old one was grandfathered but approving this variance would set a precedent for perpetual grandfathering of any section of the Code.

With no further discussion the Board moved into the Standard of Review process.

ZBA: Standard of Review: Area Variance

Zoning Board of Appeals must balance the benefit to the applicant versus detriment to the health, safety and welfare of the neighborhood. The burden of proof lies with the applicant. Factors to be assessed:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

Discussion: will create an undesirable change of character in the neighborhood and community as well.

Resolution: There will be no undesirable change produced by granting this variance

By _____ P.Kuehn Seconded ____ D. Smith _____

**Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes**

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Discussion: Modification to the sign to comply with regulation size

Resolution: The benefits can be achieved by other methods

By _____ P.Kuehn _____
Casey _____ Seconded _____ E.

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

3. Whether the requested area variance is substantial.

Discussion: The Sign is double the height is restriction of the Town zoning code.

Resolution: The area variance is substantial

By _____ D. Smith _____ Seconded _____ E.Casey _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Discussion: Impact on the neighborhood

Resolution: Will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

By _____ P. Kuehn _____ Seconded _____ S.
Schultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes

Arthur Riegal – Yes Daniel Smith - Yes

- 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Discussion: The availability of Municipal Codes , and other resources such a Code enforcement Officer as guidance as is self-created

Resolution: The difficulty is self-created

By _____ P. Kuehn _____ Seconded ___S. Schultz_____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes Arthur Riegal – Yes Daniel Smith - Yes

Zoning Board Action

Approve _____ Deny ___X___ Approve with conditions (below) _____

The use variance as requested by the applicant is hereby denied, the project does not to meet the requirements of the Town of Rockland Zoning code re: local zoning law 185-30.2 (G) (1.b, c) (3.b) as the new sign falls under the new code. Applicant has been referred to The Town of Rockland Code Enforcement Officer for further assistance.

Resolution by _____ P. Kuehn _____ Seconded ___S. Schultz_____

Roll Call Vote Perry Kuehn – No Sheila Schultz – No Emily Casey – No Arthur Riegal – No Daniel Smith - No

Motion to adjourn made and passed by common consent at 7:47 pm