

Minutes of a regular meeting of the  
Johnson City Planning Board held on  
March 27, 2018 at 7:30pm at  
243 Main St., Johnson City, NY

Present: Andrew Holbert, Vice Chairman  
Donald Slota  
Greg Matyas  
Mary Jacyna

Absent: Gerald Putman, Chairman

Also Present: Kim Cunningham, Clerk to the Planning & Zoning Boards  
Nate VanWhy, Attorney for the Village  
Marina Lane, Town of Union Senior Planner  
Trustee John Walker

A brief work session was held at 7:00pm. The board discussed the agenda and reviewed the applications.

Vice Chairman Holbert called the meeting to order at 7:30pm & noted the emergency exits.

**MINUTES**

A motion to approve the minutes from the February 27, 2018 meeting was made by Ms. Jacyna and seconded by Mr. Slota. The motion passed with all those present voting in the affirmative.

**PRIVILEGE OF THE FLOOR** - None

**COMMUNICATIONS** - None

**CONTINGENCIES** - None

**OLD BUSINESS** - None

**NEW BUSINESS**

**Ray Knapp – 301 & 305 Harry L. Dr.**

***Advisory Opinion – Expansion of a Non-Conforming Use***

Ray Knapp rents two lots at 301 & 305 Harry L Drive from which he sells used vehicles. A site plan was approved in 1997 for auto sales, allowing a maximum of 25 vehicles. The property is zoned Neighborhood Commercial, and auto sales are no longer permitted in this district as of the Village and Town Unified Zoning Ordinance passed in 2011. Mr. Knapp's auto sales are still permitted as a legal non-conforming use. Mr. Knapp's request to expand the number of permitted vehicles for sale from 25 to 33 is an expansion of a non-conforming use, and requires approval from the Zoning Board [300-64.3.C(5)].

The building with the business office includes two apartments on the second floor for which required parking is in the rear of the building. The project requires two customer parking spaces, and no



parking is permitted in the 25-foot cone of visibility on the corner of Harry L Drive and North Harrison Street.

The Code Enforcement Office and Planning Department determined that a site plan could be accepted with 28 display spaces and two customer parking spaces. On December 14, 2017, Mr. Knapp chose to submit an application for 33 display spaces and two customer parking spaces. On Tuesday, January 23, 2018, the Village of Johnson City Planning Department denied the site plan application to increase the number of vehicles displayed on the paved parking lot from 24 to 33, located at 301 & 305 Harry L Drive. This denial was based on lack of sufficient space to meet Code requirements for parking lots. Mr. Knapp is appealing for an expansion of a non-conforming use from the Zoning Board of Appeals.

Ray Knapp, of Hillside Drive, Kirkwood is present on behalf of the application. He would like to expand his lot so he can have more options for customers.

Attorney VanWhy explains Lot was originally approved in 1997 as a car lot and at that point it was an allowed use in that zoning district. There were 25 spaces approved for car sales. Since that time, zoning changed in 2011 to no longer allow car sales in that zoning district. Because the use continued and existed through that zoning change they were allowed to continue as a non-conforming use under Village Code. With the application to expand the non-conforming use to expand from 25 to whatever number negotiated, that requires Mr. Knapp to show the Village he can meet the requirements under the New York State use variance test to justify any increase or expansion of the non-conforming use and to do that there are four prongs of this test that have to be met.

They need to show:

- 1 With regard to financial data, documentary proof or evidence that they are unable to make any sort of reasonable return on any allowed use on that property including the sale of 25 cars, and that they can't make money selling 25 cars. Additionally, showing that they can't make money as a residential facility or any other uses allowed under the Village Code.
- 2 The property is not affected by any unique or uncommon circumstances to other properties in the area.
- 3 They are not going to alter the essential character of the neighborhood and that the hardship is not self-created.
- 4 Documentary proof that you are losing money at the facility

Mr. Matyas questions if Mr. Knapp is losing money or if it simply is that he would like to have more options. He asks if Mr. Knapp would go out of business without the expansion.

Mr. Knapp responds that more options would be good. If a car dealer calls and says they have 4 cars available and he can't take all four because he is restricted by the amount of cars, he loses money. The more cars he has the more chances he has to sell a car. He said he can probably get by with 25 cars, but customers have more options if he can take more cars.

Marina confirms Mr. Knapp is renting the property. The Planning Board would like to see evidence that there is pressure to take more cars and to have someone come to the Zoning Board meeting to



verify that. A problem is that there is no room for customers to park and there needs to be spaces for customers to park.

Mr. Matyas explains we need to try and enforce zoning restrictions, rules and regulations.

Vice Chairman Holbert read the department head comments.

**Department Head Comments:**

**Code Enforcement:** Lots should be combined. Corner visibility must be maintained. Access for customer parking must be maintained.

**Public Works/Water Dept:** Recommend Denial. This denial is based on lack of sufficient space to meet Code requirements for parking lots.

**Fire Department:** No Compelling Interest

**Police Department:** No Compelling Interest

**Planning Board:** In a vote of 4 to 0, 1 absent, recommended the ABA deny the expansion of a non-conforming use to 33 sale vehicles.

**Planning Department:** Recommends denial of the expansion of the number of vehicles for sale to 33. The parking lot area is insufficient to park the requested number of vehicles according to Code requirements, and to accommodate proper vehicular movement through the lot.

Vice Chairman Holbert asked Mr. Knapp if he reviewed the 28 space parking plan the Planning Board created. Mr. Knapp has not seen proposed 28 space parking plan.

*Discussion:* The Board and Marina Lane discuss the site plan.

**STAFF FINDINGS**

The Planning Department recommends the Planning Board recommend to the ZBA denial of the expansion from 25 display spaces to 33 display spaces. There is not space for parking that many vehicles and the safe movement of customers through the property. The display vehicles tend to drift into the 25-foot cone of visibility, into the driveway through the lot, and onto the property to the west, 313 Harry L Drive. The Planning Department recommends the ZBA consider an expansion to a maximum of 28 display spaces with two customer parking spaces, as provided on the attached alternate site plan.

*Discussion:* Even while planning staff may have recommended allowing 28 display spaces for cars, that would still constitute an expansion of the non-confirming use which requires the applicant meet every prong of the variance test. Attorney VanWhy doesn't believe Mr. Knapp has provided the level of proof that would justify the increase in the number of cars present on that lot. Ms. Lane explains Mr. Knapp did not come prepared for that because expansions were not previously treated in this way. Ms. Lane and Attorney VanWhy advise Mr. Knapp bring some sort of proof of hardship, which can't



be self-created, can't have a negative effect on the neighborhood and it has to be unique to your property. There can't be other similar properties in the area facing the same issues and you have to show the reasonable economic return on any use in the zoning area.

Mr. Knapp presented a letter to the board from Nicholas Cordisco noting he has no problem with him adding parking spots.

A motion that the Planning Board recommend to the Zoning Board denial of the non-conforming use variance as presented was made by Mr. Matyas and seconded by Mr. Slota.

*Motion Carried - Vote:*

*Yes – 4 (Matyas, Jacyna, Holbert, Slota) No – 0 Absent – 1 (Putman)*

*Discussion:* Ms. Lane advises Mr. Knapp to come with materials of proof to the Zoning Board meeting on April 9, 2018.

### **ADJOURNMENT**

The meeting was adjourned at 7:56pm.

Respectfully submitted,

Kim Cunningham  
Planning Board Clerk

