

**TOWN OF MANLIUS
ZONING BOARD OF APPEALS
March 20, 2014**

The minutes of the Town of Manlius Zoning Board of Appeals Meeting held on March 20, 2014 in the Town Hall, 301 Brooklea Drive, Fayetteville, New York. Those present were:

Chairman	Henry McIntosh	
Member	KP Kelly	
Member	T.R. Schepp	
Member	Al Ruthig	Absent
Member	Jim Campbell	
Secretary	Lisa Baleno	
Code Enforcement Officer	Michael Jones	
Town Attorney	Lauren Seiter	

Also Present: Jeff Bebernes, Sheryl Bebernes, Phil Berrigan, Cristina Caceres

The Pledge of Allegiance was recited.

MINUTES AND LEGAL NOTICES

Member Kelly made a motion, seconded by Member Schepp to approve the minutes of February 20, 2014, and it was carried unanimously.

Chairman McIntosh stated that he has confirmed that the legal notice had been published for the application on the agenda. Member Campbell made a motion, seconded by Member Kelly to waive the reading of the publication for the items on the agenda and it was carried unanimously.

**ROMANO REALTY, LLC, 5433 N. BURDICK STREET, FAYETTEVILLE, NY 13066
PUBLIC HEARING - SIGN VARIANCE- 5'X12' LED MESSAGE DISPLAY SIGN.**

Cristina Caceres from Kassis Superior Signs was at the meeting representing Romano Realty. Ms. Caceres said that Romano Realty would like to add an LED message center so that the customers in the parking lot different messages such as service deals or notifications that the work on the customer's vehicle is complete. This LED is kind of hidden by the Mercedes building, so you won't be able to see it unless you are on top of it. The sign is mainly for the customers who are walking in. There will be no flashing on the sign. They want to display simple messages concerning

Member Schepp asked how often the messages will be changed on the board. Ms. Caceres said she doesn't know how many messages per month but what they usually do is display one message for the week or month. This particular sign manufacturer can have the sign change every 15 minutes, meaning it can be programmed to change as frequently or infrequently as is desired. However, this sign will not be running 24 hours a day, 7 days a week.

1) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties?

- Ms. Caceres answered – No.

2) Whether the benefit sought by the Applicant can be achieved by some other feasible method?

- Ms. Caceres answered – No, but there could be other ways for Romano to display the messages it wants to display. However, Romano is looking for something new, something that is coming into the industry. Romano wants something that is easily displayed via the computer.

3) Whether the requested Variance is substantial?

- Ms. Caceres answered – No.

4) Whether the Variance will have an adverse effect on physical or environmental conditions?

- Ms. Caceres answered – Yes and No. Yes because you can see it and no because there will be no environmental impact.

5) Whether the alleged difficulty was self-created?

- Ms. Caceres answered – No. They are creating something to benefit the customers.

Member Kelly asked how bright the LED lights will be and how often will it be changed and what will be displayed on the sign. Ms. Caceres said that she thinks they will probably split the advertising between Romano Ford, Romano Mercedes and Romano Sprinter. Member Kelly then asked about outside advertising and Ms. Caceres said there will be no outside advertising, other than messages relating to Romano's business. Ms. Caceres said that she wasn't sure about the brightness of the sign. Member Kelly asked if drivers driving up the street would be able to see it from the road. Ms. Caceres said it will catch your eye when you are driving past it, but that the sign is 450' away from the street.

Member Schepp asked if the sign would be any brighter than the existing signage on the 2 Romano buildings. Ms. Caceres said she doesn't think so; it's going to be almost the same.

Member Schepp asked Ms. Caceres if she was the one to file the permit and if she knew why the Permit was denied. Ms. Caceres said yes, and she was denied because the LED sign is not permitted by the Code.

PUBLIC COMMENT

There were no comments from the Public so Chairman McIntosh closed the Public Hearing.

BOARD DISCUSSION

Member Schepp said that he had some concerns:

1. Town Law permits the Board 3 different types of action: Area Variance, Use Variance and the appellate review of the Planning Board. Thus, if someone feels that there was an incorrect decision made, they have the opportunity to come here and have that decision reviewed. Attorney Seiter said this Board does not review every decision of the Planning Board. Member Schepp said he meant the Planning and Development office. Attorney Seiter confirmed that everything goes through the Planning and Development office before it comes before the ZBA. Member Schepp

said his reading of the Code is that the ZBA has the power to grant an Area Variance, a Use Variance and to review the decisions of the Planning and Development Office. Attorney Seiter yes that is correct.

2. Member Schepp said his reading of the whole project is that the ZBA should be reviewing whether or not the Planning & Development's Office decision to deny this Permit was proper in the first instance. The Code specifically states that "Flashing, oscillating and revolving signs shall not be permitted unless necessary for public safety or welfare." The question before this Board should be whether or not an LED sign is a flashing, oscillating or revolving sign. Member Schepp stated he does not believe there is a question that the proposed sign is not an oscillating or revolving sign because it's going to be mounted on the wall and it's not moving. So the only question should whether the sign considered a flashing sign. The code does not define what flashing is. The code states any word not defined, these words shall be used in a customary fashion.
3. Member Schepp is not comfortable saying that this sign is a flashing sign simply because it is an LED display. The Code also allows illuminated signs, so he concerned whether this LED sign is substantially different enough from a traditional illuminated sign to call it a flashing sign.

Attorney Seiter said that the Code says with respect to illumination, that the illumination of signs shall be allowed by a steady light. Here, the light will not be steady if the messages change.

Member Schepp quoted the definition of "flash" from the dictionary. Member Schepp said that under the Code, a flashing, oscillating, or revolving sign shall not be prohibited unless for public safety and welfare. He does not believe the proposed sign fits that description of what is prohibited under the Code, and on that basis, the sign should be allowed.

Member Kelly stated that he agrees with Member Schepp in saying that this LED Display sign does not fall under the flashing sign part of the Code.

Attorney Seiter said that this is a very hard issue to regulate as far as the Codes Office is concerned because most signs that are LED have the capability to have scrolling messages and flashing lights. Without being able to limit it in some way, it's a hard issue to enforce from a Codes standpoint.

Member Schepp said that the Town had the ability in 2010 to ban LED signs when they were amending the Code regarding signs, but they chose not to do so. Other municipalities, such as the City of Syracuse and Dewitt, have put a moratorium on LED signs, but Manlius has not. To use the word "flashing" to describe this sign is a stretch.

Member Kelly asked if the Board could regulate the sign to 2 messages an hour. Member Schepp doesn't think that it is in the ZBA's power.

Chairman McIntosh asked whether the applicant would need to come back to the ZBA every time the face of the sign changes.

Attorney Seiter read the following from the code (155-25 I) regarding sign face changes.

In sum, all changes, such as new face, wording, colors and dimensions, shall be allowed upon issuance of a building permit from the Planning and Development office; minor changes such as new or additional professional employee names or telephone numbers do not require a permit.

Chairman McIntosh said that according to what Attorney Seiter just read, the applicant would have to come back to the ZBA every time they wanted to change the sign face. Attorney Seiter said yes.

Chairman McIntosh asked where the Board goes from here. Attorney Seiter said the Board could vote if they felt comfortable or could table a vote to the next month to allow for some additional time for the Board to consider this matter.

Code Officer Jones asked how the lights come on. Ms. Caceres said that all that is in the programming. You look at it one minutes and it changes the next. She also said that Tully has the same issue with their code. They only allow the Kinney drugstore to display the message sign every 15 minutes, no scrolling, no flashing and no oscillating and they turn it off at night.

Member Kelly made a motion, seconded by Member Campbell to table this application until the meeting of April 17, 2014 because the Board needs more time to think over the application and get more information.

The Board voted as follows:

Chairman McIntosh	aye
Member Kelly	aye
Member Campbell	aye
Member Schepp	nay

The motion was carried.

**CLEAR PATH AT SKYRIDGE LLC, 1223 SALT SPRINGS RD, CHITTENANGO, NY
13037 PUBLIC HEARING – ROAD FRONTAGE– CONSTRUCT A SINGLE FAMILY
CARETAKER HOUSE- REQUESTING 125'.05” OF ROAD FRONTAGE INSTEAD OF
THE REQUIRED 200’.**

Melinda Sorrentino, one of the co-founders of Clear Path for Veterans, appeared on behalf of Clear Path at Skyridge LLC (“Clear Path”). Clear Path is an outreach center for military veterans and their families, focusing on the re-integration process as they leave the military. Clear Path would like to add a single family residence on the property to provide housing for a property caretaker. This person would be responsible for maintenance and upkeep of the grounds.

1) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties?

- Ms. Sorrentino answered – No.

2) Whether the benefit sought by the Applicant can be achieved by some other feasible method?

- Ms. Sorrentino answered – No.

3) Whether the requested Variance is substantial?

- Ms. Sorrentino answered – Yes for the survival of the organization and No for the area, it's consistent with what is already there.

4) Whether the Variance will have an adverse effect on physical or environmental conditions?

- Ms. Sorrentino answered – No.

5) Whether the alleged difficulty was self-created?

- Ms. Sorrentino answered – No.

Member Schepp asked how big the lot is. Ms. Sorrentino said 60.2 acres she believes.

PUBLIC COMMENT

1. Jeff Bebernes 8827 Salt Springs Road – The main useable part of the property is 3 acres. There is a land use rule for a property located in a Restricted Agricultural district under 155-12 A(1) requiring a minimum road frontage of 200' and 1000' square feet for a septic system. There is clearly not 200' of frontage there. Mr. Bebernes' property is on a well that is approximately 90' from the property line and 85' from the road. The wells in the area have history of being fragile, so Mr. Bebernes is concerned that installing a septic system at Clear Path will disturb his well. Also, Mr. Bebernes is concerned there will be a change to the neighborhood; Clear Path can certainly find another location on the property for the residence other than the one proposed. He stated that he is not opposed to building the house, he is opposed to the fact that it is being built so close to the property line.
2. Phil Berrigan, President of the SkyRidge Homeowners Association, also raised some concerns about the project. Mr. Tuttle, the prior owner of the land at issue, embraced the neighborhood back in the day. He invited the neighbors to use the property, the walking trails, the swimming pool, etc. The neighbors have not been invited to the property since Clear Path took it over, nor has Mr. Berrigan ever been invited to a meeting about the project. Mr. Berrigan is not opposed to the project; he is opposed to how it is being handled. He also has an issue with the dogs barking all day. He also did not get a notice about this meeting tonight, he found out from the neighbors.
3. Sheryl Bebernes 8827 Salt Springs Road- Ms. Bebernes expressed concern that this project is to integrate a Veteran back into society. It is not keeping with the neighborhood, and it does impact the neighborhood.

Ms. Sorrentino explained a little about her background and that she is sorry to hear that Mr. Berrigan hasn't been to any of the meetings that were held. She explained that the fenced dog area is not used all the time, maybe 4-5 times a year. She also explained that Clear Path intended to drill its own well on the property with a trench, if necessary, to protect neighboring wells.

Attorney Seiter reminded the Board and the audience that the application in front of them

tonight is for Road Frontage. She appreciates all the comments and concerns, but all the Board should be concerned with is the Road Frontage variance and whether granting such a variance would be a detriment to the Town. As far as the location of any buildings or structures on the property, this Board cannot tell Clear Path where to put them unless a variance is required.

Mr. Bebernes reiterated that there is no control over where to put the house and the only reason we are here is for Road Frontage. He stated that the location of the house was still a concern for him and his wife because it is too close to the road and the property line. Clear Path has no regard for respecting space, and Mr. Bebernes is dead set against it. The proposal does not follow the land use rules.

Attorney Seiter explained that the purpose of minimum road frontage requirements was to ensure public safety and welfare for the Town. One of the Town's main concerns would be whether police or fire vehicles would have sufficient space to work if there were an emergency at the property. Here, that is not necessarily an issue because the property, which sits in both Onondaga and Madison Counties, has more than 200' of road frontage in total. Thus, if police or fire trucks were to be called to assist in the event of an emergency, they would not be limited to staying only on the Onondaga County side of the property.

Ms. Sorrentino stated that there were some limitations as to where the house could be constructed due to the topography of the land, but stated that Clear Path would do the best it could to push the house back from the road as far as possible.

BOARD DISCUSSION

Member Schepp pointed out that the only reason Clear Path needed a variance was because the parcel of land at issue sits in both Onondaga and Madison Counties. If the Board looked at the entire road frontage of the property, including the portion in Madison County, there was road frontage in excess of the 200' required by the Town's Code.

SEQR

Chairman McIntosh indicated that this is a Type II action and no further SEQR action is necessary.

CONDITIONAL APPROVAL OF VARIANCE

A summary of the Board's findings based on the discussion above is as follows: that no undesirable change in the character of the adjoining residential neighborhood or detriment to neighboring properties will be created by the variance because the lot, as a whole, has more than 200' of road frontage and only needs a variance because there is less than 200' of road frontage in Onondaga County; it is not substantial because the applicant is only requesting approximately a 75' variance; it will not have an adverse effect on environmental conditions in the neighborhood for the reasons stated above; and the variance is self-created, but the benefit to the applicant outweighs the detriment to the community.

Member Schepp made a motion to allow an area variance for the real property located at 1223 Salt Springs Road, Chittenango, New York for Road Frontage of 125'.05" instead of the required 200' for the purpose of constructing a Single Family Caretaker House. The

motion was seconded by Member Campbell.

Chairman McIntosh	aye
Member Kelly	aye
Member Campbell	aye
Member Schepp	aye

The motion was carried unanimously.

OTHER BUSINESS

ADJOURNMENT

With there being no other business, Member Kelly made a motion, seconded by Member Schepp, and carried unanimously, to end the meeting at 8:22pm.

Respectfully submitted,
Lisa Baleno, Secretary
Town of Manlius Zoning Board of Appeals