

Town of Canandaigua

5440 Routes 5 & 20 West
Canandaigua, NY 14424
Phone: (585) 394-1120 / Fax: (585) 394-9476

CPN #: 024-16

ZONING BOARD OF APPEALS APPLICATION

FOR: ☐ AREA VARIANCE ☐ USE VARIANCE ☒ INTERPRETATION

Permission for on-site inspection for those reviewing application: _____ Yes _____ No

1. Name and address of the property owner: SARAH M. GENECCO
1880 STATE ROUTE 332 & 5516 PURDY ROAD

Telephone Number of property owner: _____

Fax # _____ E-Mail Address: _____

****If you provide your e-mail address, this will be the primary way we contact you****

2. Name and Address of Applicant if not the property owner: TOC
5440 STATE ROUTES 5 & 20 WEST CANANDAIGUA NY 14424

Telephone Number of Applicant: _____

Fax # _____ E-Mail Address: _____

****If you provide your e-mail address, this will be the primary way we contact you****

3. Subject Property Address: _____

Nearest Road Intersection: _____

Tax Map Number: 55.02-1-7.100 Zoning District: CC
55.02-2-21.100

4. Is the subject property within 500' of a State or County Road or Town Boundary? (If yes, the Town may be required to refer your application to the Ontario County Planning Board.)

Please circle one:

YES

NO

5. Is the subject property within 500' of an Agricultural District? (If yes, an Agricultural Data Statement must be completed and submitted with this application – for use variance applications only.)

Please circle one:

YES

NO

(Continued on back)

6. What is your proposed new project and the variance(s) or interpretation requested?

INTERPRETATION OF 4/1/2016 ZONING OFFICER DETERMINATION
THAT THE 33' TALL "ICE CREAM CONE" BUILDING IS A BUSINESS SIGN.

7. With your completed application for an Area Variance, attach a tape map/survey/site plan, elevation of the proposed structure, and other documentation necessary describing the requested variance(s) illustrating why it is practically difficult for you to conform to the Zoning Law.

All maps, surveys, or site plans shall accurately depict the property including all existing and proposed structures, setbacks, and dimensions. *All dimensions must be precise.*

8. With your completed application for a Use Variance, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you feel this use variance is necessary, and a completed Environmental Assessment Form.
9. With your completed application for an Interpretation, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you are appealing the zoning law determination, and a copy of the zoning law determination of which said appeal is requested.
10. If the variance requested is related to signs, attach a Sign Detail Sheet, a site plan, and colored renderings of the proposed signage, and any other documentation required in Article IX (Sign Regulations) of the Town of Canandaigua Zoning Law.

Property Owner is responsible for any consultant fees*
(Town Engineer, Town Attorney, etc.) incurred during the application process.
****See Town Clerk for current Fee Schedule***

I have examined this application and declare that it is true, correct, and complete. I understand that my application and all supporting documentation will be examined by the Zoning Board of Appeals as an integral component of deliberations.

I hereby grant my designee permission to represent me during the application process.


~~(Signature of Property Owner)~~

4/8/16
(Date)

 *Development Office*
4/8/16

per § NYS Town Law 267-a(4)

see Nadler's email dated 3/30/16

INTERPRETATION NARATIVE

To: Zoning Board of Appeals

From: Development Office, Town of Canandaigua

Date: April 8, 2016

RE: Interpretation Application of Zoning Law Determination (ZLD) for property address 1880 State Route 332, dated and filed in the office of the Town Clerk April 1, 2016

The Development Office of the Town of the Town of Canandaigua is hereby requesting an Interpretation by the Town of Canandaigua Zoning Board of Appeals of the above identified ZLD under NYS Town Law § 267-a(4), which states:

4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

The ZLD is based on six key points, and includes a requirement for referral to the Ontario County Planning Board, the Zoning Board of Appeals, and the Planning Board.

- 1) "Commercial uses such as gift shops, tourist shops, clothing stores, furniture stores, craft shops, sporting goods, shoe stores, grocery stores, restaurants and liquor stores are permitted uses within the Community Commercial zoning district."

INTERPRETATION REQUEST: N/A, no interpretation requested. Town of Canandaigua Town Code § 220-23 CC, Community Commercial District §220-23 B (2) permits shopping centers, malls, plazas or other grouping of commercial uses and buildings. §220-23 B (15) further permits restaurants. § 1-17 defines a RESTAURANT, FAST-FOOD including "ice cream". The sale of ice cream at this location as part of the overall complex would constitute a permitted use.

- 2) "The entire proposed building is a 'STRUCTURE' which is representative of the products to be sold within. The intent of the proposed structure is to direct attention to the business and the commodity sold by such business. The entire proposed structure is therefore a 'business sign' under Town Code."

INTERPRETATION REQUEST: Should the proposed structure/building be regulated as a sign? Town of Canandaigua Town Code § 1-17 defines a STRUCTURE and SIGN as:

STRUCTURE: "Anything constructed or erected which requires temporary or permanent support, placement or attachment to the ground, beneath the ground or to something having permanent location on the ground, including, but not

limited to, gasoline and oil tanks, buildings, sheds, pools, decks, docks, manufactured homes, fences [excluding seasonal snow fence as further regulated in Chapter 220, §220-9K(9) of the Town Code], signs, billboards, towers, antennas, satellite TV dishes, patios, sidewalks, driveways, and impervious or substantially impervious surfaces. The term does not include vegetative landscaping."

SIGN: "Any material, structure or part thereof, or any device attached to a building or structure or painted or represented thereon, composed of lettered or pictorial matter, or upon which lettered or pictorial matter is place and is intended for display of an advertisement, notice, directional matter or name, and includes sign frames, billboards, sign boards, illuminated signs, pennants, fluttering devices, projecting signs, or ground signs."

BUILDING: "Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals, property or business activity. See also "dwelling" and "structure".

The proposed construction, regardless of the shape, by definition should be considered a building and/or structure. The definition of sign implies that a sign is something affixed to a building for the purposes of advertisement. The Development Office is requesting an interpretation from the ZBA if the building itself should be considered a sign or not.

3) "Aesthetic impact to be reviewed."

INTERPRETATION REQUEST: Should the proposed structure/building be reviewed/regulated for aesthetic impact per § 220-81 as a sign? Town of Canandaigua Town Code § 220-81 states:

All signs erected and maintained in the Town of Canandaigua shall be in accordance with the following design standards:

§ 220-81(J): Aesthetic impact to be reviewed. When reviewing applications that include signs, the Planning Board shall also consider the type of sign(s) and their suitability to the particular neighborhood, including the sign's aesthetic design, form, proportion, color, material, surface treatment and position. In addition to any other requirements prescribed within the Town Zoning Law, plans shall only be approved which reflect a reasonable conformity of design, lettering, lighting and material for all signs on a parcel and do not have an unnecessarily negative aesthetic impact.

- 4) "Sign/Structure is within a proposed Multi-Use Development."

INTERPRETATION REQUEST: Should the proposed structure/building be reviewed/regulated as a sign in a Multi-Use Development? Town of Canandaigua Town Code § 1-17 defines tenant signs and multi-use development as:

SIGN, TENANT IDENTIFICATION: A sign designed or intended to identify an individual tenant, occupant or establishment within a multi-use development.

DEVELOPMENT, MULTI-USE: A developed parcel of real property upon which more than one principal building is constructed or principal use conducted, as in the case of a shopping center, plaza or mall or industrial complex or park, or in the case of a principal building having both residential and nonresidential use as permitted by provisions of Chapter 220 of the Town Code.

- 5) "Each individual business or use within a multiuse development which has an exterior entrance may have a tenant identification sign mounted on the building."

INTERPRETATION REQUEST: Should the proposed structure/building be reviewed/regulated as a "tenant identification sign" per § 220-83(2)? Town of Canandaigua Town Code § 220-83(2) defines TENANT IDENTIFICATION SIGNS as:

(2) Tenant identification signs. Each individual business or use within a multiuse development which has an exterior entrance may have a tenant identification sign mounted on the building. Tenant identification signs shall be uniform in design, style and, to the extent practicable, location on the building when compared to other such signs within the same multiuse development and shall only consist of:

(a) A building-mounted sign which does not exceed one square foot of sign area for each linear foot of building frontage occupied by the use or tenant or 350 square feet of sign area, whichever is less, and is not more than 10 feet in vertical height.

(b) Multiple tenant identification signs are prohibited. Except for temporary signs conforming to the requirements of §220-85 and except for building directory signs permitted pursuant to Subsection B(5). Multiple tenant signs identifying or advertising individual business or tenants on the same parcel within multiple use developments shall be prohibited.

- 6) "Tenant identification signs shall be uniform in design, style and, to the extent practicable, location of the building when compared to other such signs within the same multiuse development and shall only consist of a building-mounted sign which does not exceed one square foot of sign area for each linear foot of building frontage occupied by the use or tenant or 350 square feet of sign area, whichever is less, and is not more than 10 feet in vertical height."

INTERPRETATION REQUEST: Should the proposed structure/building be reviewed/regulated as a "tenant identification sign" per § 220-83(2)? Town of Canandaigua Town Code § 220-83(2) defines TENANT IDENTIFICATION SIGNS as:

(2) Tenant identification signs. Each individual business or use within a multiuse development which has an exterior entrance may have a tenant identification sign mounted on the building. Tenant identification signs shall be uniform in design, style and, to the extent practicable, location on the building when compared to other such signs within the same multiuse development and shall only consist of:

(a) A building-mounted sign which does not exceed one square foot of sign area for each linear foot of building frontage occupied by the use or tenant or 350 square feet of sign area, whichever is less, and is not more than 10 feet in vertical height.

(b) Multiple tenant identification signs are prohibited. Except for temporary signs conforming to the requirements of §220-85 and except for building directory signs permitted pursuant to Subsection B(5). Multiple tenant signs identifying or advertising individual business or tenants on the same parcel within multiple use developments shall be prohibited.

Zoning Law Determination finding require:

- 1) Referral to the Ontario County Planning Board;

INTERPRETATION REQUEST: N/A. Agreed, the proposed construction of the building should be referred to the Ontario County Planning Board.

- 2) Referral to the ZBA for:
- a. Area variance applications shall be submitted to the ZBA;
 - b. Sign/Structure is more than 10 feet in vertical height. Proposed Structure/Sign is proposed at 33'-0" AGL. A 23ft height area variance is required;
 - c. Sign/Structure area exceeds maximum allowed area. The plans provided do not provide sufficient information/dimensions to determine the extent of the area variance required.

INTERPRETATION REQUEST: **Should the proposed project be referred to the Town of Canandaigua Zoning Board of Appeals?** If the building is not a sign, then no variance from Town Code would be needed; therefore, a referral to the ZBA would not be required.

- 3) Referral to the Planning Board for:

INTERPRETATION REQUEST: **N/A.** Agreed, the proposed construction of the building should be referred to the Town of Canandaigua Planning Board.

Director of Development

From: Chris Nadler [cnadler@reevebrownlaw.com]
Sent: Wednesday, March 30, 2016 4:58 PM
To: Director of Development; 'Chris Jensen'
Subject: RE: Stella's Flowers

Doug & Chris,

You gentlemen are of course correct in your belief that an officer or board of the Town can appeal a Zoning Law Determination to the Zoning Board of Appeals. NYS Town Law §267-a(4) states that "[s]uch appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town."

I agree that a building that looks like an ice cream cone qualifies as a sign under the Town's sign regulations.

There will need to be a Zoning Law Determination (ZLD) to be appealed to the Zoning Board of Appeals. If Chris Jensen issues a ZLD declaring the ice cream cone building to be a "sign," then the Development Office (as a department/bureau of the town), could file the appeal to the ZBA.

We should probably discuss how to handle this procedurally. I am in court tomorrow morning but should be around all afternoon, or any time Friday. Let me know when works for you guys.

Thanks,

Chris
Christian M. Nadler, Esq.
REEVE BROWN PLLC
3380 Monroe Avenue, Suite # 200
Rochester, New York 14618
Phone # 585-310-1608
Fax # 585-287-5272

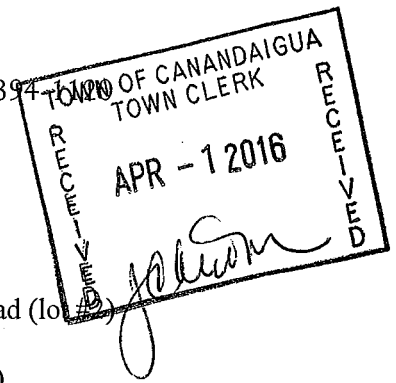
From: Director of Development [mailto:dod@townofcanandaigua.org]
Sent: Friday, March 25, 2016 10:50 AM
To: 'Brabant, Lance'; 'Tom Schwartz'
CC: Chris Nadler
Subject: FW: Stella's Flowers

Town of Canandaigua

5440 Routes 5 & 20 West • Canandaigua, NY 14424 • (585) 394-1000

Established 1789

ZONING LAW DETERMINATION



PROPERTY OWNER: Sarah M. Genecco

PROPERTY ADDRESS: 1880 State Route 332 (lot #1) & 5516 Purdy Road (lot #2)

TAX MAP NUMBER: 55.02-1-7.100 (lot #1) & 55.02-2-21.100 (lot #2)

ZONING DISTRICT: CC – Community Commercial

PROJECT DESCRIPTION: Proposed modification to existing site plan approvals – alteration of structure & associated elevations.

REFERENCE: Project Plans/elevations titled “Genecco Rt 332 Bldg B” by Hanlon Architects, dated March 25, 2016.

ISSUE:

- The owner wishes to construct a 33’ tall commercial/retail structure, in the shape of an ice cream cone.
- Per Town Code a ‘Sign’ is defined as: Any material, structure or part thereof, or any device attached to a building or structure or painted or represented thereon, composed of lettered or pictorial matter, or upon which lettered or pictorial matter is placed and is intended for display of an advertisement, notice, directional matter or name, and includes sign frames, billboards, sign boards, illuminated signs, pennants, fluttering devices, projecting signs, or ground signs.
- Per Town Code a ‘Business Sign’ is defined as: A sign which directs attention to a business, profession or industry conducted upon the premises or to a commodity or service sold or offered by such business, profession or industry upon the premises where such sign is located.

DETERMINATION:

- Commercial uses such as gift shops, tourist shops, clothing stores, furniture stores, craft shops, sporting goods, shoe stores, grocery stores, restaurants and liquor stores are permitted principal uses within the Community Commercial zoning district.
- The entire proposed building is a ‘STRUCTURE’ which is representative of the products to be sold within. The intent of the proposed structure is to direct attention to the business and the commodity sold by such business. The entire proposed structure is therefore a ‘business sign’ under Town Code.
- Aesthetic impact to be reviewed.
- Sign/Structure is within a proposed Multi-Use Development.
- Each individual business or use within a multiuse development which has an exterior entrance may have a tenant identification sign mounted on the building.
- Tenant identification signs shall be uniform in design, style and, to the extent practicable, location on the building when compared to other such signs within the same multiuse development and shall only consist of a building-mounted sign which does not exceed one square foot of sign area for each linear foot of building frontage occupied by the use or tenant or 350 square feet of sign area, whichever area is less, and is not more than 10 feet in vertical height.

REFERRAL TO ONTARIO COUNTY PLANNING BOARD FOR:

- This application is required to be reviewed by the Ontario County Planning Board due to proximity to State Route 332.

REFERRAL TO ZBA FOR:

- Area variance applications shall be submitted to the ZBA.
- Sign/Structure is more than 10 feet in vertical height. Proposed Structure/Sign is proposed at 33'-0"AGL. A 23ft. height area variance is required.
- Sign/Structure area exceeds maximum allowed area. The plans provided do not provide sufficient information/dimensions to determine the extent of the area variance required.

REFERRAL TO PLANNING BOARD FOR:

- An official request for updated site plan approval shall be submitted to the Town's Planning Board.
- An application requesting Special Use Permit for a Commercial Sign in the CC Zoning District shall be submitted.
- When reviewing applications that include signs, the Planning Board shall also consider the type of sign(s) and their suitability to the particular neighborhood, including the sign's aesthetic design, form, proportion, color, material, surface treatment and position. In addition to any other requirements prescribed within the Town Zoning Law, plans shall only be approved which reflect a reasonable conformity of design, lettering, lighting and material for all signs on a parcel and do not have an unnecessarily negative aesthetic impact.

CODE SECTION: Chapter §1-17, §220-78, §220-78, §220-80, §220-81, & §220-83

DATE:

CPN-037-15

BY:

NYS Town Law, Section 267-a(5)(b), an appeal may be made to the ZBA within 60 days of the date of this determination.

c:

Binder
Property File
Property Owner
Town Clerk

Town of Canandaigua

5440 Routes 5 & 20 West

Canandaigua, NY 14424

Phone: (585) 394-1120 / Fax: (585) 394-9476

ZONING BOARD OF APPEALS REQUIRED PAPERWORK FOR APPLICATION SUBMITTAL

Interpretation Application

✓
✓

Interpretation Application (Zoning Board of Appeals)

Description or documents in support of your appeal, a detailed description of the proposed use, an up-to-date site plan and a copy of the zoning law determination of which said appeal is being taken.

N/A

Property owner signatures on all application forms and checklists

**You must submit the original application and attachments / survey map / site plan.
Additional copies of the site plan, etc. will be requested after the Planning Review Committee
(PRC) has reviewed your application.**

FEES:

1. The \$100 application fee is required upon submission of the application. This fee is non-refundable. A separate, additional fee will be rendered for the building permit.
2. Building permit fees vary – the fee will be determined by the Town Code Enforcement Officer.
3. The property owner is responsible for reimbursement of any Town Engineer and/or Town Attorney fees incurred during application review.