

Town of Johnsburg  
Zoning Board of Appeals  
Tannery Pond Community Center  
November 14, 2016

**ZBA Members:** Cathy Allen, Phillip Goodman, James Jones

**Applicants:** Joe Brand

**Guests:** Joann Morehouse PZ Secretary,

**ZEO:** Danae Tucker

Public Hearing called to order 7:04pm by Mrs. Cathy Allen

**Variance V-03-2016- All Brands Redemption Center-Tax Map #101.-1-43 Rte 28  
Wevertown, NY**

Mr. Goodman explained the reason for needing a variance and the steps that must be taken to grant the variance. Mrs. Tucker gave her agreement that the bottle redemption center would be a benefit to the area and its economy.

Mr. Jones made a motion to close the public hearing at 7:23, seconded by Mr. Goodman all in favor.

**Variance V-03-2016- All Brands Redemption Center-Tax Map #101.-1-43 Rte 28  
Wevertown, NY**

Mrs. Allen opened the regular meeting at 7:24pm Mr. Goodman made a motion to waive the Variance fee since the hardship was not self-caused, seconded by Mr. Jones

November 14, 2016

Town of Johnsburg Zoning Board of Appeals Use Variance V-03-2016

Purpose of the variance: To allow Joseph Brand to convert the former "White Pine" Restaurant into a Deposit Bottle Redemption Center (a Retail Store) on a piece of property (101.-1-43) on State Route 28 in the Town of Johnsburg. The property has an underlying Zoning Classification of MX 8.5, where such a facility is allowed, but the lot is also in a Scenic Corridor Overlay where the use is not permitted. The conditions of the Scenic Corridor Overlay supersede those of the MX 8.5 Zone and a use variance is necessary for the project to continue.

Rationale to grant the variance based on the so called "Otto" rules that are derived from New York State zoning case law:

**Reasonable return**

*For each and every allowed use within the zoning district where the property is located, Including uses allowed after Site Plan Approval or issuance of a Special Use Permit, the Applicant cannot realize a reasonable return, provided that lack of return is substantial and is established by competent financial evidence.*

The commercial concern which operated for more than forty years at this location was a dining establishment known as *The White Pine Restaurant*. The restaurant failed several years ago, and the property went into foreclosure. After purchasing the property in a foreclosure auction, a new owner tried to re-open the business as a restaurant again; the new eatery also failed to be profitable and went out of business. Mr. Brand has now acquired the property, and believes he can make it profitable by converting the existing building into a deposit bottle redemption center. Mr. Brand runs other redemption centers in the region and has both knowledge and experience in the field.

The fact that two restaurant businesses have failed at the location in recent years seems to indicate that achieving a reasonable return for this type of endeavor at this location has become questionable. Allowable commercial uses of the location are limited by local law. At 0.75 acres the lot is also relatively small for most of the allowed commercial uses. In addition to those circumstances, the cost of building any type of requisite new commercial infrastructure would make a reasonable return less likely than the possible return achievable by converting the already existing structure into the proposed bottle redemption center.

The next two Otto questions are relatable to the justification Johnsburg used in creating the scenic corridor overlay districts in the first place. Johnsburg's land use plan justifies the need for the corridors with the following language.

The visual character of the town in its natural setting within the Adirondack Park is an important and valuable public asset which promotes the general and economic welfare of the town...it is the purpose of the Scenic Corridor Overlay District (SCO) to preserve the scenic, "Adirondack" character along major travel corridors within the town. **Unique circumstances**

*The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.*

**Essential character of the neighborhood**

*The use variance, if granted, will not alter the essential character of the neighborhood.*

The scenic corridor overlays were created so that the essential character of neighborhoods would not be drastically changed by any new construction. Granting this variance would not significantly change the essential character of the community, it would actually preserve it. The building that exists on this lot has been at the same location relatively unchanged for decades. It was constructed using hand hewn beams and barn board lumber from an old rustic barn on the Garnet Lake Road near the hamlet of Johnsburg. Repurposing the building to house this new business would save a building that is singularly unique to our community. Any new commercial use of the small lot, even one allowable under our regulations, might not be able to save the building, as it has existed for decades, and would cost us a part of our unique heritage.

**Self-created hardship**

*The alleged hardship has not been self-created*

A significant part of the hardship in this situation was actually inadvertently created by the Town of Johnsburg. A representative of the town, The Zoning Enforcement Officer, offered an opinion to the prospective buyer of the property that their desired use of the property would be allowed by our land use regulations. Initially the ZEO did not realize that the property lay within the Scenic Corridor Overlay District which actually begins very near the property. The proposed use would have been allowable in the underlying MX 8.5 zone, but is not allowed in the overlying SCO district. Primarily based on the advice he solicited from town officials, Mr. Brand acquired the land believing the law would allow for his proposed use of the property. The town's mistake was inadvertent, but also incorrect. All parties were operating in good faith, but the hardship incurred was not self-created by the landowner.

Motion:

I make a motion to approve variance application V-03-2016, a use variance to allow a public or semi-public building (a deposit bottle redemption center) to be operated in a MX 8.5 zone which is also a part of a Scenic Corridor Overlay District on State Route 28 (101.-1-3).

Motion made by Philip Goodman, Seconded by James Jones

Vote: Passed 3-0.

Motion passed on November 14, 2016

**Approval of Minutes: June 6, 2016**

Respectfully submitted,

Joann M. Morehouse

DRAFT