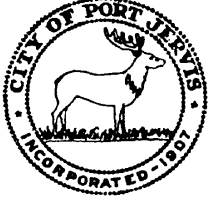


# City of Port Jervis, New York



## ZONING BOARD OF APPEALS

June 4, 2013

### Attendance

The following Board members were present:

Tim Simmons, Chairman  
Allie Acoveno  
Hermann Barth  
Earl Miller  
Lisa Randazzo  
Tom Sexton  
Dan VanKleeck  
Robert Fink, Attorney

Members absent: None

Also present: Councilman Robert Waligroski, Building Official Wayne Kidney, and Planning Board Chairman Tom Vicchiariello

Public Hearing  
Held—136 Jersey  
Avenue  
SBL 14-10-23

KAMB Properties LLC  
136 Jersey Avenue  
SBL: 14-10-23  
Lot Area Variance of 5,000 ft<sup>2</sup> for a Business and Professional Office

The public hearing was opened at 7:00 p.m.

Mr. Simmons read the public hearing notice. All mailings are on file.

Mr. Keith Brown, representing the applicant, stated that a discrepancy needed to be corrected for the parcel. The business has been at this location for eighteen (18) months with no complaints from the neighbors, and the applicant is seeking an area variance for the lot.

Mr. Simmons read department head comments. All department heads approved the application without issues. Mr. Kidney noted that department head comments were not needed; the applicant has a previously approved site plan.

No public comment was given.

Mr. Fink asked if any other property was available to increase the space. No other property is available. Mr. Kidney noted that another nearby business had recently been granted the same variance.

Motion by Ms. Randazzo, seconded by Mr. Sexton, to close the public hearing at 7:07 p.m.

AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED

Public Hearing  
Held--21 Liberty  
Street  
SBL: 11-11-19

Tricia Hess  
21 Liberty Street  
SBL: 11-11-19  
Construct a 22' x 8' Front Porch and  
Allow for a 6' high Fence in Front Setback of Corner Lot

The public hearing was opened at 7:07p.m.

Mr. Simmons read the public hearing notice. All mailings are on file.

Mr. Brendan Hess, on behalf of the applicant, stated that the applicant is seeking approval to construct a porch on the Liberty Street side of the property and to replace an existing fence on the Erie Street side with a 6' fence for security and privacy.

Mr. Barth asked is the applicant would be installing the same type of fence as the existing one. Mr. Hess stated that the fence would probably be the same.

Mr. Simmons clarified the location and type of fence and asked if the porch would cover the entire front of the house. Mr. Hess stated that the porch would cover the front.

Mr. Fink inquired if the setback on Liberty Street was typical. Mr. Kidney stated that the setback is calculated from the road edge. Mr. Kidney had discussed this with the applicant and explained the ordinances for the variances. He noted that similar variances for fences have been approved in the past for privacy, citing examples, and stated the fence will not hinder a motorist's view at that intersection. He recommended the Board approve the application.

Mr. Fink asked why the Board should not approve for the minimum of six foot (6') for the porch. The applicant stated that eight foot (8') would be more cost effective and practical for their intended use.

Motion by Mr. VanKleeck, seconded by Mr. Miller, to close the public hearing at 7:16p.m.

AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED

**Regular Meeting**

Chairman Simmons called the regular meeting of the Zoning Board of Appeals (ZBA) to order in the Council Chambers, 20 Hammond Street, Port Jervis, New York on Tuesday, June 4, 2013 at 7:16 p.m.

**Minutes of  
12/4/2012 and  
5/7/2013 approved**

Motion by Mr. Barth, seconded by Mr. Acoveno, to approve the minutes from the December 4, 2012 meeting.

AYE: 6 ABSENT: 0 ABSTAIN: 1 (VANKLEECK) NAY: 0 CARRIED

Motion by Mr. VanKleeck, seconded by Ms. Randazzo, to approve the minutes of the May 7, 2013 meeting.

AYE: 5 ABSENT: 0 ABSTAIN: 2 (ACOVENO, BARTH) NAY: 0  
CARRIED

Discussion of  
Public Hearing—  
136 Jersey Avenue  
SBL: 14-10-23

The Board reviewed the statutory criteria for the variance:

1. Will an undesirable change be produced in the character of the neighborhood and a detriment to nearby properties be created by the granting of the variance?
  - No
    - Mr. Barth noted that the applicant has maintained and improved the property.
    - Mr. Fink noted that the business has been at this location for a period of time. Mr. Kidney stated that this application was to clear up an error that had been discovered.
    - Mr. Fink asked if other businesses on a similar size lot were granted a variance. Mr. Simmons stated that other businesses had been granted variances.
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the variance?
  - No, there are no other lots available to expand to meet the required 10,000 ft<sup>2</sup> requirement.
3. Is the requested variance substantial?
  - Yes, the variance requested numerically substantial but is not substantial in regards to other neighboring properties.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
  - No, the applicant has improved the building.
    - Mr. VanKleeck commented that there have been no complaints.
5. Is the alleged difficulty self-created?
  - Yes, it is subject to existing zoning regulations.

Motion by Mr. Sexton, seconded by Mr. Barth, to declare the Port Jervis Zoning Board of Appeals lead agency and the application constitutes an unlisted action under SEQR with no adverse environmental impact.

AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED

Motion by Mr. Barth, seconded by Mr. Acoveno, to approve this application as advertised.

AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED

Discussion of  
Public Hearing—  
21 Liberty Street  
SBL: 11-11-19

Mr. Simmons commented that he has looked at the property and feels the fence will not obstruct the view of motorists.

Mr. Barth added that many other picket fences were in the neighborhood.

Mr. Sexton noted that similar variances had been approved in the past and the additional requested is only two feet (2').

The Board reviewed the statutory criteria for the variance:

1. Will an undesirable change be produced in the character of the neighborhood and a detriment to nearby properties be created by the granting of the variance?
  - No, there would be no change to the neighborhood.
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the variance?
  - No, there would be no privacy or security with a fence below the requested height and a smaller porch would be impractical.

3. Is the requested variance substantial?
  - No.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
  - No, this would improve the property and the neighborhood.
5. Is the alleged difficulty self-created?
  - Yes.

Motion by Mr. Barth, seconded by Mr. Sexton, to declare the Port Jervis Zoning Board of Appeals lead agency and the application constitutes an unlisted action under SEQR with no adverse environmental impact.

**AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED**

Motion by Ms. Randazzo, seconded by Mr. Miller, to approve this application as advertised.

The Board and Mr. Fink discussed requiring the applicant to use similar materials to maintain uniformity of the fencing. The Board felt no restriction was necessary. The application is approved as advertised.

**AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED**

**Pre-Submission:**

**Mr. Sohag Shah  
165 Jersey Avenue  
SBL: 19-2-10**

**Convert mixed use commercial to a single family dwelling**

Mr. David Bavoso, representing the applicant, stated that Mr. Shah is seeking to convert this property to a single family dwelling. Mr. Bavoso distributed a packet of information to the Board, which included a map of the area and financial data. The area is primarily residential, and Mr. Shah has been denied refinancing due to the zoning. His attempts to rent or sell have been unsuccessful. Mr. Shah would like to make adjustments to the property to accommodate a handicapped family member but is finding it difficult due to the zoning. He believes converting the parcel would increase his chances to sell the property.

Mr. Sexton and Mr. Kidney clarified that it is mixed use, with one (1) apartment and one (1) small business. Mr. Shah stated that the old barber shop area would be merged with the remaining portion of the building.

Mr. Fink asked if the Planning Board would be asked to provide input on this application. Mr. Vicchiariello stated the he does not believe the Planning Board will provide input.

Mr. Fink noted that the difficulty is self-created. Mr. Bavoso commented that the applicant bought the property knowing the zoning and had intended to keep the business. He could not, however, foresee problems with a family member's health or the failure of the business.

Mr. Fink asked Mr. Bavoso to provide information prior to the public hearing that will be necessary to give the authority needed for the ZBA to grant the variance.

Mr. Kidney spoke briefly about the history of that area of Jersey Avenue and pre-existing, non-conforming use in the zone. He stated that he had advised the applicant of the difficulties in obtaining the variance, noting that only three (3) use variances had been granted in New York State in 1993. The applicant must show, in part, that he cannot attain a reasonable return on his investment. Mr. Kidney added that he hopes Mr. Shah will be successful.

Mr. VanKleeck stated that he does not feel comfortable removing it as a commercial property.

Mr. Fink reminded the Board that its goal was not to evaluate the application's criteria at this time but only to determine if the application should be set for a public hearing.

Mr. Kidney also recommended that Mr. Bavoso provide information to the Board prior to the public hearing.

Mr. Kidney commented that the area, although zoned commercial, contains houses that are pre-existing, non-conforming. He discussed the zoning laws that pertain to that corridor.

Motion by Mr. Sexton, seconded by Mr. Miller, to set a public hearing for this application for July 2, 2013 at 7:00 p.m.

**AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED**

**Old Business**

No old business was discussed by the Board.

**New Business**

Mr. Simmons asked about time periods in regards to loss of use and the recent local law passed by the Council. Mr. Kidney detailed the law as it pertains to the loss of use, the removal of kitchens, and mandatory conversion to the lowest zoning within a zone. Mr. VanKleeck inquired how this law will affect the Jersey Avenue parcel as it applies in that zone. Mr. Kidney gave an example.

Mr. Kidney also detailed the Council's review of a potential local law for the reduction in the time from 1 year to 260 days for the determination of a building's loss of use. Mr. Fink stated that he has never known a code that requires a loss of use determination prior to 1 year. Mr. Kidney also explained the timetable for dangerous buildings. Mr. Fink spoke about the level of the ZBA's and Planning Board's involvement in the code change contained in the local law.

**Planning Board Report given**

At the May meeting, Ellicott Development, through their engineer, submitted a site plan for a free-standing building for Rite-Aid. A public hearing has not yet been set but could be set as early as the July meeting. The applicant has submitted a formal application and short form.

**Code Enforcement's Report given**

Mr. Kidney added that the Rite-Aid building will be 14,900 ft<sup>2</sup>.

The Assessor and Building Official have suggested to the Code Committee a review a possible zone change for pre-existing, non-conforming properties in the central business district that have had a loss of use. He gave several examples of parcels, including some on Hammond, Sussex, and Spring Streets.

Their proposal will be a recommendation to change thirty-nine (39) parcels in the central business district which are contiguous to an RO. This change will not create spot zoning. The Code Committee will be asked to review the recommendation so that they can move forward with a possible zone change. The recommendation is being made due to the character and location of the buildings. Mr. Kidney noted that it could be a minimum of six (6) months for a local law to be implemented by the Council.

**Council Liaison  
report given**

Mr. Hendrick could not attend due to another commitment. There was no report given.

Mr. Vicchiariello and Mr. Simmons commented that the ZBA and Planning Boards had little input on the recent local law passed pertaining to removal of kitchens.

**Adjournment**

Motion by Mr. VanKleeck, seconded by Mr. Barth, to adjourn the meeting at 8:05 p.m.

**AYE: 7 ABSENT: 0 ABSTAIN: 0 NAY: 0 CARRIED**

*The next meeting will be held on Tuesday, July 2, 2013 at 7:00 p.m.*

*Respectfully submitted,  
Robyn Hendershot  
Secretary*