

**VILLAGE OF EAST SYRACUSE  
ZONING BOARD OF APPEALS  
October 8, 2009**

Chairperson Robert Sweeney called the hearing before the Village of East Syracuse Zoning Board of Appeals for Thursday, October 8, 2009 to order at 7:00PM.

Present: Zoning Board members: Chairperson Robert Sweeney, Patricia Bacon, James Voodre, Ellen Robb and Vito Morgese. Also present: Village Planning & Zoning Attorney John Marzocchi, and Village Clerk Patricia J. Derby.

On behalf of application for interpretation for Key Bank: attorney Andrew J. Leja, from Hiscock & Barclay, and from Key Bank: Stan Cerlanek, Branch Manager, Michael Leonardo, Regional Real Property manager, and Jeff Rioux.

Claire Johnson from the Village Planning Board also attended.

**Key Bank  
121 West Manlius Street  
Tax Map # 006-02-09.1  
Interpretation**

Chairperson Robert Sweeney read the notice for tonight's hearing including the related sections of the Zoning Title from Municipal Code, including

***§803.04 Reconstruction***

is the reconfiguration of a space that effects an exit, a renovation and/or alteration when the work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained; and/or there are extensive alterations.

***§803.06 Renovation***

is the change, strengthening or addition of load-bearing elements; and/or the refinishing, replacement, bracing, strengthening, upgrading or extensive repair of existing materials, elements, components, equipment and/or fixtures. Renovation involves no reconfiguration of spaces. Interior and exterior painting are not considered refinishing.

***§803.07 Repair***

is the replacement of any component, other than one requiring structural modification, in a structure with an essentially equivalent one.

***§815.0 General Rules for Site Plans***

No building or occupancy permits shall be issued for any use or structure without an approved site plan permit. (LL4 of 1992 §@4)

On behalf of Key Bank, **Attorney Andrew Leja** began his presentation by recalling the situation that led to Code Enforcement Officer Frank Stirpe's determination, and the request for this interpretation.

Key Bank had operated a drive thru teller on the east side of the building for many decades. This was reconfigured to hold the ATM machine and had pneumatic carrier equipment, covered by a canopy and two pillars. In February of 2008, a truck that exceed the height limit hit and weakened the structure and tore it from the bank building wall. This served two purposes: shielding users from rain and snow and also permitting user to drive up to the pneumatic equipment to conduct a two-way transaction from outside the building. This was an important feature to the Bank and people conducting their banking at this location. Because of the unfortunate accident, it was removed rather than allow a weakened structure to remain.

The Bank is interested in replacing this structure. They approached Mr. Stirpe, following the appropriate mechanism, and were advised that site plan approval was needed. Key bank did file an application for site plan, with discussions centered on landscaping, parking and changes to the entrances from Manlius Street. Key Bank did not believe that the recommendations to re-route traffic made sense. Willing to make certain changes, such as replacing the sidewalk, but the reconfiguration of the parking and re-routing traffic on the site does not meet their needs.

Key Bank approached Mr. Leja and asked him to take a fresh look at the matter and the basis for the Code Enforcement Officer's determination. His reading of the Code finds no basis to require site plan review, it is simply to repair and replace. The repair will be supported at the same points, using the same concrete pad. It will be for the same purpose and serve the same function.

Believes that this analysis is appropriate. Believes that no building permit is required, either. But Key Bank is willing to apply for the building permit and submit plans so that the work can be monitored for compliance with uniform code and engineering requirements.

Once discovered that Code did not require site plan to qualify for a building permit, Key Bank withdrew its application before the Planning Board.

**Zoning Board of Appeals member Ellen Robb** asked when the demolition was done and did they obtain a permit? Mr. Leja stated that at the time the permit was not obtained, but instead was given "after the fact".

**Zoning Board of Appeals member Vito Morgese** suggested that for safety reasons it was necessary that it come down. He asked if a Police Report was available from the accident.

**Stan Cerlanek**, Key Bank Branch Manager offered that a Police Report was taken and can be provided to the ZBA.. **Planning Board member Patricia Bacon** asked if the Police that responded were the Village Police Department. Mr. Cerlanek responded that it was the ESPD.

Mr. Leja continued referencing the supplemental narrative provided with the application for this interpretation that puts forth the rationale for the conclusion that a site plan review is not needed, in particular Page 2 that speaks to the relevant definition of terms in Zoning Code. Section 803 defines Repairs, Renovations, Structure, and Non-conformance, but there is no definition for Replace. The terms Repair and Replace are used frequently. Section 700 of Code is Building Permits, with §701 Building Permits, §701.0 Exemptions list exceptions for when “no building permit shall be required for work in any of the following categories”, including §701.09 Repairs, which contains four exemptions, as follows:

**“§701.09 Repairs**

repairs, provided that such repairs do not involve:  
§701.090 the removal or diminishment of any load bearing component;  
§701.091 the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;  
§709.092 the enlargement, alteration, replacement or relocation of any building system;  
§709.093 the removal from service of all or part of a fire protection system for any period of time.”

Mrs. Robb asked if replacing with a comparable structure. Mr. Leja reports that did not remove any load bearing structure. Pillars were there and will be replaced as they were. Mrs. Robb pointed out that they are not there now. They may have been required to bear the load at the time, however they were removed.

Mr. Leja offered that no time limits are spelt out in Code for the weakness or safety issues. No deadline is stated.

Mrs. Robb noted that the process did not start timely, as no demo permit was obtained before the structure was removed. If it was the Code Enforcement Officer could have indicated time constraints. Mr. Leja noted that a retroactive demo permit was obtained. Mrs. Robb asked “how does that work?”

**Village Planning and Zoning Attorney John Marzocchi** offered that the applicant asked for the permit even though it was already removed. The demo permit was then issued for something that already happened. **Zoning Chairperson Robert Sweeney** reiterated that they took it down, then applied for the permit – it was a *fait accomplish*. Mr. Marzocchi noted that the permit had no significance as it was down already.

**Michael Leonardo**, Regional Real Property Manager, reported that it had to be taken down – it was torn from the building and the one brick column was crushed. Because of safety concern, there was no time to deliberate. It was taken down within 24 hours and traffic was barricaded away from the area.

Chairperson Sweeney suggested it was taken care of quickly because it was an emergency. Then they got the permit after when there was time. Now they just want to put up the same thing.

Mr. Leja reported that will use the same footprint and attach at the same points on the building. The two pillars will be bolted to the concrete pad. This is characterized as a repair.

Mrs. Robb questioned how you can repair what is not there? As there is nothing to repair, it must be seen as a new structure. When you put up a new structure you need a building permit, which starts the Planning Board process for site plan review. Key Bank must have understood this, as that is what they did. This process give opportunity to work with the applicant to make the site work better for everyone. Afforded the opportunity for NYS DOT to recommend changes, as well as the Planning Board to correct problems.

Mr. Leja disagreed with this – Key Bank is not starting from scratch. The concrete island and the Bank’s supporting wall are still there. The pillars and the canopy must be replaced, but the island part of the structure will be maintained. The island remains in place and pillars will be added.

When asked why it was not repaired quickly, Mr. Leja responded that it was because the process that they were advised to follow went beyond repairing the canopy. The DOT recommendation does not hold as it was unnecessary to go through the site plan process based upon the exemptions in the Code. Key Bank has a grandfathered right and cannot be made to take out curbs or put in parking.

Mr. Leja repeated that when he was retained, he interpreted the Village’s Code that Key bank does not need site plan and does not need land reviewed for changes. They are allowed to put the canopy back up. Willing to apply for building permit and meet comparable requirements in Uniform Building Code, with plans signed by Architect and/or Engineers.

Mrs. Bacon stated that §815 requires that if get a building permit, then must have site plan review. Mr. Leja repeated his interpretation of Code that this matter is exempted as per the exemptions listed in §701.09.

Mrs. Robb suggested that this is not a repair, and that this would be consistent with this Board’s handling of other cases.

Mr. Compoli’s letter dated September 21, 2009 states that “Key bank has indicated that they might not need a Building Permit. However based on Code §701.09 they can only repair the structure without a Building permit if the component of that structure is not load bearing. In this case the pillar is load bearing no matter how little of a load it supports.”

Mr. Leja noted that the §701.09 speaks to the removal or diminishment of the load bearing support.

**Zoning Board of Appeals member Jim Voodre** commented that Key Bank has already removed the load bearing pillars. Mr. Leja argued that there is no difference to what was there and what is going to be there.

The pillars that were there were removed for safety reasons. The existing concrete base will be used for the support.

Mr. Leja further noted that this is not a reconstruction as per §803.4; or an alteration as per §803.1; or §803.06 renovations. These are all different and distinguished from repairs. He sets forth that this proposal does not meet the definition in Code except for Repair – and that it is the replacement of the structure. All Key Bank wants to do is replace the canopy with an equivalent one. There will be no structural changes, it will be the same canopy and the same pillars, except that the canopy may be raised slightly to avoid the same problem that caused the truck not to clear the height limits, but essentially equivalent, only more clearance.

Mr. Morgese asked why that is not an alteration. Mr. Leja implored the Zoning Board to read the Code carefully. Asked them to read the definitions for Repair; Alteration; and Reconstruction. Not proposing to add anything, but keep what they had.

Mrs. Robb asked if the equipment was damaged in the accident. Mr. Leja suggested that they would be using the same equipment, but replacing the canopy, and two support pillars.

Chairperson Sweeney asked the Village Planning and Zoning Attorney if he accepted this interpretation. Mr. Marzocchi instructed the Chairperson that it was the job of the Zoning Board to make that decision. He suggested that they read Mr. Stirpe's memo date 10/6/09 and see what he did and what process he followed. It was not an issue with site plan when they first came to the Planning Board. He also noted the exception that the Village Engineers pointed out with §701.09 because the pillars are load bearing. He also referenced the recommendations of the Onondaga County Planning Board, that while they saw no significant adverse inter-community implications they did share the NYS DOT determinations for this site. Mr. Marzocchi acknowledged that this is an unusual situation – addressing what to do in a circumstance where the structure was hit by a truck.

Mrs. Robb suggested that the Board take time to read the definitions in Title 8 Zoning and Title 7 Building Permits. She would also like to see a copy of the Police Report.

Mr. Leja again referred to the demolition. This does not effect the need for a site plan. The Code offers exemptions and this situation is one that applies. To replace what was there does not need to go to site plan.

Mrs. Robb offered that site plan is the process whereby the Village can take another look and make a determination for what needs to happen, with changes brought about by time, such as changes in traffic. That systems allows the Planning Board to take a thorough look at what is there and what the Village desires. Problems can be identified. The applicant can work with the Village to address all needs.

Mr. Leja responded that open a process that it is not required to do.

Mrs. Robb noted that the lapse of a year's time in taking any action, adds to the need to look at the site. Opens an opportunity to correct problems.

Mr. Woodre noted that the claim that are not making any alterations are not true – the height is being raised and pillars are added to support the structure. Sees that as an alteration. Wondered if this was just a maneuver to bypass the Planning Board site plan review process.

Mr. Leja noted that the same footprint remains.

Mrs. Bacon asked if this was being classified as a “reconstruction”. Mr. Leja replied no. But Mrs. Bacon referred to the application to the Planning Board where it was called that. Mr. Leja noted that that application was withdrawn. Found the process to be improper, so the application was withdrawn. Was not the attorney at that time, but suggested that the Architect may have called it that at Mr. Stirpe’s direction.

Mrs. Robb asked Mr. Leja when he was hired. Mr. Leja was asked to look at the matter late summer 2008, after appeared before the Planning Board. The site plan process took time and were still in discussions with Village Planning and Zoning Attorney after July 2008. No discussions have occurred since.

Mrs. Bacon asked if an asbestos survey was ever done for the demolition.

Mr. Leja reported that the new application was submitted January 26, 2009. Discussions with attorney have led to this application for an interpretation. Mr. Leja added that this decision has not been taken lightly, but the insistence for changes to the driveways configuration is not acceptable.

Mrs. Robb asked what Key Bank saw as not desirable. Mr. Leja noted that Key bank has used this configuration for decades without any safety issues. Mrs. Bacon noted that the third curb cut is very close to the traffic signal and can easily be seen to have an impact entering into traffic.

Mr. Leja suggested that the Village may have been prompted by DOT.

Mr. Robb asked about the other diagram put forward by the Planning Board to reconfigure the site. Mr. Leja reported that Key Bank wanted to be reasonable and looked for a settlement, but Key bank cannot live with any deal that reconfigures the site.

Mrs. Robb asked if Key Bank had a Traffic Engineer look at the site design. Mr. Leja said no Traffic Engineers has looked at this, just the Architect. The site currently operates without any traffic issues.

Mrs. Bacon asked what the parking use of the site was versus the required number of parking spaces. Does not see the lot using its maximum number of spaces. Mr. Celanek noted that other businesses in the area, such as the Laundromat and the Pizza place, frequently use Key Bank’s parking lot, as well as Bank customers. Mr. Leja offered that there was no accord for use of the site, but Key Bank is happy to be a good citizen in the community.

Mr. Leja again noted that that application was withdrawn. They do not submit the Planning Board design or anything related to the reconfiguration. As it is outside of the parameters of this application, will not discuss safety or snow removals for any reconfiguration.

Mr. Leja noted the issue before the Board is whether or not Mr. Stirpe's interpretation of the Code is correct and whether Key bank needs to obtain a building permit for the repair. Mr. Leja reported that the application for a Building Permit was denied because they did not have site plan approval. He contends that site plan review is not necessary, as the building permit is not necessary, but Key Bank is willing to apply for a building permit and allow the Village to monitor the work under that permit.

Mr. Morgese asked what considerations Key bank was willing to make. Do they need three curb cuts on Manlius Street. Mr. Leja was reticent to enter into this discussion. Feels it is a separate discussion.

In summary, Mr. Leja asked the Board to look at Mr. Stirpe's letter dated 10/6/09, and to review §701.09 and the exemption for repairs.

Mrs. Robb pointed out that this is not a repair. The canopy and the pillars were removed. You cannot repair what is not there.

Mr. Leja offered the analogy of repairing a window. The glass may be broken, but the frame is still there. In this situation the Bank wall and the concrete island are still there, all they are waiting for is the pillars and the canopy.

Mrs. Robb suggested that if it was a simple repair it should have been done shortly after the accident. Mr. Leja noted that there are not time frame limits in the Code. Chairperson Sweeney concurred that the Code does not have any time restrictions.

Mrs. Robb noted that the applicant demoed the canopy without a permit, then obtained a permit retroactively, and then waited over a year to schedule repairs. It may be that during that time period issues warranted modifications. Think that the Code Enforcement Officer made the right decision.

Mr. Morgese noted that Key Bank attempted to obtain a permit. The accident happened in February. Mr. Leonardo noted that the structure was removed the very next day, as it was deemed to be un-safe.

Mr. Voodre asked if it was necessary for operation, could something have been done other than the complete removal. Mr. Cerlanak repeated that it was removed for safety.

Mrs. Robb suggested that the applicant may have ended the conversations with the Planning Board too soon. Mr. Leja offered that they did not see any other way to proceed. Village and Planning Attorney Marzocchi reported discussions with attorney were on general site improvements. Discussed landscaping, replacing the cross-over sidewalks (covered by asphalt), and modest aesthetic improvements. No agreement was reached because of changes to parking and reconfiguration of traffic with the shut down of an entrance.

Mr. Leja noted that they reserve their rights and sought this interpretation. By his reading of the Code, do not believe that Mr. Stirpe made the proper interpretation. Again, referred to definition for repair, reminding the Board of the window analogy.

Mrs. Bacon suggested the analogy may not fit – as they took away the frame. Chairperson Sweeney commented that the footprint stayed. Mrs. Robb again noted that you cannot repair something that is not there. Noted that §815 requires site plan review for building permits.

Mr. Morgese commented that it is a repair. The canopy was there but for the accident. The foundation is still there. They will just replace what was there.

Mrs. Robb suggested that the hearing be adjourned to allow time to review. Will not close the hearing to allow more information to be submitted, including a copy of the Police Report.

Mr. Leja made addition point regarding SEQR. NYCRR 617.5C.19 references that SEQR is not required for building permits that to not impact the environment. It is a Type 2 action for the replacement, rehabilitation, re-construction, or upgrade. No discretionary decision needs to be made. This is another instance where it is “shall” not “might” when demonstrated that meet the criteria. The Code Enforcement Officer can simply provide the building permit.

This is not a new structure. Pillars and canopy are simply components. Repair is essentially equivalent to replacement. Site Plan review is not necessary. Building permit is not necessary either, but Key Bank is willing to obtain a building permit.

Mr. Morgese noted comment in the County Planning recommendation referencing a site plan from December 22, 1999. Would like to see this site plan. Mr. Leja reported that he had requested all information related to this location and this was not included in the response. Village Clerk will check the Village’s records and with County Planning.

Chairperson Sweeney noted that the following documents are made a part of this record:

- Application Key bank N.A. ATM Teller Island and Canopy Repair/Replacement. Appeal from Village Codes Officer Determination. Marked received August 26, 2009;
- Letter, dated October 6, 2006 from Code Enforcement Officer;
- Comments from WM Engineers, dated September 21, 2009;
- Onondaga County Planning Board resolution from meeting date September 15, 2009;
- Village of East Syracuse Planning Board meeting minutes from meeting on July 8, 2008.

**Motion** – by E. Robb, seconded by P. Bacon – To adjourn the hearing, to reconvene on Thursday, November 5, 2009 at 7PM.

Polling the Board: P. Bacon – aye, J. Voodre – aye, E. Robb – aye, V. Morgese – aye, and Chairperson R. Sweeney – aye. Motion carried

The hearing adjourned at 8:15PM, to reconvene on Thursday, November 5, 2009 at 7PM.

Respectfully submitted by,

Patricia J. Derby  
Village Clerk