

May 19, 2005
Zoning Board of Appeals Minutes
Oswego Town Hall

Chairman: Greg Mills
Board Members: Greg Auleta, Robert Baker,
Brad Livesey, Timothy Anderson
Attorney to the Board: Kevin Caraccioli

Call To Order

At approximately 7:00 PM, Greg Mills, Chairman of the Zoning Board of Appeals called the meeting to Order.

Attendance

Those in attendance were:
Greg Mills, Chairman
Robert Baker, Member
Brad Livesey, Member
Timothy Anderson, Member
Greg Auleta, Member
Kevin Caraccioli, Legal Advisor
Marjorie Best, Secretary

Acceptance of Agenda:

Greg Auleta made a motion to accept the Agenda. Brad Livesey seconded the Motion. All Ayes. Motion carried.

Approval of April 28, 2005 Minutes:

Greg Mills stated that on Page 3, 6th paragraph down, that paragraph should be removed. Also, the next paragraph, the last part of the last sentence should be removed. Greg Auleta made a Motion that the April 28, 2005 Minutes be approved with corrections. Tim Anderson seconded the Motion. All ayes. Motion carried.

New Business:

Application #2005-05 - First United Methodist Church - Use Variance/Sign Permit:

At approximately 7:10 PM, Greg Mills opened the Public Hearing on Application #2005-05. He asked David Dice to state his name, address, and the purpose of the hearing. David Dice stated his name, the address of the First United Methodist Church as 7111 State Rte 104, Town of Oswego, New York. As to the purpose of the application, Dave stated Harold Leal, who was a member of their congregation passed away over a year ago. His wife and family wanted to make a memorial gift of a new sign for the Church to replace the existing sign. Greg Mills said on the application, the existing sign is 24 square feet, and the Church wants to replace it with a 32 square foot sign. Two concerns would be the size of the sign and the lighting. Sometimes an annoyance could be created, as to it being too bright, and shine in a neighbor's window. Dave stated the lighting would be the same as the existing sign, and it would be in the confines of the flower bed. Dave was asked if the height of the flower bed would be changed, and he said it could be. He was also asked if the sign would be closer to the road, and he said it would not. He said the base of the sign is 9-1/2 feet.

Greg Auleta asked if the Northern post will remain as it is; the expansion would be away from

the road. If that remains as it is, and add the square footage by going South; thereby what they are doing is not projecting more of the sign closest to the road. Greg Mills wanted to clarify that the sign is already 24 feet from the road, and Dave Dice stated that is correct. He said he took the measurement from the white line at the side of the road, which is 4 feet. Greg Auleta referred to Article IV, Section B-3, g, which specifically addresses signage in relation to home occupation. It does not mention signage for a church or place of worship. Dave said the existing sign came from a church in the City of Oswego in 1970.

Kevin Caraccioli said we need a provision in the Ordinance that is clear for signs. We need a variance, but there is no criteria by which to measure. Greg Auleta asked if it a variance is what we are looking for, or are we looking for a permit. Greg Mills stated a Use Variance is requested. Greg Auleta said he can imagine a motion providing a permit, and creating some restrictions. The CEO could take some sort of action.

Greg Mills asked if there were any more questions of the applicant. He also asked if there were any members of the public who would like to step forward and comment, which no one did.

Greg Auleta moved on Application #2005-05, First United Methodist Church, that we grant the replacement of the existing sign under the following provisions: (1) The sign shall not exceed 32 square feet; (2) That the footprint of the sign shall not extend further North than the existing footprint; (3) That the illumination for the sign shall not exceed the existing illumination; and (4) That the sign shall be constructed in accordance with the provided drawing.

Dave Dice asked if they decided to lower the flower bed, would it be a problem. Greg Mills stated it would not be a problem, it would lower the sign. Brad Livesey seconded the Motion. All Ayes. Motion carried.

Greg Auleta made a motion that in the interpretation of the ZBA, that the CEO must request a Use Variance according to Article IV, Section B-3, as written, is not required. Brad Livesey seconded the Motion. All ayes. Motion carried.

Old Business:

Application #2005-04 - Donald J. Smith - Use Variance and New Business Permit:

At approximately 7:25 PM, Greg Mills opened the meeting on Application #2005-04. On April 28th, this application was tabled, and he asked Mr. Smith to again state his name, address and the purpose of the application. Donald Smith stated his name, and his address as 7185 State Rte 104, Oswego New York. He submitted an application to run a repair shop in his existing garage.

Greg Mills said for the public present, as well as the Board, to bring the matter up to speed from last month's meeting, this application is for a Use Variance and Business Permit in an R-2 District. A business is not permitted in an R-2 Zone. That is the reason the application was denied. The applicant had the right to appeal to the Zoning Board of Appeals. We tabled the matter as there was not a super majority present at the April meeting, and we wanted the full Board to address the application. We have 5 members and need 4 in favor of the decision. Also, as the Use Variance being brought before the Board, we also would need 4 out of 5 to permit the use. There needs to be 4 tests to take place for the overturning of this use: (1) Deprivation of "Economic Use or Benefit"; (2) Uniqueness; (3) Character of the Neighborhood; and (4) Self created hardship. He stated that all four of them need to be recognized. Bob Baker asked Mr. Smith if a packet had been supplied to him, and Mr. Smith said he had been provided with the material.

Brad Livesey said since he was not present at the last meeting, he asked for a quick rundown of what his plans are. Don Smith explained his proposal, and answered all questions Brad posed to him; and explained it would be a one man operation, no signs, no more than 3 or 4 cars, and no employees.

Greg Auleta stated his concerns, as he did at the last meeting. As a Board, we would have to be consistent. This is a designated residential district. Conditional uses are home occupation, and a car shop is not a home occupation. It is a general business. If the Board would grant this Use Variance, we would open ourselves up to other applicants wanting to be granted a business in an R-2 zone. This kind of inconsistency is something we need to work on, as to the Ordinance. Greg said he does not feel Mr. Smith has met the 4 tests as spelled out.

Greg Mills said that if this does not pass tonight, that possibly at a later date, he could apply again, if Mr. Smith meets the criteria. Mr. Smith said he does not understand the 4 tests, but does understand the self created hardship. He explained that his rental property is no longer rentable, or livable, and it would not be for some considerable time. The car shop would give him an opportunity to replace that income. Greg Mills again said perhaps he could come and apply again, with documentation, and may be required to bring financial statements, but all 4 tests must apply.

Greg asked the public if they had any comments, and if so, to state their name and address.

Fran Dellamano, a Planning Board Member, stepped forward, stated his name and his address as 8145 State Rte 104, Oswego, NY. He said when our Ordinance was drawn, it was meant to protect the residents of the Town. Districts R-1 and R-2 for Zoning and Planning Board gave responsibilities as to highly residential areas in the town. There are really nice houses in the area. We do have people who want to put a business in a residential area. We had some residents at our last meeting regarding a housing development, and OCWA was next to it, and they were complaining about them. We cannot do much about it, as it is a State organization. It shows that people are really concerned about protecting their homes.

Brad Livesey asked whether the DEC would get involved, and Don Smith stated it was brought up at the last meeting, that any oil disposed of would go to recycling or the landfill.

Greg Auleta stated he is going to offer a negative motion. The reasons for the negative vote are Articles in the State and Town Laws. If the Motion is defeated, it will have to be defeated by a super majority. There are two ways to make a motion in favor, and bring it to a vote. We must make reference to Town Law 267 (b). Kevin Caraccioli stated one way to do it, is a Motion to approve the application based upon evidence presented on the 4 criteria, as required by the Town Law. Greg Auleta said an affirmative motion means that they have met the criteria. Kevin again said a motion could be made to grant the Use Variance, and then take a vote, and it could be denied by 4 members.

Greg Auleta made a Motion that the request for a Use Variance by Donald Smith be granted on Application #2005-04 to operate a vehicle repair shop. Tim Anderson seconded the Motion. All nays. Motion denied.

Greg Auleta said he voted no, as he did not feel that under Town Law, Article 267-b-(2) or Village Law, Article 7-712-b(2)(b) that the applicant does not adequately meet the 4 test criteria to grant the Use Variance.

Greg Mills brought up the subject of the previous Application #2005-03, James LeFlore regarding an addition to his existing garage. Mr. LeFlore was asked to submit the Agreement between he and his neighbor, as to an Easement regarding a common driveway. Mr. LeFlore did submit the Agreements. Greg wondered if they were recorded in the County Clerk's Office,

and Kevin said that maybe they were attached to the Deed.

Public Comment:

Lee Phillips, a Planning Board Member, and lives at 7425 State Rte 104, Oswego, NY, was present and spoke of his concerns about the Donald Smith matter, but was satisfied with the outcome of the hearing.

Tiffany and Earl Burdick, and Mark Gentile appeared before the Board with questions regarding a piece of land they wish to purchase, and place a manufactured home on it. They did not want to purchase the home until they knew the regulations of the Town. The property is in an R-2 Zone on County Rte 89.

Fran Dellamano advised them they should check with the Health Department as to sewer or septic system, and water.

The Burdicks were asked what the size of the home would be, which they stated 28 feet by 72 feet. Greg also asked what the width of the lot is, and they stated 100 feet by 200 feet deep. Greg explained they must have various set backs - front yard, side yard and back yard. He told them they could go and see Theresa Cooper and obtain a packet to apply if any variances are involved.

Tiffany Burdick thanked for Zoning Board Members for their time and advice.

Adjournment:

At approximately 8:15 PM, Greg Auleta moved for adjournment. Tim Anderson seconded the motion. All ayes, Motion carried.

Respectfully submitted,

Marjorie Best
ZBA Secretary