

TOWN OF ALLEGANY ZONING BOARD OF APPEALS  
Monday, August 15, 2016

Present:

John Jones, Chairman  
Carol Ozzella  
Donald Sue  
Ronald Kyser  
Donna Stady, Secretary

Absent:

Also Present: Wendy Tuttle, Esq., Town Attorney and  
Frank DeFiore, Planning Board Chairman

Applicant: Matthew Kahm on behalf of Shults Real Estate Company

**PUBLIC HEARING opened at 7:00 p.m**

Public hearing was opened with a salute to the flag.

The public hearing is held pursuant to a request by Shults Real Estate Company for a use variance and area variance to permit Applicant to place a Billboard at their 3004 New York State Route 417 location. Chairman Jones addresses the Applicant, Matthew Kahm, to describe for the Board and audience the particulars of his Billboard construction, lighting, placement and size. Upon review of the Use Variance application, Chairman Jones notes and requests that Article 5.15 be stricken from the application as being irrelevant to the request. This request by the Chairman is to become part of today's record. The application is further discussed by Board and Applicant addresses the Board detailing the expense and improvements that Shults has placed into the lot at question, to make it user friendly to store vehicles there for the Shults Automotive Group. Applicant advises that the expense to erect a building on the lot, which was purchased in October of 2015, (due to its existence in the flood plain) would far outweigh the return that could be realized and that the billboard would permit Shults Real Estate to charge the Shults Automotive Dealership for use of the advertising billboard along with other Shults Dealerships being permitted to place ads on the proposed billboard. Applicant acknowledges that he is aware that billboards are not permitted within the overlay district.

Chairman Jones advises Applicant that the Zoning Board has received the July 28, 2016 County of Cattaraugus Planning Board's review of the Use Variance, indicating disapproval of such Variance, along with a letter describing justification of their decision. Said letter is to become a part of today's proceeding. A synopsis of the County's letter is that the County has advised that they see no evidence that the Applicant provided valid proof/reasons that they have met any of the needed requirements for the 4-part use variance test and, in fact, that the inter-community impact of a proposed billboard at this proposed height and lighting would adversely affect the neighborhood in the Town of Allegany and adjacent City of Olean.

Attorney Tuttle advises the Board that this is an unlisted action. Attorney Tuttle further advises the Board that the first thing they must consider is "if" they are accepting the Applicant's application. Further discussions are had regarding what procedures would need to be followed "if" the Board accepts the application.

Chairman Jones asks the public if they have any questions. Of note there are only three individuals in attendance.

Michael Nolan of 104 Independence Drive, Olean, New York, advises that he is not against Applicant placing a "sign" in the general vicinity of the lot in question but that he is opposed to having a billboard in that area due to the lighting, size, and general nature of a billboard which could potentially create driver distraction on a very busy avenue; he requests that the lights on the billboard get turned off between midnight and 6 a.m. Mr. Nolan further voices his concerns about the Shults Company's admission that they are not able to make a profit off of the said lot in question citing different opinions he has concluded from independent research.

Michelle Smith of 3428 Hemlock Farms, Hawley, Pennsylvania advises that she is expecting to soon reside in a home on Independence Drive and the area is not entirely a commercial district, there are two residential houses on that street that people live in. She would be opposed to such a billboard being constructed due to the size and lighting and its direct view from her potential home. Mrs. Smith shows the Board and Applicant a picture from her cell phone showing where the 40 ft. billboard would be viewed from her future home.

Matthew Smith of 3428 Hemlock Farms, Hawley, Pennsylvania advises that he is opposed to a billboard as well due to the size of the billboard and lighting. Mr. Smith asks the Board to take into consideration the size of other billboards in the area and how a billboard of that size would impact homes and drivers on Independence Drive.

As discussions continue with guests, the Town Attorney and the Board, Applicant advises his willingness to make any changes to his request, if necessary.

Attorney Tuttle advises that Applicant could withdraw his Variance applications for a billboard and apply for a "sign" through the Town of Allegany, should he so desire. Applicant advises that he wishes to withdraw the Variance applications. On the record of this public hearing, Applicant withdraws his use variance and area variance applications at 8 p.m. in the presence of the Zoning Board, the Town Attorney and audience members.

Motion was made to close the Public Hearing at 8:04 p.m. by Don Sue and seconded by Ron Kyser. Ozzella-aye; Sue-aye; Kyser-aye; Jones-aye. Motion carried.

Regular Meeting: Meeting was opened by Chairman John Jones at 8:06 p.m.

Review of minutes of Zoning Board meeting of July 11, 2016 are discussed. Motion to approve minutes as written was made by Board member C. Ozzella and seconded by member D. Sue. Kyser-aye, Sue-aye, Ozzella-aye and Jones-aye. Motion to accept minutes as written carried.

Other Business – Filjones application #66-13. Board members discuss placing time limits on future variances and reviewing former variances to amend how they were written. Board members (through Board Chairman) will request Town Planner/Town Zoning Secretary to review rules/regulations with the Board to ascertain if reviewing former variances and amending them to add time limits is permitted within the Town Zoning Ordinance currently in force.

Board Member Carol Ozzella makes a motion to close meeting at 8:13 p.m., seconded by member D. Sue. Kyser-aye; Ozzella-aye; Sue-aye; Jones-aye.

Meeting adjourned 8:13 p.m. on 8/15/2016.

Sincerely,

Donna G. Stady  
Secretary/Recorder to Zoning Board for Town of Allegany