

**Village of Central Square Planning Board Meeting  
Tuesday, July 20, 2010**

The meeting was called to order by Stephen Williams at 7:00 pm.

**Attendance:** Mayor Murphy, Stephen Williams, Dee Sperling, Burt Alm, Maryellen Commisso, Mark Bombardo, Donald ad Chad Penoyer (applicant) John R. Langey ( Mr.Penoyers Lawyer)

Pledge of Allegiance: Was led by Chairperson Stephen Williams

**Discussion of Donald Penoyers request for variance of sign.**

**Steve Williams:** Mark, Please explain to us our first objective this evening.

**Mark Bombardo:** There is a request for interpretation and request of variance to allow Mr. Penoyer to continue to use an electric sign as a bill board, as defined by the Village Code.

They currently have a variance for the electronic sign from ZBA in 2007.

The question is: If they have displayed other businesses on the sign and is that allowed in this zoning district? Should a variance be granted? For example: businesses other than Dignity Plus's address or name on the company. I would like to stress, the question is not whether to allow the lighted sign, but whether all the content of the sign itself.

**John Langey:** I am a land and use zoning attorney. I represent 12 other municipalities and Don came to see me. This pertains to the sign that was authorized in 2007. The issue at that time was approved in 2007. At that time, there were discussions about the content of the sign. The content of the sign, allowed the lighted sign and there were no limitations.

There were relations to off site businesses. I feel Mark Bombardo sent Don a letter to keep safe. We are here to make a recommendation for an interpretation or variance to the ZBA.

First, the sign has always contained a message. Second, anytime a government attempts to exercise control over the content of the messaging, locally in Onondaga County they were sued by the advertising company for the billboard. For a moment let's forget about the ZBA. The billboard law is unconstitutional in my opinion. I feel your ordinance is not legal. I feel there is a constitutional infirmity to the law that is on the books.

It is impermissible to govern the message content of the sign. There is no arching state interest there. This is a First Amendment issue. We should consider this before we go down the road to far. I feel Don is in the same situation. I feel the law is unconstitutional. Third, the third part is they are asking for a variance for the off site messaging to occur. (John reviewed a poster of several Central Square businesses, John asked Chad Penoyer to point out the local businesses.) Please note the advertising on gas pumps. Mobil has advertising in the windows. Dunkin Donuts has advertising in the windows. Adams advertises different auto parts, and there is a clutter of signs on North Main Street. Verizon has grand opening signs; there is a trailer with advertising in front of Bob Collins. The Village of Central Square's sign is advertising off site items. I believe there is no harm to the community. (Chad Penoyer pointed out that the sign above the diner is in terrible shape) I am solely talking about the content of the sign. There is nothing profane about the sign. There is off site advertisement.

**Steve Williams:** The sign mentions advertising a lot. I would like to add Section 250-18 of the Village Code to the minutes, the definition of the billboard. I understand the village enforcer is concerned. The billboard is a type of sign. Not all signs are a billboard.

**John Langey:** Zoning laws take away personal rights.

**Steve Williams:** Are the laws legal?

**John Langey:** Plenty of laws are passed illegal. I have made laws that are illegal. Dee Sperling read from the application in exhibit one.

**Dee Sperling:** Reviewing the variance that was sent and my interpretation of the minutes are they following the variance request and are they making money advertising on the sign?

**John Langey:** Are they making money on that? Making money is not your concern.

**Mark Bombardo:** A billboard is a type of sign.

**Burt Alm:** What is a billboard?

**John Langey:** It is any sign.

**Burt Alm:** A billboard is something that offers something other than on site.

**Mark Bombardo:** Any sign does this.

**Dee Sperling:** The variance was granted to enhance the awareness of his business and community events.

**John Langey:** You are passing judgment.

**Dee Sperling:** No I am discussing this. I want them to...

**Steve Williams:** Clarification, we are supposed to make a recommendation to the ZBA of our opinion of the variance request and interpretation of the definition of 250-18 Billboard?

**John Langey:** I think Mark and I are in the same position. The sign is prohibited inside the message of it. There was a complaint and Mark had to do what he had to do because it is a billboard. He says it is similar to the Onondaga County one. The Mayor is here and will surely make a recommendation to change the law.

(John Langey was jovial)

**Steve Williams:** I asked was this comment about messages in the letter or was it a conversation with John Laney? John keeps talking about messages.

**Mark Bombardo:** The content of the sign kicked it into the billboard during a casual discussion as a result of receiving the letter. We need to look at the definition of a billboard, content of language, and advertising.

**John Langey:** The courts use the phrase commercial speech.

**Burt Alm:** Commercial speech is different than public service announcements.

**John Langey:** Public service announcements are also not allowed.

John read from the law that was applied and he would like it read the Local Law.

**Mark Bombardo:** What if a town had different zoning classifications that would allow billboards in some districts?

**John Langey:** They tried and it struck it down.

**Burt Alm:** If there is anything that is clear, the ZBA has to consider the case and would be well advised to get legal advice based on that case. I would like a clarification on a billboard.

**Dee Sperling:** Is there a distinction between commercial speak and public service announcements?

**Burt Alm:** John said the public service announcements are illegal. What about political signs?

**John Langey:** Political signs are protected speech.

**Burt Alm:** Can Burt pay Don to say the mayor eats radishes?

**John Langey:** That is legal.

**John Langey:** He understands that we are not a court of law.

**Burt Alm:** I understand that Mark had to interpret the law and it does make sense that he did that. He does not have to answer for that, and he wants to make sure they understand the aspect.

**Mark Bombardo:** The reason why it came to the Planning Board is because the Village Law has this in their ordinance. As the planners, you should look at it like a planning issue:

**A. Is it a Billboard?**

**B. If it is a billboard is it permitted in this district?**

**C. In lieu of that does it fit into the area comprehensive plan?**

Is this a bad thing; is it a detriment for planning? It will have the same sign, and lights and location.

All that is changing for example if I say something like Shop at Joe's, is that bad? Along with all this other information absorbing this evening.

**John Langey:** We did a full analysis of the variance.

**Burt Alm:** What I did not anticipate was the content as being the issue. I assumed the problem would be traffic. The first time I saw the sign it was distracting. Now after coming through the intersection it is not. "Distracting" is subjective. The more you are used to it, the distraction is less. The locals may not be distracted. The non locals may find it as a distraction. Looking around at other examples: Liverpool and Skaneateles, no illuminated moving signs.

**John Langey:** Confirmed Liverpool, Skaneateles, and Cazenovia.

**Burt Alm:** Looking into the original request, if I was on the board at the time, I would have interpreted that there would have been some community events information. Let's do this for this guy. The question comes later: Is he promoting other businesses on site? I can see looking strictly as a definition: I think it is a billboard.

**Maryellen Commisso:** Do you thin so, I think it is a billboard. Was that the reason for the approval?

**John Langey:** He might get paid for some of the information but that is irrelevant.

**Burt Alm:** We can not read those guys minds. I do not know what to recommend, we have to be careful, look at the court rulings, the ZBA should look at definitions of the billboards. I recommend the ZBA find out the definition of commercial speak.

**John Langey:** There are court rulings for the definition.

**Don Penoyer:** We are supporting the Village by helping the business survive in the community.

**Steve Williams:** When is the ZBA meeting on this application?

**Mark Bombardo:** August 3<sup>rd</sup> at 7:00 pm is the ZBA Meeting.

**Mudd Murphy:** Can it be changed?

**Mark Bombardo:** Their second choice is August 17<sup>th</sup> 2010. The 17<sup>th</sup> would work better.

**John Langey:** In August at 7:00pm.

**Mudd Murphy:** Pass this on to Kevin Carricola

**Steve Williams:** Do we need to send it to the lawyer before it goes t the ZBA?

**Mark Bombardo:** I will send it to the Village attorney and I will include my thoughts to the ZBA and copy this fully.

We do not have to convene again until August 17<sup>th</sup>. We are done. New York State has mandated five criterias for the ZBA to determine if a variance will be granted.. You are all looking at it as a planning aspect.

**Burt Alm:** Oh, you said earlier we need to react to the five areas.

**John Langey:** As a planning board in the big picture stuff, is that good or bad.

**Steve Williams:** The ZBA told us once before that it was a good idea.

**Mark Bombardo:** We do not know what they intended, they met the criteria to allow the variance.

**Burt Alm:** So it is up to them to be more specific.

**Mark Bombardo:** So maybe it was their criteria. An applicant can disagree with his interpretation of the ordinance and enforcement.

**Steve Williams:** Based on our reading of 250 – 18 that is a billboard, because the sign is displaying information about businesses that are not on site.

**Mark Bombardo:** Regardless of the area of the village, billboards are not permitted in any zone of the village.

**Steve Williams:** However, the caveat is that they were allowed a variance to have an electronic messaging sign there.

**Maryellen Commisso:** I agree with Steve Williams interpretation.

The Planning board then voted on is that a billboard? Unanimous the planning board views this as a billboard.

**Dee Sperling:** I disagree because the ZBA was presented with the emphasis on the lighted sign, because it was presented as a lighted sign and that is what my interpretation is.

**Burt Alm:** The problem is the ZBA variance did not clarify allowed messages on the billboard and did not include a definition of public service announcements and commercial speak messages.

**Steve Williams:** Because the Planning Board views that sign as a bill board the question is: Is it allowed in that area of the village. Let's have a vote on it.

**Steve Williams:** Yes

**Maryellen Commisso:** Yes

**Burt Alm:** Yes

**Dee Sperling:** NO

**Steve Williams:** Our third objective is whether or not we should recommend a variance.

**Mark Bombardo:** What if they were concise in their approval and more specific with conditions, if they came back and asked to approve this?

**John Langey:** Would you be okay with the ZBA?

**Steve Williams:** So are you saying that we are setting a precedent that would allow another business to grant a variance?

**Mark Bombardo:** No each case is individual, they have separate evidence, conditions and we are not setting a precedent.

**Dee Sperling:** I am concerned that it is a precedent.

**Burt Alm:** If I was a ZBA member now, I would probably say yes. I would like to control the fade in and fade out of the information. I do not believe there is a potential for an accident. I would like to tone the sign down to have it not as glitzy. Toning it down would take away the Las Vegas or Erie Blvd look and feel.

**John Langey:** This has just caused financial hardship on my client.

**Dee Sperling:** I recommend that they grant it with stipulation that it stays with the original variance request submitted in 2007. Like for example advertise information, disaster, community jobs, and advertising their own business like it was in the original request of 2007.

**Dee Sperling:** I also would like noted the absence of specific mention to displaying information about their commercial business.

**Maryellen Commisso:** I recommend allowing the sign with the stipulations. I feel it is a good community board and the village does not have one like this.

**Mark Bombardo:** Would you be in favor of a variance?

**Maryellen Commisso:** Yes it also appears other businesses are clutter.

**Steve Williams:** This does not mean that we are allowing another business to automatically obtain a variance does it?

**Mark Bombardo:** Yes

**Steve Williams:** What if someone else installed a digital sign in an exact dimension as we are doing considering this application.

**Mark Bombardo:** I would cite them if the digital sign was not permitted by the Village law in that zoning district and if it was a billboard they would also be cited.

**Steve Williams:** Could someone add a billboard to an existing sign?

**Mark Bombardo:** No they could not.

**John Langey:** For example, sheds, would this guy have to grant a variance to each one, no, and that is limited to each specific application.

**Burt Alm:** I have a question... Is this variance with the business, assuming they would outgrow this space?

**Mark Bombardo:** It would go with the property.

**Burt Alm:** Would the sign come down if they leave the property?

**Mark Bombardo:** No we can not do that.

**Burt Alm:** Can the new owner of the property be required to obtain a variance?

**Dee Sperling:** And should the sign be limited for future technology?

**Maryellen Commisso:** If a new business went in there, would they need a new variance?

**Mark Bombardo:** No, a variance is based on the property. They would have to follow the same criteria. If the sign was taken down for over a year and the village substantially changes the ordinance, it would be considered abandoned and a new

variance would need to be obtained. All these three things would have to happen for a new variance.

**Steve Williams:** I would like us to approve the variance with guide lines.

**Burt Alm:** Steve, can you put the notes together and copy in Mark Bombardo and John Langey?

**Steve Williams:** I call for a vote to recommend the approval of the variance requested, with the following stipulations:

- 1. The ZBA will consider the definition of Commercial Speech.**
- 2. The ZBA will consider the definition of Public Service Announcements.**
- 3. The ZBA will consider the legal exhibits presented to us that discuss previous case laws, specifically which have pertained to Onondaga County. The exhibits are attached to our Planning Board Packets.**
- 4. The ZBA will more clearly define their intentions so that the Planning Board may make an informed decision of requirements.**
- 5. The ZBA will review the definition of "Billboards".**
- 6. The ZBA will consider the applicants request to have the meeting August 17, 2010.**

**Steve Williams:** I call the vote to recommend the variance as requested. You will vote yes to affirm the request for the variance and vote no will suggests to the ZBA that they deny the variance request.

**Vote Results;**

**Steve Williams: Yes**

**Burt Alm: Yes**

**Maryellen Commisso: Yes**

**Dee Sperling: Abstains**

**0 Votes for no**

The meeting was adjourned for a break at 8:47pm

The meeting reconvened at 8:50 pm.

**Request for Approval Of Minutes for The Planning Board Meeting for May 13, 2010 and The Public Hearing Meeting for May 13, 2010 regarding the Proposed Site for Express Rentals Inc.**

Dee Sperling made a motion to approve the minutes. Burt Alm seconded the motion, the board was polled and the motion passed unanimously.

Steve William reviewed the minutes from the public hearing of the Tattoo Ordinance. The board reviewed the minutes and passed with Kevin Carricolas notes.

**Mudd Murphy:** This is out of our hands at this point. I will have to get with Marie Loran to get a copy of the ordinance to us.

Steve Williams reviewed the proposal for pawn brokers and seconded hand and consignment shop ordinances.

The Planning Board requests that the village board extends the moratorium for the pawn brokers, second hand and consignment shop ordinance.

The next meeting is scheduled for August 19, 2010.

Steve Williams made a motion to adjourn the meeting. Burt Alm seconded the motion. The board was polled and the motion passed unanimously.

The meeting adjourned at 9:20pm.

Respectfully Submitted by:  
Betsy Stedge  
Village of Central Square Secretary