

## Village of Central Square ZBA Meeting

November 16, 2010

**Attendance:** Chairman Mike Sperling, Board member Tyler Gervaise, Board member Bob Loran, Board member Deborah Worlock, Village Attorney Kevin Caraccioli, Attorney John Langey, Donald Penoyer, Chad Penoyer, Brian Gristwood of Central Square Farm & Lawn (a local business), Secretary Brandy Hickman, and Court Reporter Mary Agnes Drury of Action Reporting, 211 West Jefferson Street, Syracuse, NY 13202.

Chairman Mike Sperling calls the public meeting to order at 7:06 p.m.

Mike Sperling leads the Pledge of Allegiance.

Mike Sperling asks if there are any public questions or concerns.

Brian Gristwood a local business owner comments in support of the sign and to question why the Village does not want tattoo parlors, pawn shops or electronic signs. Mike Sperling says, in response, that it's not this board's duty to make the ordinances. Tyler Gervaise says, in response to Mr. Gristwood's question, that he appreciates his input and question but that he will have to take it up with Village Planning Board.

Mike Sperling then asks if there are any other questions or concerns. No one speaks up, so he closes the public comment portion of the meeting.

### **OLD Business:**

Mike Sperling makes a motion to open the regular board meeting at 7:09 p.m. Tyler Gervaise seconds the motion.

Kevin Caraccioli says the existing matter at hand is Penoyer interpretation/decision of this Board based on the information provided by applicant Donald Penoyer. At the August 2010 meeting & September 2010 workshop the ZBA directed him to write a *proposed* Resolution based on individual opinions of the ZBA members.

Kevin then read the *proposed* Resolution into public record. Attached please find said *proposed* Resolution (labeled as **Exhibit A**).

Kevin Caraccioli then suggests that Mike Sperling open the discussion to his Board to see if any there are any edits or additions to the *proposed* Resolution. All present Board members agree that there are no additions to be made.

John Langey brings up the fact that the letter from Code Enforcement Officer, Mark Bombardo to Donald Penoyer advises them to get an **AREA** variance (rather than a USAGE variance) to determine content of the sign. Mr. Langey would prefer to have the Board modify the allowed content rather than have to go back and redo the whole Variance application process because Area variance law is different than a Usage variance.

Tyler Gervaise reads from the 5/26/10 from CEO, Mark Bombardo's letter to Donald Penoyer saying that it just says variance and does not specify use variance or area variance.

John Langey states that the information submitted to the Board, and the discussion thereof, in this matter has been for a Usage variance not an Area variance. Mr. Langey wants to make sure the Board is made aware of this issue.

Deborah Worlock points out that the original 2007 application was for an Area variance not for a Usage variance.

Modification for the Resolution: change Usage variance to AREA variance. This Modification is on the RECORD

Kevin Caraccioli suggests that the Board decide on an **AREA** variance. It will need to be referred to Oswego County, but it should only take one week to get a recommendation. The County has a new Planning Board, but we should only need County Planning Staff and not the actual County Planning Board. He also advises that the Zoning Board can't make a final determination until we hear back from the County. Kevin will submit the entire record of this

matter to County. Kevin warns the Board that they (the County Planning Staff/Board) may decide not to take any action at all. Tyler Gervaise asks Kevin Caraccioli "If they are ONLY recommendations, do we have to follow their position on the matter or can we still make our own determination?". Kevin says that the ZBA can deny any of the recommendations. Kevin Caraccioli says for the Board to pick a date one month from now to set another hearing so that the County has time to make their recommendation.

Kevin Caraccioli asks Donald Penoyer and his attorney John Langey if they had any further evidence or information to submit to the Board. John Langey says that he will call Kevin tomorrow morning to let him know if he will submit anything further.

Since this is going to be a Public hearing we need to make sure we have a Legal Notice published at least 10 calendar days in advance of the hearing date.

Discussion between the Board members and the 2 attorneys takes place, and December 7, 2010 is the date to be set for the Public hearing.

Mike Sperling asks if there is anything further to add regarding this matter. No one has anything to add.

Tyler Gervaise makes motion to vote on Resolution drafted and read into record by Kevin Caraccioli in matter of Donald Penoyer & the Dignity Plus sign. Deborah Worlock seconds the motion. Board polled, all in favor. Board member, Jack Monica, is absent tonight.

Kevin Caraccioli also adds that Village law states that this Resolution be filed with the Village Clerk. He advises that the Board should wait to file the Resolution pending the recommendation of the County Planning Board. Kevin will submit for Chairman, Mike Sperling to sign.

Tyler Gervaise makes a motion to adjourn the meeting at 7:46 p.m. Mike Sperling seconds the motion.

\*\*\*\* On November 29, 2010 Village Attorney Kevin Caraccioli received a letter dated November 24, 2010 from, Attorney John Langey regarding an additional submission in the matter of the Penoyer area variance. The additional submission is a letter from, Fay L. Christensen, a local realtor. The letter is in favor of Mr. Penoyer's sign. Attached please find said letters (labeled as **Exhibit B**).

Respectfully submitted,

Brandy Warren-Hickman, Secretary

# EXHIBIT A

At a Regular Meeting of the Zoning Board of Appeals held in and for the Village of Central Square on the 16th day of November, 2010, at 7:00 P.M. at the Village Hall.

STATE OF NEW YORK

COUNTY OF OSWEGO

VILLAGE OF CENTRAL SQUARE ZONING BOARD OF APPEALS

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In the Matter of an Application by

DONALD PENOYER/DIGNITY PLUS, INC.

For An Interpretation of the Village Code and

An Application for a Variance to Continue Use of Signage

Located at 673-675 South Main Street,

Tax Map No. 276.10-01-05

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## RESOLUTION

**WHEREAS**, Donald Penoyer and Dignity Plus, Inc. have applied to the Village Zoning Board of Appeals (ZBA) for an interpretation of the Village of Central Square Code Enforcement Officer's (CEO) decision declaring the signage located at 673-675 South Main Street in the Village of Central Square constituted a billboard and is otherwise not permitted pursuant to Article 250-18 (E)(8), and in the alternative have applied for a variance to continue the use of the sign at its present location; and

**WHEREAS**, the matter having been referred to the Village Planning Board on or about July 20, 2010, at which time a public hearing was held and recommendations were made by the Planning Board recommending approval of an area variance; and

**WHEREAS**, the matter having come on to be heard before the ZBA on or about August 30, 2010, at which time a public hearing was held at which the applicant submitted arguments in support of the continued use of the sign and, in the alternative, justification for the issuance of an area variance for the continued use of the sign; and

**WHEREAS**, the applicant argued that the CEO's interpretation of the code violation was tantamount to a misapplication of the constitutional protections afforded one under the First Amendment to the United States Constitution, claiming a violation of one's freedom of speech by limiting the content of the speech used by the applicant when promoting matters on the signage; and

**WHEREAS**, the matters before the ZBA to address are twofold: first, whether the CEO's interpretation of the Village Code was correct; and second, whether the applicant is entitled to a variance for the continued use of the sign in its current location; and

**WHEREAS**, a referral to the County of Oswego Planning Department pursuant to General Municipal Law Section 239-l&m is not required for an interpretation of the CEO's decision; and

**WHEREAS**, the interpretation of the Village Code is considered a Type II Action under the New York State Environmental Quality Review Act (SEQRA) and therefore no further action is needed pursuant to SEQRA; and

**NOW, THEREFORE, THIS MATTER HAVING COME BEFORE THE ZONING BOARD OF APPEALS FOR A DETERMINATION HEREBY CONSIDERS THE FOLLOWING:**

#### **DISCUSSION**

The CEO is charged with making determinations on matters that come before him and to interpret the application of the Village Code to properties located within the Village of Central Square. The CEO determined that the applicant's sign is a billboard within the definitions contained in the Village Code which states, in pertinent part:

Billboard – any sign which directs attention to a business, commodity, service, entertainment, or attraction, sold, offered, or existing elsewhere than upon the same lot where such sign is displayed, or only incidentally upon such lot.

Sign – any material, structure or device, or part thereof, composed of lettered or pictorial matter which is located out-of doors, or on the exterior of any building displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any person or business or cause when such is placed in general view of the public. The word "sign" includes the word "billboard," but does not include the flag, pennant or insignia of any municipal unit, or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. Furthermore Article 250-18(E)(8) states clearly "all new billboards are prohibited".

Accordingly, the CEO's interpretation of the Village Code is correct. The applicant, however, argues that the Village Code in and of itself violates the United States and New York State Constitution as it unfairly regulates the content of signs and therefore violates the First Amendment protections

afforded speech. The applicant further argues that the Village Code violates the protections afforded commercial speech and cites many federal cases, including U.S. Supreme Court decisions addressing the regulation of commercial speech. With due respect to the applicant, those matters and this Board's consideration of such arguments is misplaced at this time. The Zoning Board of Appeals for the Village of Central Square is limited in its scope and jurisdiction. It is charged with interpreting the Village Code. Matters involving Federal and State Constitutional Law are left to the sound discretion and jurisdiction of federal and state courts of competent jurisdiction. Whether the Village Code as it is currently written violates these laws is a matter outside the jurisdiction of the Zoning Board of Appeals. Accordingly, the ZBA respectfully declines to address the applicant's constitutional law arguments.

Alternatively, the applicant's request for an area variance is well within the jurisdiction of the ZBA to consider and determine. As such, it is noted that this body previously granted permission for the erection of an electronic sign on the applicant's property. To the extent that this latest request constitutes a *de novo* review of this matter, the ZBA will entertain the application presently before it and refer the matter to the County of Oswego Planning Department for its review pursuant to General Municipal Law §239-l&m. Upon conclusion of the County's review, the ZBA will consider the application and make determinations in accordance with the Village Code.

**NOW, THEREFORE**, upon motion made by board member Tyler Gervaise and seconded by board member Deborah Worlock it is and shall hereby be

**RESOLVED**, that the interpretation of the Village CEO, that the applicant's sign is a billboard within the meaning of Village Code Article 250-18 (E)(8) is correct and hereby affirmed; and it is further

**RESOLVED**, that the ZBA does not rule on the constitutionality of the Village Code and its application to the Applicant's sign, that issue being outside the jurisdiction of the ZBA and a matter more appropriately before a court of competent jurisdiction to entertain, and it is further

**RESOLVED**, that the applicant's alternative request for consideration of an area variance for the continued use of the sign at its present location is hereby granted, with the matter being referred to the County of Oswego Planning Department pursuant to GML §239-l&m inasmuch as the application is for an area variance and the variance application is now set down for further consideration on December 7, 2010, at 7:00 p.m.

The motion having been placed before the Zoning Board of Appeals for a vote was adopted by a vote of 4 in favor, 0 opposed, 1 absent in accordance with the following roll call vote.

**I HEREBY CERTIFY** the above to be a full, true and correct copy of a Resolution duly adopted by the Zoning Board of Appeals of the Village of Central Square, on the date mentioned, five members being present and all concurring.

Mike Sperling,Chairman	[AYE]	[NAY]	[ABSENT]
Robert Loran	[AYE]	[NAY]	[ABSENT]
Jacques Monica	[AYE]	[NAY]	[ABSENT]
Tyler Gervaise	[AYE]	[NAY]	[ABSENT]
Deborah Worlock	[AYE]	[NAY]	[ABSENT]

Dated: November \_\_\_\_, 2010

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MIKE SPERLING, CHAIRMAN

VILLAGE OF CENTRAL SQUARE

ZONING BOARD OF APPEALS