

**TOWN OF SCHODACK - COUNTY OF RENSSELAER - STATE OF NEW YORK  
ZONING BOARD OF APPEAL JULY 21, 2011  
CALLED TO ORDER BY: CHAIRMAN CALARCO AT: 7:03 P.M.**

**PRESENT**

**David Calarco, Chairman  
Ed Brewer  
Anthony Maier  
Lou Spada  
Attorney Robert Linville, Esq.  
Nadine Fuda, Director of Planning and Zoning**

**MEMBERS ABSENT**

**David Smith**

**APPROVE MINUTES - JUNE 16, 2011**

Brewer moved, Spada seconded that the minutes be approved as amended

4 Ayes. 0 Noes

Ayes: Brewer, Calarco, Maier, Spada

Oppose: None

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**Nadine Fuda, Director, read the hearing notice(s) as published in the Troy Record on the following variance application(s):**

**Mark Bubniak Published on July 12, 2011**

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public hearing open 7:05 p.m.

public hearing closed 7:08 p.m.

**Mark Bubniak  
2 Holland Lane  
Proposed - Front yard setback/ Area**

**Z697-11/R-20/189.1-9-10**

Mark Bubniak, applicant was present for this meeting

Chairman Calarco stated to the applicant that there is a member of the board that is not present for tonight's meeting, and asked him if he would like to post pone until all members could be present.

Mr. Bubniak state no he is find with board member being absent.

Chairman Calarco asked the applicant to explain what it is he would like to do.

Mr. Bubniak stated he would like to replace his existing 6 foot front concrete steps with a

deck that is 6 by 13 feet. A variance is required because his front yard setback is only 32 feet, but the new deck will not extend out any farther than the existing concrete steps.

Chairman Calarco asked if there were any questions or comments for the applicant.

Chairman Calarco asked the applicant if this was going to be a covered porch or just a landing.

Mr. Bubniak stated it is not going to be covered just a landing.

Mr. Spada asked about the stairs.

Mr. Bubniak stated the stairs will come out along the walk way not into the yard.

Chairman Calarco stated for the record that the recommendation from the planning board was favorable and that the Rensselaer County Bureau of Economic Development and Planning has acted on the above subject as follows:

After having carefully reviewed the information submitted as part of the subject referral, the Bureau of Economic Development and Planning has determined that the proposal does not have a major impact on County plans and that local consideration shall prevail.

There were no more questions or comments for the applicant.

**Mark Bubniak**

**AREA VARIANCE CRITERIA**

- 1) Can the benefit be achieved by other means feasible to the applicant? **NO**
- 2) Will the granting of the variance create an undesirable change in the character of the neighborhood or to nearby properties? **NO**
- 3) Is the request substantial? **NO**
- 4) Will the request have an adverse physical or environmental effect? **NO**
- 5) Is the alleged difficulty self-created? **YES**

Maier moved, Calarco seconded that the Zoning Board of Appeals be **LEAD AGENCY** relative to the variance only.

4 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Maier, Spada  
Oppose: None

Brewer moved, Spada seconded that the area variance be **GRANTED**.

<u>Brewer</u>	<u>Calarco</u>	<u>Maier</u>	<u>Smith</u>	<u>Spada</u>
Yes	Yes	Yes	absent	Yes

**Frank Johnston**

**Z694-11/PD-3/ 200.-6-22.2**

**1704 Hillcrest Ave.**

**Proposed - Front yard Setback/ Area**

Mr. Johnston, applicant was present for this meeting.

Chairman Calarco stated this application is a continuation from the last meeting held on June 16, 2011 and noted that Mr. Johnston had indeed found the stake in the front yard and ran a string to the back stake along Champaign Drive to give the board an idea of where the property line might be.

Chairman Calarco then stated Mrs. Fuda zoning director and, Mr. Holmes the highway superintendent and himself made a trip out to the site and measured to see where the lot line were and look into the right a way issue. While on site Mr. Holmes discovered the proposed fence on Champaign Drive was to be a stockade fence and not chain link, he then changed the setback distance from 6 feet to 12 based on that discovery. He then referred to a letter written by Mr. Holmes dated July 19, 2011 requesting a 12 foot setback for large piles of snow during particularly hard winters. (letter in file) At that time Chairman Calarco questioned Mr. Holmes about the front yard setback on Hillcrest Ave, and asked if it was necessary to have the setback there at 25 feet. Mr. Holmes stated a 12 foot setback there would be fine. The only place that still requires the 25 foot setback would be between the applicants and the neighbor driveway so there would be no trouble whit the line of site when backing out of ether driveway.

Mr. Johnston stated he agrees with the 25 foot setback by the driveways.

Chairman Calarco asked the members if they had an issue with the fence being 13 feet closer to Champaign Drive and 13 feet closer to Hillcrest Ave with the exception of the area by the applicant's garage which will remain 25 feet for from the property.

There were no comments from the board.

Frank Johnston cont...

AREA VARIANCE CRITERIA

- 1) Can the benefit be achieved by other means feasible to the applicant? **Yes**
- 2) Will the granting of the variance create an undesirable change in the character of the neighborhood or to nearby properties? **No**
- 3) Is the request substantial? **No**
- 4) Will the request have an adverse physical or environmental effect? **No**
- 5) Is the alleged difficulty self-created? **Yes**

Maier moved, Calarco seconded that the Zoning Board of Appeals be **LEAD AGENCY** relative to the variance only.

4 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Maier, Spada

Oppose: None

Calarco moved, Maier seconded that the area variance be **GRANTED**. With the following conditions.

- 1. Install a 6 foot tall fence along both frontages ( Hillcrest Ave & Champaign Drive) no less than 12 feet from pavement. With the exception of the west side of the property along the applicant's driveway the setback must remain at 25 feet.
- 2. The town should not be liable for any and all damage to the fence due to plowing or any town activity.
- 3. If the town should in the future need to utilize the right of way of the road the fence then becomes a secondary issue.
- 4.

Brewer	Calarco	Maier	Smith	Spada
Yes	Yes	Yes	absent	Yes

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Nadine Fuda, Director, read the hearing notice(s) as published in the Troy Record on the following variance application(s):

Tae Carlson Published on July 12, 2011

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Public hearing open 7:31 p.m.

public hearing closed 7:36 p.m.

Tae Carlson  
1615 Columbia Turnpike  
Proposed - Apartments over Retail /Use

Z696-11/HC/178.-12-9

Mark Teliska was present for this meeting.

Chairman Calarco stated for the record that the recommendation from the planning board was favorable and that the Rensselaer County Bureau of Economic Development and Planning has acted on the above subject as follows:

**Zoning Review Action** by Rensselaer County Bureau of Economic Development and Planning has acted on the above subject as follows:

After having carefully reviewed the information submitted as part of the subject referral, the Bureau of Economic Development and Planning has determined that the proposal does not have a major impact on County plans and that local consideration shall prevail

**RECOMMENDATIONS TO THE ZBA - June 20, 2011**

Puccio moved, Mayrer seconded a **"FAVORABLE"** recommendation to the Zoning Board of Appeals.

6 Ayes. 0 Noes. Motion carried.

Ayes: Goold, Haber, Johnson, Mayrer, Puccio, Timmis

Oppose: None

Mr. Teliska stated they are looking to put 2 apartments in his building at 1615 Columbia Turnpike over the existing hair salon and the tux shop. Due to the amount of traffic the hair salon has they figure the least amount of additional traffic would be to have the apartment instead of additional businesses.

Chairman Calarco asked if he understands that this application is for a use variance.

Mr. Teliska stated Yes.

Chairman Calarco stated when Mr. Carlson was given the application attached to it was a packed which explained your responsibilities in order to **acquire** a use variance.

Mr. Teliska stated correct.

Chairman Calarco stated there are 4 criteria under the use variance that all the applicants have to meet under the New York State town law, which if they don't meet any one of those it is fatal to your application. He then opens this application for public comment.

Mrs. Teliska, 2431 Old Coach Drive stated the look of the building and the look of the community will benefit by adding two residential apartments. This will bring residents into the town to utilize the business it is not any way shape of form diminishing the look of the area.

There were no more public comments. Public hearing was closed

Chairman Calarco stated after reviewing this application it is apparent that application is never going to meet the criteria set forth in law for a use variance. One of the criteria the applicant has to meet is that the alleged hardship has not been self created, which means if you buy an existing property with the existing zoning you cannot come in later to claim hardship and ask for relief for that very zoning. This property that is in question was purchased by you somewhere in 2000 the zoning stating no apartment in a highway commercial zone has been in effect since the 70's.

Mr. Teliska stated that is why he is here requesting a use variance.

Chairman Calarco stated there was no financial proof submitted showing that this space could be used for any other allowable use. He then wanted the applicant to understand that the zoning board has no discretion on this matter; it is New York State Town law that dictates that you have to meet the criteria. And if you don't it is fatal to your application. Even if the members of the board thought this was a wonderful use we do not write the legation of the town. We also have the minutes from the Planning Board Meeting approving the business and stating the upstairs was for storage only.

Mr. Teliska stated that is what they are here to change; they want to use the upstairs for apartments instead of storage.

Chairman Calarco asked the applicant if he understands that apartments are not an allowed use in the highway commercial zone.

Mr. Teliska state yes. That is why they are requesting a use variance.

Chairman Calarco asked the applicant if he read the packet that was handed to his partner.

Mr. Teliska state no he did not but his partner did.

Chairman Calarco stated that he will read him the law as it is paraphrased because he did not read it for himself.

*A use variance cannot be granted where the unnecessary hardship complained of has been created by the applicant or where he or she has acquired the property knowing of the existence of the condition that he or she now complains of.*

Meaning you took ownership of this property with the existing zoning and you cannot now come in and ask for the zoning to be changed to a non-allowable use.

Mr. Teliska asked, it doesn't matter that there are apartments next door and across the street that are above the business.

Chairman Calarco stated the apartments next door and elsewhere in the area existed before zoning and they are called 'preexisting non-conforming use' and by law they are grandfathered into the zone. Now if they cease to exist for a period of one year they lose their grandfathering and those apartments can no longer exist.

Chairman Calarco then stated to the members that it is clear that we need to make a motion to deny this application based on the criteria. They started to review the criteria and was interrupted by Mr. Teliska.

Mr. Teliska asked to have # 1 of the criteria explained.

Chairman Calarco stated the law requires you to present to the board dollars and cents proof of how you tried to utilize that property for every other use that is allowed in the highway commercial zone in the code.

Mr. Teliska stated commercial use requires that you have to have handicap access to the second floor which they do not have, if they could have whatever business down stairs could be the same business up stairs would work but both tenants on the bottom floor do not need any more space. So in that regard they cannot do anything up stairs unless they were to put in handicap access.

Chairman Calarco stated then you need to put in handicap access.

Mr. Teliska stated there is no room for handicap access.

Chairman Calarco asked if there was room to put an elevator in the front.

Mr. Teliska stated no.

At this point Mr. Teliska gets upset and leaves the meeting.

Chairman Calarco continues to go through the criteria

**USE VARIANCE CRITERIA**

- 1) Cannot realize a reasonable return - substantial as shown by competent financial evidence; **NO**
- 2) Alleged hardship is unique and does not apply to substantial portion of district or neighborhood; **NO**
- 3) Requested variance will not alter essential character of the neighborhood; **NO**
- 4) alleged hardship has not been self-created; **YES**

Calarco moved, Spada seconded that the area variance be **DENIED**.

<u>Brewer</u>	<u>Calarco</u>	<u>Maier</u>	<u>Smith</u>	<u>Spada</u>
Yes	Yes	Yes	absent	Yes

The members agreed that under the criteria #4, this is self-created which caused this application to be denied.

Mr. Brewer asked if they could give the applicant time to bring in finical proof.

Chairman Calarco stated no, it would not matter the applicant still will not meet #4 of the criteria which alone is fatal to this application. He then stated that if the members had visited the site on Monday they would have seen that the entire apartment on the right has been completed minus the kitchen cabinets and all without a building permit or inspections.

Members stated they had gone after the tag was placed on the door.

**ADJOURN / July 21, 2011 meeting**

Calarco moved, Brewer seconded that the meeting be adjourned. There being no objections, Chairman Calarco adjourned the meeting at 7:50 p.m.

Respectfully submitted,  
Nadine Fuda  
Director of Planning & Zoning

**Tae Carlson - final resolution**

On August 9 2011 at 4:00 pm the public hearing for this application Tae Carlson Z696-11/HC/178.-12-9, was finalized with the following,

- SEQUA
- Reaffirming decision and vote

This was not completed the night of July 21, 2011 at which time Mark Teliska representing Tae Carlson abruptly left the meeting.

Chairman Calarco called the meeting to order on August 9, 2011 at 4:05 and asked

All members in favor

4 Ayes. 0 Noes. Motion carried.

Ayes: Brewer, Calarco, Maier, Spada

Oppose: None

Chairman Calarco stated due to the events of 7-21, 2011 the following was not completed, and asked for a vote on SEQRA.

**SEQRA** - Unlisted action. Uncoordinated review.

Calarco moved, Spada seconded that the Zoning Board of Appeals be **LEAD AGENCY** relative to the variance only.

4 Ayes. 0 Noes. Motion carried.

Ayes: Brewer, Calarco, Maier, Spada

Oppose: None

Brewer moved, Maier seconded a **NEGATIVE DECLARATION**.

4 Ayes. 0 Noes. Motion carried.

Ayes: Brewer, Calarco, Maier, Spada

Oppose: None

A new roll was called to reaffirm the decision made on July 21, 2011 to deny this application.

<u>Brewer</u>	<u>Calarco</u>	<u>Maier</u>	<u>Smith</u>	<u>Spada</u>
Yes	Yes	Yes	absent	Yes

**ADJOURN - August 9, 2011 meeting**

Spada moved, Calarco seconded that the meeting be adjourned. There being no objections, Chairman Calarco adjourned the meeting at 4:10 p.m.

Respectfully submitted,

Nadine Fuda

Director of Planning & Zoning