

**City of Berlin, NH
Zoning Board of Adjustment
Meeting Minutes
June 27, 2022**

Members Present: Dana Hoyt, Tiffany Hale, Greg Marrer, Scott Losier and Mark Evans

Members Excused:

Members Absent: David J. Lavallee Sr.

Others Present: Ryan Charest and Ellen Mikesh, applicants

Others Present at City Hall: Michel Salek, Building Inspector/Zoning Officer; Jennifer Ouellet, Code Enforcement Administrative Clerk/recorder of minutes

The meeting was called to order at 6:29 pm.

Roll call was taken:

Dana Hoyt-present

Tiffany Hale-present

Greg Marrer-present

Scott Losier-present

Mark Evans-present

Approval of May 2022 Minutes:

Tiffany Hale made a motion to approve the minutes as presented. Motion was seconded by Mr. Losier. A vote was taken of each member by Mr. Hoyt, chair of the board and all members voted in favor, the motion to approve the May 2022 minutes passed. Chair Hoyt asked for current list of members.

Case 03-22: Ryan Charest and Ellen Mikesh, 206 Main Street, Map 119, Lot 17 Variance

Chair Hoyt then moved to the Reading of Zoning Board of Adjustment Rules:

The Building Inspector and/or Zoning Officer is required to follow the strict letter of the Ordinance while the Board of Adjustment is required to follow the intent and spirit of the Ordinance. Our function is to hear both sides, use judgment within the Ordinance, and render a decision in writing, within a reasonable time. The main purpose of the public hearing is to allow property owners and anyone concerned with the case to testify how the proposed variance (or special exception) will affect them and their property. The reason for these hearings is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against the appeal. While the evidence may be in the form of an opinion

rather than an established fact; it should support the grounds which the board must consider when making a determination.. During the hearing, all persons wishing to speak will raise their hands, be recognized, give their names, address and interest in the case, then be sworn. If you wish, it is your right to be represented by counsel.

Please address all your questions and statements to the Board and not to any individual in this room. In order to give everyone a chance, no one will be allowed to speak a second time until all persons have been given a chance to speak for the first time...and the petitioner will be given the last word. If you feel any member of this board is prejudiced for or against your case, please let me know and if the facts warrant it, they will abstain from participating or voting in your case. I want you to know that although the board is to be impartial, it must abide by the intent and spirit of the ordinance and cannot rewrite the ordinance to please any particular individual.

Mr. Marrer read the request into the record.

Request: Case#03-22: The request for a Variance for 206 Main Street Tax Map 119 Lot 17 in the Business General Zone. If permitted would allow: a free-standing sign 48" from sidewalk/property line. This request comes under Article XV, Section 17-164.4a under the Berlin Zoning Ordinance.

Ryan Charest of 441 Norway Street, Berlin, NH was sworn in by Chair Hoyt.

Mr. Charest introduced his wife Ellen and himself as the owners of 206 Main Street he went on to explain their intent of the building is to have a public facing food service business. Due to property being setback from the street and the Albert Theatre blocking visibility from the road a sign needs to be present near the road. A sign that is visible from street would help show business is present that is why we are seeking a variance.

Ellen Mikesh of 441 Norway Street, Berlin, NH was sworn in by Chair Hoyt.

Ms. Mikesh stated that the current codes state freestanding signs need to be 10 feet from sidewalks. Due to building being set so far back it isn't feasible to put projecting signs up. A variance is being proposed to have freestanding sign set back 4' from front property line (back of sidewalk) and 10' from the southernmost side property line to have more visibility for business and easier access to building location.

Chair Hoyt asked what size the proposed sign would be?

Mr. Charest wasn't sure of the specifics at this time it is contingent of the placement of the sign. He is in collaboration with Seventh Street Graphics and will follow Sign Ordinance. It will be traditional in design and with a size of 2 ½ x 2 ½ large enough to read. A few years ago, an old lamp post from Southern, NH was purchased. The plan is to erect a pedestal out of masonry & concrete to thread power through. The idea is to have a gas station appearance due to the past of history of building being a gas station. Ms. Mikesh mentioned trying to keep the round sign look above the tall pole but projecting off of the pole for customer visibility.

Mr. Marrer asked if sign would be lit externally or internally?

Mr. Charest answered it would be externally lit with goose neck lighting. The boom piece that the sign will be hanging from has a scroll wrought iron design in mind.

Chair Hoyt asked if there were public comments in favor of the applicant. An email was read by Mrs. Ouellet from abutters Paul and Fran Cusson of 198-204 Main Street. It read "As the owners of The Albert Theater at 198 Main St, and abutters to the Charest/Mikesh property at 206 Main St, Berlin, NH., we wholeheartedly support the granting of a variance for the proposed location of sign on their property. As you all know, easily visible and attractive signage is crucial to the successful operation of any business. Because of the deep setback of this building, positioning a sign that is highly visible from the traffic light intersection will be the first indication that there is an active business on that property, and it will act as a critical tool for attracting customers to this new and very welcomed downtown business. Thank You for your consideration of our comments in this important matter. Sincerely, Paul & Fran Cusson, Owners, 198-204 Main St., Berlin, NH

Chair Hoyt asked if there were anyone else to speak in favor of applicant. There was not.

Chair Hoyt asked if there were any other public comments in opposition to the applicant. There was not.

Mr. Losier had a question concerning sidewalk snowplows in the winter would the sign post be in the way of the plow. Ms. Mikesh answered by stating the pedestal of the sign will be 48" from sidewalk and should not be in the way of the snowplow.

Final words from Mr. Charest were thanking board for hearing their case.

Chair Hoyt summarized case.

Chair Hoyt asked if the base will be 48" or edge of sign? Mr. Charest answered the base will be 48" and the sign will have to hang closer to property line to get any visibility from street. Ms. Mikesh mentioned there is a 10' high ordinance so there shouldn't be any obstruction to citizens passing by.

Public Hearing Closed at 6:44 pm. Chair Hoyt advised Mr. Charest and Ms. Mikesh that a decision would be made that evening and a letter of decision would be sent. He was also welcome to wait and be present to hear the Board's deliberations and decision. He was informed that if anyone chose to appeal the decision, the appeal must be filed within thirty days.

Mr. Evans questioned property being in the Downtown Zone on Maps on Line but on the applicant's application it was stated Business General which have the same setbacks. Mr. Salek clarified stating it was changed in the Zoning the upper section of Main Street, North of East Mason Street to Business General a year and a half ago.

Chair Hoyt asked Mr. Salek would it be against the ordinance if the applicants were to build their business up against the sidewalk? Mr. Salek answered that he wasn't sure but there would probably be setbacks maybe 25 feet? Chair Hoyt mentioned he didn't see any provision for in the Business General Zone for a projecting sign? Mr. Salek agreed that he didn't see any himself.

Mr. Evans asked for clarification of total sign measurements. Chair Hoyt mentioned the board can put restrictions of the variance.

Chair Hoyt read the "Supporting Facts for Granting the Variance" stated by Mr. Charest on the Variance application received.

- 1) Granting the variance would not be contrary to the public interest because this business provides the service of a healthy food option in Berlin.
- 2) If the variance were granted, the spirit of the ordinance would be observed because the building sits back away from the sidewalk making a projecting or wall sign impossible directly from the physical building. A free-standing sign closer to the sidewalk permits the business to show its location.
- 3) Granting the variance would do substantial justice because it allows the business's sign to be visible from the street and sidewalk.
- 4) If the variance were granted, the values of the surrounding properties would not be diminished because this business brings a healthy food option to Berlin, which is limited in food options, thus being an asset to the community & surrounding properties.
- 5) Unnecessary Hardship
 - a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in **unnecessary hardship** because:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: this building does not sit directly on the sidewalk as other buildings on Main street that have the option for projecting or wall signs.
-and-
 - ii. The proposed use is a reasonable one because: it allows for the business to have a properly visible sign so patrons may find it more easily.
 - b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to

enable a reasonable use of it. Without the variance the business will not be easily visible from the street and sidewalk. This will reduce business.

Mr. Evans questioned if the board had to state that the proposed sign can't hang over sidewalk? Mr. Salek clarified that there will be a forthcoming sign permit in addition to the proposed variance.

Chair Hoyt asked the members for comments on each request. On Question 1, Chair Hoyt didn't feel the first fact was related to the proposed sign. Ms. Hale didn't see how in anyway the public interest would be affected unless there was visual obstruction of sign, Mr. Marrer agreed with Ms. Hale and feels sign would draw interest to the public which the downtown needs. Mr. Losier answered the Albert Theatre is a massive building that is blocking view for the applicants. Question 2, Chair Hoyt asked Mr. Salek does the ordinance allow the Albert Theatre building to have a projecting sign due to being in the Business General Zone? Mr. Salek answered it wouldn't be allowed. Ms. Hale in her opinion feels it is the spirit of the ordinance to grant variance due to obstruction of applicant's business property in the Business General Zone. Chair Hoyt agreed with Ms. Hale that it is in the spirit of the ordinance to have a free-standing sign. Question 3, All board members feels there is no other choice but to have business sign visible from the street and sidewalk. Question 4, Ms. Hale answered by having an attractive sign will increase property values and help the business thrive. Chair Hoyt doesn't feel granting the variance would have a negative effect on property value. Mr. Marrer feels the antique sign appeal is more pleasing to the surrounding properties. Question 5, Chair Hoyt agrees that there is unnecessary hardship and any business that was in the applicant's building would be faced with the same problem. Mr. Salek wasn't sure if there is any ordinance in the Business General Zone for projecting signs.

Case #03-22 Deliberation

Chair Hoyt did a roll call and had each member voted on each of the 5 Variance questions. Each member voted in favor on each of the five criteria.

Case #03-22 Decision

Mrs. Hale made a motion to Grant a Variance in Case #03-22.

Mr. Marrer seconded the motion, the Board took a vote, and voted unanimously in favor.

Member Comments: None.

Other Business:

Meeting Adjourned: Ms. Hale made a motion to adjourn, seconded by Mr. Marrer. All members voted in the affirmative on a roll call vote and the meeting adjourned at

7:10 pm.

Respectfully submitted, Jennifer Ouellet

** Note: These minutes are unofficial until they have been accepted by the Zoning Board of Adjustment by motion.*