

**THE CITY OF HIGHLAND HEIGHTS, OHIO
BOARD OF BUILDING AND ZONING APPEALS
APPEAL HEARING FOR LARICH PIZZA
APRIL 3, 2023 - MINUTES**

Chairman David Corrado called the meeting to order at 7:01 p.m.

ROLL CALL

PRESENT: Board Members Sean Biega, Michael Conley, David Corrado, Tom Hawkins, Michael Jiannetti

ALSO PRESENT: Board Secretary Susan Olson; Building Commissioner Dale Grabfelder; Assistant Law Director Timothy Paluf

APPELLANT: Kim LaRich, owner of LaRich Pizza, 797 Bishop Road, Highland Heights, Ohio 44143

APPELLANT'S COUNSEL: Rich LaPilusa, attorney, Joseph W. Diemert, Jr. & Assoc. Co., 1360 SOM Center Road, Mayfield Heights, Ohio 44124

ABSENT: None

Chairman Corrado stated that pursuant to Section 6.06.01 of the Charter of the City of Highland Heights, Ohio, the Board of Building and Zoning Appeals is empowered to affirm, amend or supersede a decision of the City of Highland Heights Planning and Zoning Commission.

CASE SUMMARY – BBZA23002

Kim LaRich, owner of LaRich Pizza, is a tenant at the Hi-Bishop Plaza, 797 Bishop Road, Highland Heights, Ohio 44143. At issue is the existing LaRich Pizza storefront window sign that does not comply with HHCO Section 1145.06(d), which requires that window signs do not cover more than 25% of the area of the window (the sign covers 100% of the window) and which prohibits window signs from remaining on display in excess of 10 days (the window sign has been on display approximately 20 years). **Building Commissioner Grabfelder** mailed a letter dated December 21, 2022 to Kim LaRich, ordering removal of the sign within 30 days. Rather than remove the sign, Mr. LaRich requested variances to allow the sign to remain as-is, and on February 13, 2023 the Highland Heights Planning and Zoning Commission denied Kim LaRich a variance to allow the sign to cover 100% of the window, and denied a second variance to allow the sign to remain permanently. Counsel for Mr. LaRich filed an appeal with the Board of Building and Zoning Appeals on March 13, 2023, seeking a reversal of the decisions of the Planning and Zoning Commission, asserting Kim LaRich has a right to the sign based upon a sign permit issued by the City in 2003. Mr. LaRich asserts the permit was for the window sign because the permit was issued at the same time the window sign was installed. The City asserts the sign permit was for an overhead building sign and that a permit was not issued for the window sign.

Written notices of tonight's hearing were given by mail in accordance with HHCO Section 1114.04(b): "Board of Building and Zoning Appeals; Hearings", to the appellant and abutting property owners as well as the property owners located directly across the street from LaRich Pizza, and appeared as follows:

BBZA Public Notice dated March 20, 2023: *The City of Highland Heights Board of Building and Zoning Appeals will conduct a hearing on Monday, April 3, 2023 at 7:00 p.m. in the Highland Heights City Hall Council Chamber, 5827 Highland Road, Highland Heights, Ohio 44143, concerning the application submitted for LaRich’s Pizza, lessee, 797 Bishop Road, Highland Heights, Ohio 44143, located in the Hi-Bishop Plaza at the northeast corner of Bishop Road and Wilson Mills Road. LaRich’s Pizza is appealing the decision made by the City of Highland Heights Planning and Zoning Commission on February 13, 2023, that denied variances to allow the existing storefront window sign to remain at LaRich’s Pizza, 797 Bishop Road. The following variances were denied.*

1. *Variance of 75 percentage points from HHCO Section 1145.06(d): “BUSINESS DISTRICT SIGNS; Window Signs”, which requires that window signs do not cover more than twenty-five percent (25%) of the area of the window, to allow the existing window sign to cover 100% of the area of the window.*
2. *Variance from HHCO Section 1145.06(d): “BUSINESS DISTRICT SIGNS; Window Signs”, which prohibits window signs from remaining on display in excess of ten days, to allow the existing window sign to be permanent.*

HEARING OPENED TO THE PUBLIC

Mr. Corrado inquired if anyone in attendance wished to speak on this matter. **Sharon Arslanian**, owner and landlord of the Hi-Bishop Plaza, 785 Bishop Road, Highland Heights, Ohio 44143, stated she may be interested in speaking at a later time during the hearing. In response to Mr. Corrado’s inquiry if the Board received any comments or correspondence on this matter, Ms. Olson replied no.

STATEMENTS FROM APPELLANTS

Rich LaPilusa, counsel, representing Kim LaRich, said he is seeking a reversal of both decisions rendered by the Planning and Zoning Commission on February 13, 2023, that denied Kim LaRich a variance to allow the existing window sign at LaRich Pizza to cover 100% of the window area, and denied a second variance to allow the existing window sign to remain permanently. He said the landmark sign has been on the storefront window twenty years, is recognized by the public, identifies the LaRich brand and is needed for the continued successful operation of the business. He said the City’s contention that the sign impairs visibility into the store and poses a fire, safety and security problem is not valid because the sign does not technically cover the entire window. He said Mr. LaRich appeared before the Planning and Zoning Commission on March 13, 2023 and was granted approval for a proposed overhead building sign and he is in the process of following through with that plan, but wants to keep the existing window sign in addition to the overhead sign.

Mr. LaPilusa said the variances that were denied should be granted because they meet the standards for granting variances as outlined in HHCO Section 1113.10 as follows.

1113.10(a) – Without the variances, removal of the landmark sign would result in a practical difficulty because people would not recognize the business, and an overhead building sign without the window sign is not sufficient identification of the business.

1113.10(b) – The variances are justified because an exceptional circumstance exists that is only applicable to LaRich Pizza, when the City issued a sign permit in February 2003. The permit did not list the sign specifications, but the appellants claim it pertains to the window sign that was installed around the time the permit was issued.

1113.10(c) – The variances are justified because the sign is not detrimental to the public welfare or injurious to the neighborhood and no complaints regarding the twenty-year old sign were made until last year.

1113.10(d) – The variances are justified because they are not contrary to the objectives of Zoning Code. The sign does not cover the entire window and provides visibility from several points into the store allowing for safety and security. Other storefront windows in the plaza are completely covered by blinds with no visibility into the stores.

BOARD MEMBERS DIRECT QUESTIONS TO APPELLANT

Kim LaRich, appellant, owner of LaRich Pizza, approached the podium. In response to **Mr. Corrado's** inquiry if there is the possibility patrons may not recognize his business if the window sign is removed, Mr. LaRich replied yes because his business has been identified for over twenty years by the window sign. In response to Mr. Corrado's inquiry if business increased when the window sign was installed, Mr. LaRich replied business skyrocketed. In response to Mr. Corrado's inquiry as to why the sign is imperative to his continued success, Mr. LaRich replied people will think his business is not there anymore if the sign is removed. Mr. Corrado asked Mr. LaRich if he intends to install an overhead building sign. Mr. LaRich replied yes and that he has already received approval for the overhead sign from the Planning and Zoning Commission. Mr. Corrado asked if business would be harmed if the only sign was the overhead sign, and not an additional window sign. Mr. LaRich replied yes because the first thing he notices when he drives by the plaza is his window sign. In response to Mr. Corrado's inquiry if he advertises, Mr. LaRich replied yes through valpak. In response to Mr. Corrado's inquiry if he was involved in the initial application for the window sign, Mr. LaRich replied that he and his friend applied for the permit in 2003, and he knows it was for the window sign because it was also installed in 2003.

PUBLIC HEARING OPENED TO PUBLIC

Sharon and Hank Arslanian, owners and landlords of the Hi-Bishop Plaza, requested BBZA to affirm the decision of the Planning and Zoning Commission that denied variances to Kim LaRich that would have allowed the existing window sign to remain. In response to Ms. Arslanian's inquiry if Mr. LaRich has the right to apply for a variance on property he does not own, **Mr. Corrado** replied the Board will consider Mr. LaRich's application for now. Ms. Arslanian said she is against window signs because they appear sloppy whereas overhead signs are neater. She said she did not approve the LaRich window sign. She said other tenants have contacted her requesting window signs and she replied no, that they must have illuminated overhead building signs. She said it is her understanding the Building Commissioner and Mayor have received calls from businesses who want to install window signs, and the Fire Department is against the LaRich window sign because they cannot see into the building in case of fire. Ms. Arslanian said Mr. LaRich agreed to install an overhead building sign within six months after signing his five-year lease on November 17, 2021, and to-date the sign is not installed. She said he received approval for a building sign from the Planning and Zoning Commission in March 2023 and to-date it is not installed. She said she recently called the sign company hired by Mr. LaRich and was told Mr.

LaRich did not purchase a sign because he is waiting for the decision of BBZA. Ms. Arslanian said she invested a lot of money into creating a good aesthetic for the plaza, including landscaping, awning, concrete parking lot, sidewalks and ingress/egress signage, and feels the window sign depreciates the value of her property. She said she wants to do the right thing for her tenants, City and her property, and through the years extended her tenants, including Mr. LaRich, one-year interest-free loans for their signs. She said she does not want to set precedent by allowing the window sign to remain because it would open a can of worms for other landlords and the City. She said adding the word “pizza” on the overhead sign is key and a good investment.

Mr. Arslanian said he notices the overhead building signs and not the LaRich window sign when he drives past the plaza. He said an overhead building sign with a smaller window sign would be more effective than the existing window sign only.

OPINION OF ASSISTANT LAW DIRECTOR PALUF

Mr. Corrado inquired if there is any possibility of compromise and what the implication would be in allowing the window sign to remain. **Assistant Law Director Paluf** replied Highland Heights Code requires that window signs do not cover more than twenty-five percent (25%) of the area of the window and the implication of allowing the sign to remain would be a negative precedent with oversized window signs appearing throughout the City. He opined the permit issued by the City in 2003 was for an overhead building sign that was installed, and that the oversized window sign would not have been approved because it violated the size requirement.

OPINION OF BUILDING COMMISSIONER GRABFELDER

Building Commissioner Grabfelder said there is no record of a permit issued for the window sign, and he believes the sign permit issued by the City in 2003 was for an overhead electric white box building sign because a fee of 3% was added that was required by Ohio Building Code for electric commercial building signs. He said the City performed a property maintenance inspection and the white box signs were removed because they were rusted out. He stated that several years ago there was collaboration among the City Architectural Review Board, Planning and Zoning Commission, Ms. Arslanian and her architect to design the sign format used today for consistency at the plaza. He said he received complaints from other tenants in the plaza and other strips in the City who also want window signs. **Mr. Grabfelder** said the Police Department checks store windows at night and the Fire Department checks stores if fire alarms are activated and they want windows clear for visibility to avoid the need to break them.

COMMENTS FROM BOARD MEMBERS

Mr. Biega said the window sign is the LaRich Pizza logo, his “Golden Arches” so to speak, and the sign has been there a long time.

Mr. Conley said the overhead building sign recently approved by the Planning and Zoning Commission in 2023 only includes the word “LaRich’s”, and that people will not know the nature of the business, and asked if the word “pizza” could be added. Mr. LaRich replied it is possible but would cost more money, and further stated he does not know if it is possible to remove the existing window sign since it has been on the window twenty years. **Mr. Conley** questioned why

the window sign is just now an issue given the fact it has been up for twenty years. **Messrs. Grabfelder and Paluf** replied this matter is complaint driven.

Mr. Corrado opined there will be a domino effect throughout the City of noncompliance with Code if the sign is allowed to remain.

REBUTTAL FROM APPELLANTS

Mr. LaRich said the Mill Tavern, located on Wilson Mills Road in Highland Heights, has a brick front with no window or visibility into the store and questioned why the City needs visibility into his store. **Mr. Grabfelder** replied there is no Code requirement that a store must have a window; however, Code must be followed for stores with windows. **Mr. LaRich** replied he is being penalized for having a window and claimed the only complaint received by the City is from Ms. Arslanian whose intention is to force him to install an overhead sign. **Mr. LaRich** asked if the window sign could be grandfathered and reiterated it is necessary to his livelihood, and defended his right to keep the sign because he has been a good citizen of the City for 23 years and all the while paying taxes, supporting the Police and Fire Departments and baseball teams. **Mr. LaRich** said the storefront adjacent to his, David Shoe Repair, has an oversized window sign that violates Code and blinds that cover the entire window. **Mr. Grabfelder** replied the blinds can be opened, and that David Shoe Repair does not have an overhead sign because it sub-leases the space from the ice cream shop. **Mr. Corrado** clarified that BBZA is only authorized to consider the LaRich window sign. **Mr. LaPilusa** said Mr. LaRich will compromise by modifying the window sign to include the circular logo only and remove the “pasta salad subs” portion of the sign. **Mr. Paluf** replied this needs to be addressed with the Building Department.

VARIANCE #1 - MOTION

A motion was made by Mr. Hawkins to affirm the decision of the Planning and Zoning Commission made February 13, 2023, that denied Kim LaRich, on property located at Hi-Bishop Plaza, LaRich’s Pizza, 797 Bishop Road, Highland Heights, Ohio 44143, a variance of 75 percentage points from HHCO Section 1145.06(d): “BUSINESS DISTRICT SIGNS; Window Signs”, which requires that window signs do not cover more than twenty-five percent (25%) of the area of the window, to allow the existing window sign to cover 100% of the area of the window; seconded by Mr. Biega.

VARIANCE #1 - FURTHER DISCUSSION

Mr. Biega said Mr. LaRich’s livelihood is the quality of his food that keeps people returning to his store and the majority of his customers are local and know he is there. He said the Code requirement that window signs cannot exceed 25% of the window area was passed in 1995; therefore, the existing sign that covers 100% of the window violated Code in 2003 and cannot be grandfathered.

Mr. Conley opined the City has failed Mr. LaRich because this has become an issue twenty years after the sign was installed, and that at some level the window sign should be allowed to remain, perhaps keeping the logo and removing the “subs salad pasta” portions of the sign, contingent on sign approval. He inquired if the overhead sign could be designed using the LaRich Pizza logo. **Messrs. Grabfelder and Paluf** replied this would need to be addressed with the City ARB and Planning and Zoning Commission.

Mr. Jiannetti said the sign permit issued in 2003 does not specify it was for a window sign and that it addresses building issues and footers. He said he wants Mr. LaRich to be successful and said a sign covering 25% of the window would look nice. He said BBZA is tasked to enforce Code and that Mr. LaRich created his hardship.

Mr. Hawkins said he struggles with the fact this matter is being addressed twenty years after the sign was installed. He said everyone understands the problem and difficulties, but it is the obligation of BBZA to uphold Code.

Mr. Corrado encouraged Mr. LaRich to explore the sign options discussed at this meeting with the Building and Law Departments because it is not within the purview of BBZA to make compromises. He said this is a difficult matter for BBZA because we love our local businesses and our common goal is that they succeed; however, BBZA must enforce Code.

VARIANCE #1 - ROLL CALL ON MOTION

Ayes Biega, Jiannetti, Hawkins, Corrado; nay Conley. Motion denied.

VARIANCE #1 - APPEAL IS DENIED

The Board of Building and Zoning Appeals has affirmed the decision of the Planning and Zoning Commission made February 13, 2023 by a vote of 4-1 and the appeal requested by Mr. LaRich to allow the existing sign that covers 100% of window area to remain is denied.

VARIANCE #2 – MOTION

A motion was made by Mr. Hawkins to affirm the decision of the Planning and Zoning Commission made February 13, 2023 that denied Kim LaRich, on property located at Hi-Bishop Plaza, LaRich Pizza, 797 Bishop Road, Highland Heights, Ohio 44143, a variance from HHCO Section 1145.06(d): “BUSINESS DISTRICT SIGNS; Window Signs”, which prohibits window signs from remaining on display in excess of ten days, to allow the existing window sign to remain permanently; seconded by Mr. Biega.

VARIANCE #2 - FURTHER DISCUSSION

None.

VARIANCE #2 - ROLL CALL ON MOTION

Ayes Biega, Corrado, Hawkins, Jiannetti; nay Conley. Motion denied.

VARIANCE #2 - APPEAL IS DENIED

The Board of Building and Zoning Appeals has affirmed the decision of the Planning and Zoning Commission made February 13, 2023 by a vote of 4-1 and the appeal requested by Mr. LaRich to allow the existing sign to remain permanently is denied.

REASONING IN VOTE

Mr. Corrado requested Ms. Olson to poll the members for their reasoning in the manner in which they voted. All members expressed empathy for the difficulty Mr. LaRich is facing and wish for his continued success. The consensus of the Board for affirming the decisions of the Planning and Zoning Commission made February 13, 2023 that denied Mr. LaRich variances to allow the existing window sign to remain permanently follows: BBZA is obligated to enforce Code; the Code requirement that window signs cannot exceed 25% of the window area was passed in 1995 meaning the existing window sign violated Code in 2003 when it was installed; Mr. LaRich caused his hardship by not complying with Code twenty years ago; a hardship was not established to justify a variance; negative precedent would be set and the implication for the City would be a domino effect of businesses wanting oversized signs resulting in complete defiance of Code; there

are options and compromises addressed at this meeting that can be considered; and the opinions of the Building Commissioner and Assistant Law Director that a permit was never issued for the window sign and that the sign violates the Code size requirement.

RECOURSE TO APPELLANTS

Mr. Corrado advised Messrs. LaRich and LaPilusa that pursuant to HHCO Section 1114.10 “Appeals to Common Pleas Court”, a decision made by the Board of Building and Zoning Appeals is considered final and cannot be re-appealed except to the Common Pleas Court as provided by law pursuant to Ohio R.C. Chapters 2505 and 2506.

MOTION TO CLOSE HEARING

A motion was made by Mr. Conley to close the hearing; seconded by Mr. Corrado. Hearing closed at 7:52 p.m.

SCHEDULE MEETING TO CONSIDER MINUTES

The Board set a meeting date of May 3, 2023 at 7:00 p.m. to consider for approval the minutes of this meeting.

ADJOURNMENT

There being no further business before the Commission, Mr. Corrado asked if anyone wished to make a motion to adjourn the meeting. A motion was made by Mr. Hawkins to adjourn the meeting; seconded by Mr. Conley. Ayes all; motion carried. Mr. Corrado declared the meeting adjourned at 7:54 p.m.

Susan M. Olson, *Secretary*

David A. Corrado, *Chair*