

**Zoning Board of Appeals  
City of Cortland  
February 11, 2013**

A regular meeting of the Zoning Board of Appeals was held on **Monday, February 11, 2013 at 5:00 p.m.** in the Mayor's Conference Room at City Hall.

Present: Chair Mary Kay Hickey, Comm. Stephen Brown, David Funk, Christine Place, and Michael Stoll

Staff: Zoning Officer Bruce Weber, Deputy Chief William Knickerbocker

The meeting was called to order at 5:10 PM

Item #1 – 3 River Street – (Denny's Restaurant) – GB – Area Variance - Signage

To speak was John Montagne from Allied Sign Company. It was his understanding that the sign is above the roof line, but questioned the Hampton Inn with a sign above the roofline, Econo Lodge with a terrace above the roof line with their signs. Bruce Weber explained that he did not know if the Hampton Inn got a variance, and Econo Lodge signage was allowed because it was a pre-existing sign that was simply replaced. A new sign requires a variance.

Chair Hickey noted that there are residences close by the Denny's location, and wondered if the light from the sign would be visible from those residences. The auto parts store blocks much of the visibility.

The sign will be internally illuminated.

The sign would be above the roof and above the parapet of the building. Bruce explained that any sign erected upon, against or directly above a roof, or on top of or above the parapet requires a variance.

Some discussion ensued over whether the sign would be attached to a part of the building structure or if the structure was actually a part of the sign itself. By definition, the part of the structure serves no other purpose than to put a sign; it serves no other purpose.

There was no one further to speak; therefore the public hearing was closed.

On the motion of Comm. Place, seconded by Comm. Stoll, voted and carried.

Chair Hickey	Aye	Comm. Place	Aye
Comm. Funk	Aye	Comm. Stoll, Jr.	Aye
Comm. Brown	Aye		

The criteria for an Area Variance were reviewed.

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 variance. No, as discussed, it is not out of keeping in the context of the neighborhood; it is a commercial neighborhood with commercial signs, and it is nicely integrated into the building.
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. Yes, but if the intent is for it to be seen from a distance, no.
3. Whether the requested area variance is substantial. No, it's not substantial in context, but it is substantial because it should be placed below the roof line.
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. No.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. Yes.

On the motion of Comm. Place, seconded by Comm. Brown, voted and carried.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Stoll	Aye	Comm. Brown	Aye
Comm. Place	Aye		

**RESOLVED THAT THE AREA VARIANCE – 3 RIVER STREET – (DENNY’S) – (GB) – BE APPROVED, UNDERSTANDING THE CONDITION OF THE NEIGHBORHOOD AND SURROUNDING COMPETING PROPERTIES AND THE LOCATION OF THE I-81 EXIT.**

Item #2 – 3 Comando Avenue – (Comando’s Restaurant) – (Fagnoli) – (R2) – Use Variance to allow applicant to bottle his sauce for sale to other retail outlets.

To speak was Vince Fagnoli, presenting the Board with signed petitions of support from residents on Hyatt Street, Bartlett Avenue and Comando Avenue.

The Board questioned the traffic, deliveries and pickups. Mr. Fagnoli stated there would likely not be more deliveries, just larger amounts delivered once a day and Cavalero comes once a week. He plans to build a small loading dock off to the right side of the building eventually. Currently a stand-up fork truck is being used.

The Board questioned issues such as the time of day trucks would be arriving – which would be hours when the restaurant was not open, if hazardous conditions would be present – no, the sauce is cooked in large steam kettles, if gas and water lines needed

to be installed – no, all lines were installed years ago when the family made pizzas in there.

Chair Hickey asked if not granting this variance would be a hardship, possibly resulting in closing the restaurant. Mr. Fragnoli expressed the desire to cut the hours worked in the restaurant and putting more hours into the making and producing the sauce. Bruce Weber explained that the canning operation would be considered an industrial type facility. The predominant use of the site is not industrial, and is not necessarily accessory to the business. Even if it were, it would still be an expansion of a non-conforming use, requiring a use variance.

On the motion of Comm. Brown, seconded by Comm. Place, voted and carried to close the Public Hearing.

The criteria for a use variance were reviewed.

1. Whether the applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. Yes, Mr. Fragnoli showed the expense of canning off-site. His cost and time would be significantly reduced if allowed to can the sauce in the rear of the restaurant.
2. Whether the alleged hardship relating to the property is unique, (The hardship may not apply to a substantial portion of the zoning district or neighborhood.) Yes, it is a residential neighborhood but the restaurant has a long history of being there.
3. Whether the requested use variance, if granted, will not alter the essential character of the neighborhood. No, it's in the back of the building and faces the railroad tracks. The exterior of the building would basically remain the same.
4. Whether the alleged hardship has not been self-created. No, the room had previously been used to sell pizza and baked goods. This proposal simply reactivates a previous similar use that had lapsed during a change of ownership.

On the motion of Comm. Funk, seconded by Comm. Stoll, voted and carried.

Chair Hickey	Nay	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Place	Aye
Comm. Stoll	Aye		

**RESOLVED THAT THE USE VARIANCE – 3 COMANDO AVE – CANNING OPERATION IN THE REAR OF THE COMANDO RESTAURANT BE APPROVED ON THE GROUNDS THAT A REASONABLE RETURN CANNOT BE ACHIEVED BY CANNING OFF-SITE; THE PROPERTY IS UNIQUE, AS IT IS NEAR A RAILROAD TRACK; IT HAD BEEN A RESTAURANT WITH A BAKERY ATTACHED FOR MANY YEARS; IT IS NOT SELF-CREATED, HE RE-PURCHASED THE RESTAURANT WITH THE INTENTION OF USING THAT SPACE FOR MANUFACTURING; IT**

**WOULD NOT ALTER THE CHARACTER OF THE NEIGHBORHOOD, CONTINGENT ON THE CONTINUING USE OF THE RESTAURANT. IN THE EVENT THAT THE RESTAURANT CEASES ITS OPERATION, THE CANNING OPERATION VARIANCE WOULD BE VOID.**

Minutes

Minutes of the January 14, 2013 meeting.

Comm. Place stated that she was very impressed with the minutes, had called Joyce to commend her, and feels things are gelling in so far as stating the resolutions as needed and documenting those resolutions properly in the minutes.

Comm. Brown noted on page 4, after the resolution, motion was made by Comm. Place and seconded by Comm. Brown. On the election, motion was made by Comm. Place seconded by Comm. McGinley. Motion to adjourn was made by Comm. Funk and seconded by Comm. Wickman.

On the motion of Comm. Place, seconded by Comm. Funk, voted and carried

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Place	Aye
Comm. Stoll	Aye		

**RESOLVED TO APPROVE THE MINUTES OF THE JANUARY 14, 2013 MINUTES AS AMENDED.**

Adjournment

On the motion of Comm. Funk, seconded by Comm. Stoll, voted and carried.

**I, MARY KAY HICKEY, CHAIRPERSON OF THE ZONING BOARD OF APPEALS FOR THE CITY OF CORTLAND, NY, DO HEREBY CERTIFY THAT SAID RESOLUTIONS WERE ADOPTED AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE CITY OF CORTLAND, HELD ON THE 11<sup>th</sup> of FEBRUARY, 2013.**

---

**MARY KAY HICKEY, CHAIRPERSON**