



**TOWN OF HENRIETTA
ZONING BOARD OF APPEALS
JANUARY 27, 2010**

AGENDA

**Robert Steidle, Chairman
Robert Barley, Jr.
Kenneth Breese
Douglas Levey
David MacIntyre
Beth Mossworth
Beth White**

**Terry Ekwel, Fire Marshal/Building Inspector
Marc Duclos, Zoning Board Attorney**

WORKSHOP: 6:30 P.M.

PUBLIC HEARINGS: 7:00 P.M.

PUBLIC HEARING APPLICATIONS:

- 1. Application 09-128 of Robert and Stephanie White**
- 2. Application 09-130 of Brusters Ice Cream**
- 3. Application 09-136 of Ted Hosmer Enterprises, Inc.**
- 4. Application 09-137 of Sunoco, Inc.**
- 5. Application 09-138 of Rush Henrietta Physical Therapy**
- 6. Application 09-139 of Rush Henrietta Physical Therapy**

MINUTES:

- Minutes of December 17, 2009**

TABLED APPLICATION:

- Application 09-123 of Roberta and John Legno**

PURSUANT TO CALL A MEETING OF THE ZONING BOARD OF APPEALS OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL, 475 CALKINS ROAD, HENRIETTA, NEW YORK ON THE 27TH DAY OF JANUARY, 2010 AT 7:00 P.M.

MEMBERS PRESENT

Robert Steidle, Chairperson
Robert Barley, Jr.
Kenneth Breese
Douglas Levey
David MacIntyre
Beth Mossworth
Beth White

MEMBERS ABSENT

Terry Ekwel, Fire Marshal/Building Inspector
Marc Duclos, Zoning Board Attorney

On motion of Mrs. White, seconded by Mr. MacIntyre, the minutes of the meeting of December 17, 2009 were approved.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

The following notice was published in the *Henrietta Post* on January 21, 2010. It read as follows: "A public hearing will be held on Wednesday, January 27, 2010 at 7:00 P.M. in the Henrietta Town Hall, 475 Calkins Road, Henrietta, New York before the Zoning Board of Appeals of the Town of Henrietta regarding the following applications: 09-128, 09-130, 09-136, 09-137, 09-138 and 09-139."

On motion of Mr. Breese, seconded by Mr. Barley, Applications 09-128, 09-137, 09-138 and 09-139 were declared a Type II Actions under Section 617.5(c)(10) of the State Environmental Quality Review Act (SEQRA).

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

On motion of Mr. Breese, seconded by Mr. Barley, Applications 09-130 and 09-136 were declared Type II Actions under Section 617.5(c)(12) of the State Environmental Quality Review Act (SEQRA).

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

Application 09-128 of Robert and Stephanie White requesting a variance for a 6' high fence on the sides and back of property, whereas a 3' high fence is allowed by code on property located at 315 Pinnacle Road.

On motion to approve by Mr. MacIntyre, seconded by Mrs. Mossworth, it was RESOLVED THAT Application 09-128 of Robert and Stephanie White be approved.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

Application 09-130 of Brusters Ice Cream requesting a variance for a 76.2' front setback, whereas an 86.2' front setback is required by code to install a permanent roof with removable wall panels and independent heating units on property located at 2755 East Henrietta Road.

On motion to deny by Mr. Levey, seconded by Mrs. White, it was RESOLVED THAT Application 09-130 of Brusters Ice Cream be denied with the following findings of fact:

- The proposed patio enclosure is not in character with the commercial nature of the neighborhood. No other such enclosure is permanently in place within the Town of Henrietta.
- The alleged difficulty is self-created because the applicant purchased the property with the current zoning laws in effect. Furthermore, the applicant testified they were aware of the co-branding between Brusters and Nathan's prior to purchasing this property.
- The requested variance is substantial as it represents an approximate 20% increase in the building's footprint.

AYES: Breese, Levey, MacIntyre, White
NOES: Steidle, Barley, Mossworth
ABSTAIN: None

DENIED

Application 09-136 of Ted Hosmer Enterprises, Inc. requesting a variance to permit the outdoor display and sale of evergreen and deciduous stock within the 50 foot buffer area on property located at 1285 Lehigh Station Road.

On motion to deny by Mr. MacIntyre, seconded by Mrs. Mossworth, it was RESOLVED THAT Application 09-136 of Ted Hosmer Enterprises, Inc. be denied with the following findings of fact:

- ☐ Applicant testified that nursery stock could be placed elsewhere on the property. Also testified would only see about 23 feet of stock from front where customers drive by. Therefore, the variance is unnecessary.
- ☐ The hardship is self-imposed, as the applicant purchased the property with current zoning laws in effect.

AYES: Steidle, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: Barley

DENIED

Application 09-137 of Sunoco, Inc. requesting a variance to replace existing Fuel Price Reader Boards on existing Pole Sign with new LED Price Reader Boards (Pole sign face size would be reduced by 15.6 sq.ft. from 93.4 sq.ft.± to 77.8 sq.ft.±) on property located at 2499 East Henrietta Road.

On motion to approve by Mrs. Mossworth, seconded by Mr. Barley, it was RESOLVED THAT Application 09-137 of Sunoco, Inc. be approved.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

Application 09-138 of Rush Henrietta Physical Therapy requesting a variance for a second wall sign of 23 square feet, whereas only one wall sign is allowed by code on property located at 5370 West Henrietta Road.

On motion to approve by Mr. MacIntyre, seconded by Mr. Breese, it was RESOLVED THAT Application 09-138 of Rush Henrietta Physical Therapy be approved.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

Application 09-139 of Rush Henrietta Physical Therapy requesting a variance for a third wall sign of 16 square feet, whereas only one wall sign is allowed by code on property located at 5370 West Henrietta Road.

On motion to approve by Mr. MacIntyre, seconded by Mr. Breese, it was RESOLVED THAT Application 09-139 of Rush Henrietta Physical Therapy be approved.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY CARRIED

The following application was tabled from the December 17, 2009 Meeting:

Application 09-123 of Roberta and John Legno requesting a variance to park more than 4 cars in residential driveway, whereas only four vehicles are allowed by code on property located at 138 Valley View Drive.

On motion to deny by Mr. Breese, seconded by Mr. Barley, it was RESOLVED THAT Application 09-123 of Roberta and John Legno be denied with the following findings of fact:

- The applicant failed to substantiate the necessity of a fifth vehicle in order to rent the property. In fact, his own testimony reveals that the tenants are car pooling on their own to save money. The applicant's own testimony also shows that the income generated is double the mortgage with four tenants. Therefore, the variance is unnecessary.
- A grant of the variance would create an adverse physical effect in the neighborhood. Multiple people testified that the additional car causes congestion on the curve near an intersection, thereby increasing the chances of an accident.

AYES: Steidle, Barley, Breese, Levey, MacIntyre, Mossworth, White
NOES: None
ABSTAIN: None

UNANIMOUSLY DENIED

On motion to adjourn by Mr. MacIntyre, seconded by Mr. Breese, it was agreed that the meeting be adjourned at 9:07 P.M.

Respectfully Submitted,

Robert Steidle

Chairperson