

Village of Athens Zoning Review Committee

Minutes from meeting on April 2, 2009; Committee members in attendance: Margaret Moree, Chris Pfister, Tim O'Leary, Denise Hartman and Mark Levanway, Chairman.

The meeting was called to order by Chairman Levanway at 6:30 pm.

Chairman Levanway tentatively scheduled Nan Stolzenburg to attend a ZRC meeting for Wednesday, May 6, 2009 at 6:30 pm. Therefore, the regularly scheduled first Thursday of the month meeting for May (which would have been May 7th) has been changed to Wednesday, May 6, 2009 at 6:30 pm. Margaret Moree is sending Nan Stolzenburg an email to confirm this.

Chairman Levanway will provide the following dates to MaryJo regarding the ZRC and the update of scheduled meetings:

- 1). Thursday, April 30, 2009 at 6:30 pm
- 2). Wednesday, May 6, 2009 at 6:30 pm
- 3). Thursday, May 21, 2009 at 6:30 pm
- 4). Thursday, June 4, 2009 at 6:30 pm
- 5). Thursday, June 18, 2009 at 6:30 pm
- 6). Thursday, July 2, 2009 at 6:30 pm
- 7). Thursday, July 16, 2009 at 6:30 pm

Chairman Levanway spoke to Nan Stolzenburg about Special Use Permit and Site Plan Review and the possibility of joining the two, using the Town of Colonie as an example. He also spoke to Nan about Plan Unit Development, Cluster Development and Density Bonuses. All of this will be further discussed with Nan when she attends the Wednesday, May 6, 2009 ZRC meeting.

Chairman Levanway wrote to Tal G. Rappleyea, Esq., Attorney for the Village of Athens and asked him to review the Village Zoning Ordinance and recommend provisions regarding the appellate process to be included in the new zoning ordinance.

He received a reply from Brent R. Stack, Esq., Attorney for the Village as follows: “I have reviewed the current Village Code, other village codes, the Village Law and other state statues and have come up with the following recommendations:

1). Appeals from Determinations by the Code Enforcement Officer:

The Zoning Board of Appeals of the Village is authorized to hear and decide appeals from and review any order, requirement, decision, interpretation, or determination made by and administrative official (in our case, this official is the Village Code Enforcement Officer) charged with the enforcement of any ordinance or local law adopted pursuant to the zoning enabling statues. The jurisdiction vested in the board by 7-712 of the Village Law is appellate, not original. A ZBA does not have jurisdiction to modify conditions imposed by a planning board or its approval of a subdivision plat. A ZBA is without authority to render an advisory opinion concerning the meaning of a zoning regulation or its application to a particular set of circumstances, but it has jurisdiction to interpret the zoning regulations upon an appeal from the issuance of a permit, and a construction of such regulations by an enforcement official, and such interpretation will not be disturbed absent a showing that it irrational or unreasonable.

The jurisdiction of a ZBA to construe the ordinance includes the power to determine the application of the ordinance to a specific property. It is within the power of the zoning board of appeals to determine whether an applicant for a building permit is entitled to a non-conforming use, and a ZBA determination concerning the existence of a non-conforming use will not be reversed unless it is without support in the record. This power to rule on the application of the ordinance to specific land may be exercised by the board although it is without power to enforce its decision.

The board’s jurisdiction to review the zoning decisions of enforcement officers is exclusive. It cannot be exercised by other administrative officers, or by the legislative authority of the municipality. In fact, the courts are reluctant to review a decision of a municipal enforcement officer prior to an appeal to the zoning board of appeals.

Absent a specific provision in the municipal zoning ordinance, a ZBA is without authority to review a decision of the legislative body of the municipality. Thus, the Appellate Division has held that the ZBA of a village does not have jurisdiction to hear and decide an appeal from a decision of the village board of trustees.

In sum, the above narrative taken from Patricia E. Salkin's New York Zoning Law and Practice, an authority on zoning and land use, states that the first line of appellate review is that from any order or determination by the Code Enforcement Officer. In the zoning ordinance, this avenue of administrative review should be articulated in the Article entitled "Administration" (Article VI of the current code). I recommend that immediately following old code 92-27 (new code 92-40) Enforcement, a provision is added, entitled "Administrative Review," with the following text:

Pursuant to Village Law 7-712-a any order, requirement, decision, interpretation, or determination made by the Village Code Enforcement Officer or the Historic Preservation Commission charged with the enforcement of any ordinance or local law adopted pursuant to the zoning enabling statutes, may be appealed to the Zoning Board of Appeals within sixty days after the filing of such order, requirement, decision, interpretation or determination by such administrative official by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought.

2). Appeals from Official Village Determinations (generally):

Village Law 7-712-c provides that, "any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the Village, may apply to the Supreme Court for review by a proceeding under articles seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the Village Clerk."

The above is the general rule for appealing decisions of municipal boards and/or officials. The text in quotations should be added to the new zoning ordinance toward the end thereof. I recommend the provision be entitled, "Judicial Review."

3). Appeals from Decisions of the Planning Board:

Village Law 7-740 provides that, “any officer, department, board or bureau of the village, with the approval of the board of trustees, or any person or person, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice Law and Rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the Village Clerk.”

The above provision of the Village Law is specific to decisions of the Planning Board concerning plats or the changing of zoning regulations of such land. I recommend that the text in quotations be added at the end of Article II – Zoning Districts, immediately following old 92-5, (new 92-40) and that it be titled “Judicial Review.”

Recommended Changes to the Proposed Zoning Code:

§ 92-22. Signs

A. General. **Signs that are not exempt shall require a permit.** Signs shall be of such design and construction so as to convey information with clarity and without disruption to the character of the community. Such signs shall conform to the following general design principles:

- (1) The lowest point of any hanging sign in a pedestrian circulation area should be at least seven and one – half (7½) feet above the ground.
- (2) Signs should be a subordinate part of the local landscape and as small as practicable. Signs shall be architecturally compatible with the style, composition, colors, materials, and details of the building and should reflect the character of the area.
- (3) Signs should have a minimum of information in order to avoid clutter and confusion.
- (4) Whenever feasible, multiple signs should be combined into one to avoid clutter.

- (5) No sign shall be located so as to project into the public right-of-way or to be a hazard to traffic or pedestrians, to obstruct any door, window, ventilating system or fire escape, or to cause any other hazard to public safety.
- (6) Signs shall not be mounted on roofs or extend above the roof line unless they are mounted on the face parapet wall which extends above the roof line, in which case it cannot extend above the top of the parapet.

(7) No exterior sign shall be illuminated beyond two hours after the close of business and in no event between the hours of twelve midnight and 6:00 am unless the premises on which it is located is open for business. Externally lighted signs are preferred in all districts where signs are allowed. Internally light signs are permitted in the C district.

(8) In addition to other allowed signs, one sandwich sign per business is allowed in the CR, C, and W districts. The sandwich sign shall not exceed five square feet, but can be made of wood, chalkboard or finished metal, have handwritten or painted letters. Such signs shall not interfere with pedestrian circulation and must be removed at the close of business each day.

(9) Not more than 2 signs per business or residential unit shall be allowed and only one of those shall be freestanding.

(10) Off-site directional signs shall not exceed two (2) feet square.

E. Building Signs. Signs attached to a building shall conform to the following standards:

(1) The maximum area of all signs permitted for a building shall be related to the height of the building above finished grade and the length of the wall of the building facing the nearest street. The total maximum face area of all signs shall not exceed X square feet per linear foot of building frontage, where X equals:

BUILDING HEIGHT

Under 2 Stories	2 Stories	Over 2 Stories
0.75	1.0	1.25

Where a building fronts on more than one (1) street, the face area of the sign shall not exceed the area calculated based upon the longest side on one (1) street.

In computing the square foot area allowed, each side of a multi-faced sign shall be considered a separate sign.

- (2) Signs shall not project above the highest point along the face of the building.
- (3) Iconic signs, such as barber poles, eye glasses, etc., which are traditional in appearance and size should not extend more than four (4) feet from a building wall-nor occupy a space of more than fifteen (15) square feet when viewed from any angle.

(4) One sign not exceeding four (4) square feet in area may be hung under a roof overhang perpendicular to each storefront.

D. Freestanding Sign. All freestanding signs shall comply with the following standards:

- (1) Only one freestanding sign, which may be double-faced, shall be permitted for the primary frontage of a property on a public street. Not more than one freestanding sign shall be permitted for each business structure regardless of the number of stores or businesses housed therein. Each business located within the parcel may have one additional sign that is building mounted only.

(2) The maximum height for freestanding signs shall be ten (10) feet.

(3) The maximum size of the sign shall be (twenty-four) 24 square feet per side. Except in the C and MU/W districts where the size of a sign shall be (sixteen) 16 square feet per side.

(4) Ground-mounted freestanding signs may be required to have a landscaped base.

B. Exempt Signs. The following signs shall be exempt from requirements of this section:

- (1) Memorial or historical signs, names of buildings, and dates of erections when cut or cast into any masonry, bronze, stainless steel or similar permanent material.
- (2) Traffic or other municipal signs.
- (3) Legal notices or such temporary, emergency, or non-advertising signs.
- (4) Temporary non-illuminated signs on the premises for up to one year for the following purposes:
 - a) Real estate “For Sale” or “For Rent” signs not exceeding six (6) square feet and located on the front wall of the building or if freestanding, not nearer than ten (10) feet to any roadway edge or property line.
 - b) Signs which announce anticipated occupancy of a site or building or identifies the contractors, architects, engineers, etc., on a building or site under construction should not exceed twenty (20) square feet in area. Such sign shall be a minimum of ten (10) feet from a roadway edge on the subject property.
- (5) Temporary, non-illuminated off-premises directorial signs for the convenience of the general public not exceeding two (2) square feet in area.
- (6) Signs or bulletin boards customarily incidental to places of worship, libraries or museums, erected on the premises for purposes of displaying temporary public information notices, not exceeding fifteen (15) square feet in area.
- (7) Any existing signs used for current purposes are exempt and any alteration requires a permit.
- (8) Temporary political signs and posters.
- (9) Signs required or governed by law.

C. Prohibitions. The following signs shall be prohibited unless otherwise exempted by the Planning Board:

- (1) Except for holiday seasons, grand openings and other special or temporary events, not to exceed thirty (30) days, no sign shall include or consist of pennants, ribbons, streamers, spinners or other moving, fluttering or revolving devices.
- (2) No sign shall contain flashing lights.

- (3) No revolving, moving or animated signs shall be permitted.
- (4) No permanent sign shall be erected on utility poles, trees or other natural features of the site intended for other uses.

(5) No advertising billboards shall be allowed.

- (6) No temporary, movable signs, except for holiday seasons, grand openings, and other special events, not to exceed sixty (60) days, shall be allowed.

(7) No vending machine shall be placed on sidewalks.

- (8) No plastic panel rear lighted or internally lighted signs shall be permitted.

G. Sign Permits and Sign Administration. No sign shall be erected without Site Plan Approval from the Planning Board. An application to erect a sign shall be made to the Planning Board and shall include a) a scale drawing of the sign showing type of sign, b) dimensions, advertising content, materials, method and style of illumination, c) method of structural support, d) colors, e) location on the land or building in relation to buildings, roadways, driveways and sidewalks, f) name of the sign owner and person responsible for maintenance of the sign. The Planning Board will accept a hand-drawn illustration of the sign to convey the above information. Upon approval of the sign site plan review, the Code Enforcement Officer shall issue a sign permit.

Meeting Adjourned, the next meeting will be on Thursday, April 30, 2009 at 6:30 pm.

CC: Andrea Smallwood, Mayor

