

Village of Canton Zoning Board of Appeals

Meeting Minutes

March 29, 2023

Courtroom, Canton Municipal Building

7:00pm

Members Present

Chairperson Conrad Stuntz; Caitlin Gollinger; Mike Snow; Pete Beekman; Andy Whittier (alternate);
Recording Secretary Jeni Reed

Members Absent

None

Others Present

Code Enforcement Officer Tim Nolan; David Pearson (Applicant - VFW); Randy Burke (Applicant - VFW); Kevin Tupper (Applicant - VFW); Mary Bregg (Neighbor)

Public Hearing

Chairperson Conrad Stuntz called the public hearing to order at 7:01 pm by explaining the process of the public hearing and introductions of the Board. Chairperson Stuntz noted that the application is for a use variance at 34 Gouverneur Street, Canton to permit the use of an Electronic Messaging Center (EMC) at the VFW building. Any approval of the requested variance will be connected with the parcel in question.

The Code Enforcement Officer Tim Nolan was invited to discuss the application and why it was denied:

The applicant submitted a request for a sign permit; however the sign permit was denied by the Code Enforcement Officer due to code section 325-65.d.6 regarding illumination of signs. The current code permits Electronic Messaging Centers only in the Commercial Corridor (CC) district, and the VFW building is in the General Mixed Use (GMU) zone. So this is a standard denial due to a not permitted activity in the zone.

The applicant, members of VFW Post 1231 at 34 Gouverneur Street, Canton, was called on to explain their application for the appeal of the Code Enforcement Officer's decision on their original permit application:

Mr. David Pearson, Commander of VFW post 1231 noted that their application for a sign permit was submitted in November 2022, and they have since met with the Code Enforcement Officer and Zoning Board of Appeals to ask questions and get more information to determine how they can move forward. He noted that the current sign is obsolete and can no longer be used or maintained. The sign is of importance to help the VFW keep the community aware of events, dinners, gatherings, etc; and it was noted that they are currently the only service club in Canton with these activities. It was mentioned that the VFW events (promoted by their sign) generate a significant amount of revenue which is often donated to local organizations. The VFW hopes that they can work with the ZBA and the Village to benefit the VFW as well as the community and continue to be good neighbors.

Several clarifying questions were posed by the members of the Board:

Chairperson Stuntz noted that the current sign is on the parcel away from the road and is a freestanding sign with letters that can be changed, and that this application is for a use variance for a new EMC sign.

Chairperson Conrad Stuntz then presented the public the opportunity for open discussion of the request:

Mary Bregg, 45 Gouverneur Street

Ms. Bregg noted that she owns two properties across the street from the parcel in question, at 45 & 43 Gouverneur Street. One of these properties is also occupied by Ms. Bregg. She noted concerns regarding EMC signs being garish, gaudy, too bright, and could potentially make her properties less marketable to renters. It was noted that there are two houses between these properties and the current Dairy Queen restaurant, for reference.

Several comments and questions were again posed by members of the Board:

Chairperson Stuntz noted that EMCs are very tightly regulated in the Village under current code. As an example, the current sign out at Coakley's is too bright; the current code in the Village requires that EMCs be dimmable based on ambient light. There are a number of restrictions on EMCs that would have to be met should this application be approved, and this has been conveyed to the applicant.

It was noted that the application proposes two alternative options for the new sign:

- 1 - adding the new EMC to the existing sign; this would be approximately 6ft x 36", or 18 square feet.
- 2 - a freestanding sign that is solely for the EMC; this would be in addition to the existing wooden sign indicating the building's use as a VFW. This proposed EMC would be 4ft x 8ft or 32 square feet.

Pete Beekman asked if the EMC would be stationary in terms of the message or if it would scroll. The applicant clarified that this would likely be dependent on the activities being listed on the sign.

The code regarding EMCs in the Village was referenced - this portion of code can be found in section 325-66.e. One highlight is that light trespass must be limited to 1.5 footcandles maximum.

Caitlin Gollinger asked if this would be a two-sided sign; this was confirmed by the applicant.

David Pearson noted that the VFW intends to be good neighbors and plan to meet code requirements but also turn off the sign over nights. This would mean the sign would only be lit during business hours and evening hours, and they are amenable to turning it off by 11pm if requested. There are also concerns about any motion on the sign, and it was noted the applicants would potentially be comfortable with a static, single color sign for the EMC.

It was noted that this property is right next to the Stewarts on Gouverneur Street. The zoning is Commercial Corridor down the river side (across the road) of Gouverneur Street where this type of sign would be permitted.

Mike Snow asked for clarification about the portable sign, and it was confirmed that this would replace that sign.

Randy Burke noted that the applicants are leaning toward proposed option 1 with an EMC incorporated into the current standing wooden sign. This sign was originally illuminated and will continue to be; it was noted that if the EMC were to be incorporated, they will need to investigate combining the light sources properly, along with the lighting for the flag which is located 15 feet above the sign.

As there were no additional questions or public comment, the public hearing was closed at 7:24 pm by Chairperson Stuntz.

Call to Order

The meeting of the Village Zoning Board of Appeals was called to order at 7:25 pm by Chairperson Conrad Stuntz.

Agenda Items

1. Discussion of use variance for an Electronic Messaging Center sign at 34 Gouverneur Street, Canton
 - Chairperson Stuntz reviewed the process for addressing a Use Variance as regimented by the State.
 - Four tests will be reviewed and discussed, and all four must pass to approve the variance.
 - If the variance is approved, conditions can be assigned to mitigate concerns.
 - Overall discussion of the project:
 - It was noted that if a new location for the sign is pursued, then the setback requirements will need to be met. If the EMC is incorporated into the existing sign, this does not apply.
 - Village Code section 325-65.d.6 outlines the allowed sizes for EMCs.
 - In the commercial corridor district, the maximum display area permitted is 12 square feet; this will need to be taken into consideration as the requested size for option 1 presented by the applicant is 18 square feet.
 - The current sign is no longer working; the applicant was asked what they would consider for solutions if the variance is not granted. The applicant noted that they do not currently have a plan B but would address it with the membership if necessary.
 - The applicant was encouraged to consider options for a wall mounted sign as well.
 - According to Village Code section 325-65.f, a free standing sign is still only allowed 16 square feet, with the intent of limiting signs outside of the Commercial Corridor zone.
 - The four tests for a use variance were reviewed and discussed (an application must have a 100% pass rate to approve the variance).
 - Test #1 - The applicant must prove that the property is unable to achieve a reasonable return for any use allowed in that zoning district.
 - The applicant noted that they are attempting to maintain their membership and their ability to contribute to the community, and marketing is needed to do these things.
 - Anecdotal evidence indicates that events and other things are not being attended due to the lack of signage (despite additional marketing efforts). The applicant noted that their financials are not a reliable indicator due to the current economic environment.
 - It was noted that a community hall would likely want and/or need to advertise in order to boost their financial situation.
 - The board asked what alternative options there are; the applicant indicated that all signs are electronic now. It was suggested that the same financial return could be achieved with a different sign option, and noted that Dairy Queen utilizes a manually changing backlit sign.
 - The board discussion revolved around the difficulty to locate a replacement sign.
 - It was mentioned that the current sign has electrical service set up, and is a 4x8 backlit sign currently 18-24 inches off the ground. This is a non-conforming sign which is eligible to be replaced, but can not be made bigger.

- The board ultimately decided that the sign provides a substantial return which could not otherwise be realized.
- Test #2 - The applicant must prove that unique circumstances apply to the property for which the variance is requested.
 - As EMCs are not allowed in this district, the lack of a sign is impacting the applicant's ability to maintain a relationship with the community.
 - It was questioned if this is an issue of the parcel or of the district. The board noted that the situation appears to be unique.
 - It was asked how the Village can be a good community partner and not permit this use, as Dairy Queen would be permitted to install an EMC; however it was noted that the zoning is different for these two parcels.
 - It was noted that there are only 2-3 businesses currently on the same side of the road as the applicant.
 - It appears that the need for this signage is unique to this parcel due to its location on an entrance corridor to the village (which is generally Commercial Corridor), and that it doesn't appear to apply to other parcels in this district.
 - Permitted signs in the General Mixed Use district are freestanding signs no larger than 16 square feet.
 - The board ultimately decided that they feel this issue is unique to the parcel.
- Test #3 - The applicant must prove that the hardship is not self-created.
 - The applicant noted that if the application had been submitted the previous year, the result would have been determined by the Village Board and the process would have been different; as such the issue with the code change is not self-created.
 - Chairperson Stuntz noted that the applicant can no longer purchase parts to repair their current sign, and they are looking to minimize the work and modernize their systems with an EMC.
 - The applicant is in a situation where if they were located on the opposite side of the street, this would be a permitted use. It was noted that their building has been there a long time, and the current sign has been nursed along for as long as possible.
 - It was noted that if the applicant can do away with the current sign, it would improve the look of the front of the property; however the concept of light trespass is cause for concern.
 - It was also noted that at the time the building was built, this use would not have been prevented.
 - The board ultimately determined that they did not feel this issue is self-created.
- Test #4 - The applicant must prove that the essential character of the neighborhood will not be altered if the use variance is granted.
 - It was noted that the new sign would help the business to continue doing what they are already doing, and likely wouldn't change the character of the neighborhood much, especially considering the other businesses located in the immediate vicinity.
 - It was indicated that the current code requirements for EMCs would make a big difference regarding light quality.
 - Light trespass was noted as a primary concern, and imposition on the neighbors is definitely something to consider.
 - It was noted that the code would need to be trusted to address light trespass issues, as it is difficult to relate to the measurements and estimates provided.
 - It was determined that there may be a small change presented, but this would not be a significant change to the character of the neighborhood.

- The board ultimately determined that they did not feel this approval would change the essential character of the neighborhood.
 - Based on the review of the four tests, Chairperson Stuntz concluded that a use variance could be granted in this case.
 - Conditions will be applied as such:
 - The code for EMCs in a Commercial Corridor will apply to this new sign.
 - Maximum size of the sign would be 12 square feet; any increase to this would require an area variance.
 - One EMC is permitted per lot.
 - The message must be static and can not change more than once in a 24 hour period.
 - A photocell to control brightness based on ambient light must be incorporated.
 - No more than two colors are permitted per message.
 - Brightness and light trespass requirements must be met per the code.
 - This is all pretty clear and restrictive; it will be the responsibility of the Code Enforcement Officer to measure and ensure compliance with the code.
 - The preference of the board is to incorporate the new EMC into the existing sign to limit the impact to the neighborhood and improve aesthetics.
 - Could the light impact be mitigated by moving the posts as needed to present the sign to the street at more of an angle?
 - Ultimately, it was determined that no additional conditions would be set other than the sign must meet code requirements for EMCs.
 - It was determined that this decision does not set a precedent as any other applicant requesting something similar would have to go through the same process.

A motion was made to permit the use variance for an EMC sign at 34 Gouverneur Street, following all required guidelines for EMCs per the current Village Code. Voting results were as follows:

Pete Beekman - aye

Mike Snow - aye

Caitlin Gollinger - aye

The motion passed and the use variance will be permitted. A final decision will be written up by Chairperson Stuntz and submitted to the Code Enforcement Officer within 60 days, at which time the Code Enforcement Officer will issue a permit.

It was also noted that due to the location this application was referred to the County Planning Board for review, who did not offer any additional feedback and deferred to the local authority to make the decision.

Other Items

No other items were addressed at this time.

Adjournment

The meeting was adjourned by Chairperson Conrad Stuntz at 8:32 pm.

Respectfully Submitted,

October 16, 2023

Recording Secretary Jeni Reed

USE VARIANCE FINDINGS & DECISION

OFFICE USE ONLY

Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the
Municipal Clerk: _____

Applicant: VFW Post 1231

Appeal Concerns Property at the following address:

34 Gouverneur St., Canton NY, 13617

County Tax Map Section: 88.042 Block 8 Lot 27

Zoning District Classification: GMU

Use for which Variance is Requested: Installation of an Electronic Messaging Center (EMC)

Applicable Section of Zoning Code: Section 325-65(D)(6) - Illumination of Signs.

Permitted Uses of Property: Signs as specified in 325 Schedule F

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes No

Proof: Loss of business due to lack of adequate signage.

ILLUSTRATIONS OF FINANCIAL EVIDENCE

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes No

Proofs: EMC signs are allowed across the street. The VFW is located as a unique parcel on their side of a commercial street. The property is located along an entry corridor to the village, which is a natural space for businesses.

ILLUSTRATIONS OF UNIQUENESS

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes x No

Proof: Located next to a gas station and down the street from a
 fast food restaurant, an EMC sign would not alter the character of this
 neighborhood.

ILLUSTRATIVE
NEIGHBORHOOD
CHARACTER FACTORS
• Board members' observations of neighborhood.
• Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes No x

Proof: _____
 The VFW has an existing plastic letter sign, that they are looking to
 replace. Under new zoning maps adopted within the past 12 months, they
 are no longer able to update this sign to the more modern EMC sign.

SELF-CREATED
• What were the permitted uses at the time the property was purchased by the applicant?
• Were substantial sums spent on remodeling for a use not permitted by zoning?
• Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing the above four proofs, finds:

- That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.
- That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE) Installation of an Electronic Messaging Center (EMC) sign at 34 Gouverneur Street.

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: Follow all stated code for EMCs in the village of Canton. This includes but is not limited to codes 325-66(E)(3) for light emittance and in 325-65(D)(6) for sign size.

Adverse impact to be minimized: Impact of excess light to the neighborhood.

Condition No. 2: EMC will be installed on the existing free standing sign (as per option 1 in the application)

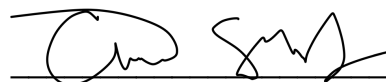
Adverse impact to be minimized: Creates a single free standing sign on the property, removing the extra signs for a single building.

Condition No .3: _____

Adverse impact to be minimized: _____

Condition No. 4: _____

Adverse impact to be minimized: _____



Chairman, Zoning Board of Appeals

4/20/2023

Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	<u>Conrad Stuntz</u>	<u>x</u>	<u> </u>
Member	<u>Caitlin Gollinger</u>	<u>x</u>	<u> </u>
Member	<u>Mike Snow</u>	<u>x</u>	<u> </u>
Member	<u>Peter Beekman</u>	<u>x</u>	<u> </u>
Member	<u> </u>	<u> </u>	<u> </u>