

## MINUTES OF THE ZONING BOARD June 7, 2013

Members Present: Dan O'Shea, Amy Bertini, Nancy Dalley and Bob Lieber. Al Socha is absent. Town Attorney Don Armstrong is present as is the applicant Dave Law of CNY Power Sports.

The **Public Hearing** opened at 7:30 PM. The purpose of the hearing is on the application of Dave Law for a use and area variance for new billboards on existing frames. The location is Route 11, just south of the Currie farm. Dan O'Shea asked for public comment and there was none. Dan O'Shea inquired as to how much land will be cleared. Dave Law stated that the general area will be cleared as it is overgrown. His plan is to clear 15-20 feet back, clearing out the overgrowth and planting evergreens and shrubs 4-5 ft. high, to serve as a backdrop. The area totals 1.4 acres. He plans to clean up the area and maintain it. Bob Lieber asked how much clearing would occur in the front. Dave Law states he would remove trees surrounding the billboards and will take it back at least 15 ft, so as to improve the appearance of the billboards. Bob Lieber also asked for specifics on the billboards use. Mr. Law proposes using the (3) boards to display advertising for CNY Power Sports. Dan O'Shea stated the Board has to establish there is a hardship and would want a condition there would be no lighting. The applicant stated he does not intend to light the boards. Dan O'Shea said the Board has enough information to close the hearing. Motion made by Amy Bertini, seconded by Nancy Dalley, to close the hearing at 7:45PM, all in favor, the motion carried.

The regular meeting began at 7:45 PM after the close of the Public Hearing. Dan O'Shea stated that County Planning has reviewed the application and made recommendations reciting the applicable law, that being the applicant is requesting a use variance, area variance and site plan review to install new billboards on existing frames. The use of the property for billboards lost its status as a pre-existing non-conforming use as the billboards have not been in use for a period of more than one year. The Town does not permit general advertising signs. Further, an area variance is necessary as the Zoning Ordinance only permits one sign per site with a maximum sign area of 20 sq. feet and the applicant is requesting a total of (3) signs each with a sign area of 300 sq. ft. In order for a variance to be granted, the ZBA must weigh the benefit of the increased number and area of signage as relates to the health, safety and welfare of the neighborhood. The recommendation of County Planning is as follows: The board must establish that unnecessary hardship exists; that there be no lighting of the billboards; that the board weigh the benefit to the applicant vs. the health, safety and welfare of the community; and comply with SEQR requirements.

The Board then began its environmental impact assessment addressing each item to determine if the action would result in any adverse effects. The Board determined there was not likely to be any controversy related to potential adverse environmental impacts and found only limited impact on the aesthetic of the community or neighborhood. The Board made the determination, based on the information and analysis provided and discussed, that the proposed application will not result in any significant adverse environmental impacts. Motion to make a negative declaration made by Nancy Dalley, seconded by Bob Lieber, all in favor, the motion carried, and Daniel O'Shea signed as Chairman on behalf of the ZBA as lead agency.

The Board then proceeded to discuss the criteria for the use variance. The applicant has met the criteria for an area variance but not for use. The Board had a hand-out from a training session which was referred to. Dan O'Shea stated that the applicant cannot realize a return on his investment without the variance. Amy Bertini stated that the use for advertising had lost its "grandfathering". The Board then made the following findings in reviewing the criteria for the grant of a use variance:

Whereas, the applicant cannot realize a reasonable return from his investment without the use as a billboard; and Whereas the use is unique as there are no other dilapidated billboards and the benefit sought cannot be achieved by some other method other than the area variance and is not substantial. The Board then discussed the criteria for determining the character of a neighborhood. Dan O'Shea does not believe it affects the essential character of the neighborhood and stated there have been no complaints from neighbors. Whereas, the proposed variance will not have an adverse effect or impact on the environmental conditions of the neighborhood. The Board then considered whether the difficulty was self-created. Amy Bertini said it was because the applicant purchased the property for that use. Dan O'Shea stated that Mr. Law had not created the difficulty however, and Nancy Dalley said the hardship is that is a single use area. Don Armstrong stated that whoever purchased the land should expect to realize some return and that the hardship is that the area cannot be used for anything other than billboard use. The area is zoned Agricultural, however the land is too wet for that use. The Board then found that the alleged difficulty was not self-created.

Dan O'Shea then discussed that the criteria for an unnecessary hardship has been met. He stated there must be criteria met by the applicant to include a condition of no lighting, and that the area be cleared back at least 10 ft. with trees planted to improve the appearance. Based on that, the Board added criteria to its initial findings: Whereas, the grant of the use variance is conditioned upon no lighting, that evergreens must be planted at a minimum of (4) feet high approximately 10-15 feet behind the signs, and that the area be maintained by the applicant. **Motion to grant the use variance** based on a fact finding of the criteria and conditions and after completing SEQR review, made by Bob Lieber, seconded by Nancy Dalley, Amy Bertini is opposed, the motion carries.

The Board then proceeded to review the area variance and noted the sign is significantly larger than the ordinance allows, consisting of (3) signs 300 sq. feet each. The ordinance only allows 20 sq. feet. The Board must address two issues; the size and the number of signs. Each sign is 12 x 25 feet. The Board then discussed the criteria for the area variance addressing the following (5) factors: 1. No undesirable change to the character of the neighborhood as the appearance will be improved; 2. the benefit sought cannot be achieved by another method other than the area variance as the applicant is only using what is already there; 3. Is the variance substantial: the signs are substantial but the variance is not, as the applicant is not changing from what is already existing in the framework of the boards; 4. Adverse effect on the conditions of the neighborhood, yes it will have an impact but not significantly so; and 5. Was the condition self-created, no as the billboards frames have been there 50 plus years. Don Armstrong added that even if the condition is self-created, it does not preclude the granting of a variance. Amy Bertini gave her opinion that the variance is way too much but since the use variance has been given, there is no way to mitigate the use by making the signs smaller. Bob Lieber stated in his opinion the use should go from (3) signs to (2) signs as it would be less substantial. He would like to eliminate one of the

side by sides which would still allow a view from the north and south. The applicant states that he wants use of all (3) signs and feels there is sufficient road frontage and that the signs are small in proportion to the size of the property. Nancy Dalley stated she is also leaning towards the use of (2) signs rather than (3). Don Armstrong said that under Section 832 (b), the Board must consider the five criteria but it is not necessary to find that the application complies with each criteria. Dan O'Shea then called for a motion on the area variance. Motion made by Bob Lieber, seconded by Nancy Dalley to approve the area variance for **two signs, not three**, based on the rationale that this is a significant area variance and the signs are much larger than what the ordinance allows, Amy Bertini is opposed, the motion carried.

Dan O'Shea stated that the applicant will need to apply to the Planning Board for site plan review. Motion to approve the minutes of the meeting of 5-2-13 made by Amy Bertini, seconded by Bob Lieber, all in favor, the motion carried. Motion to adjourn at 9:35 PM made by Bob Lieber, seconded by Nancy Dalley, all in favor the motion adjourned with the note that there will be no July meeting.

Respectfully submitted,

Mary Anne McCloskey, Secretary