

**VILLAGE OF EAST SYRACUSE
ZONING BOARD OF APPEALS
December 3, 2009**

Chairperson Robert Sweeney reconvened the hearing on the matter of an Interpretation for Key Bank for Thursday, December 3, 2009 to order at 7:03PM.

Present: Zoning Board members: Chairperson Robert Sweeney, Patricia Bacon, James Voodre, Ellen Robb and Vito Morgese. Also present: Code Enforcement Officer Frank Stirpe, 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, Dick Robb and Chairperson Ronald Gustafson 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 and invited Mr. Leja to add any comments. This hearing is continued from October 8, 2009.

On behalf of Key Bank, **Attorney Andrew Leja** reported that he submitted the addition information requested. The police report of the accident shows damage to the canopy when a truck, entering the wrong way, clipped the top of the canopy. As regarding the site plan issues before the Planning Board, the truck entered from a curb cut that would remain. Changes to curb cuts would not have affected the accident.

Asks the Zoning Board of Appeals to rely upon the information provided, in writing and at the October appearance. Hope that the ZBA will reflect on this information. Happy to answer any questions.

Chairperson Sweeney surmised that the ZBA is being asked to interpret if this is a reconstruction or a repair.

Code Enforcement Officer Frank Stirpe apologized for missing the October hearing. Was confused when read the minutes. Pointed out that the accident happened on February 11, 2008, but the canopy was not taken down until the weekend of March 8th & 9th. Conferred with Building Inspector Bill Cramer. He recalls meeting with the Contractor and determined that the canopy was not in danger of immediate collapse.

Mr. Stirpe continued noting that he spoke with Jim King, NYS Regional Director, and concurred that a building permit is necessary, and not included under the exemptions listed in §701. IN 2006/2007 NYS mandated that Article 1203B which outlines the rules for the permit process, as well as safety, fire, operations, enforcement and administration. This assured that all municipalities would be all on the same page as regulated by the State. Title 7 of the Municipal Code is not subject to ZBA interpretation. Would need to appeal to the State.

Title 8, Zoning, is subject to ZBA review. §815 says that if need a building permit, must have site plan review. Site Plan review affords the Planning Board an opportunity to review existing conditions.

Over the last 18 months the Village has gone through a process of vision planning. Looking at the problems on Main Street. Hoping to adopt this Plan and implement design guidelines, as well as pedestrian friendly access, calming traffic flow, parking, sidewalks and green spaces. Should look at not only what Key Bank would like to do, but also what would benefit the community and improve the main street. Site plan review is necessary.

ZBA member Vito Morgese asked if the Vision Plan had been adopted. Code Enforcement Officer Stirpe responded that the Plan has not yet been adopted.

Chairperson Rob Sweeney asked about the comment from the County Planning Board's referral about an old site plan. Village Clerk Patricia Derby reported that she spoke with The County Planning Agency. That date was taken from the site plan submitted with the application. There is no other site plan.

ZBA member Ellen Robb added that the accident report does not add to the discussions. It is not germane. Chairperson Sweeney noted that the accident occurred on February 11th but the canopy was not taken down until the weekend of March 8th & 9th – a month later.

Mr. Leja noted that differs from what his client recall. The demo was not a month later. But the difference for the date of demolition has no gravitas with the analysis. Article 1203B NYS law calls for consistent handling. This is not an issue with the State Building Code, but a local decision. Looking for how the ZBA interprets the zoning code for what is a repair and what is reconstruction. These definitions are in local code.

Key Bank proposes to replace with an identical canopy. The footprint and support structure will be the same. That under the Village Code is a repair and site plan review is not required. As for other issues in the code or the Vision Plan it is not that Key Bank would not propose further improvements, but that has no effect on this decision. Not looking for a variance, only a strict interpretation of the verbiage in the Code.

Village Planning and Zoning Attorney Jon J. Marzocchi offered that the Zoning Board is asked to only interpret if Mr. Stirpe was correct when he denied the building

permit application of Key Bank. Was he correct or not correct? The basis for the exceptions are not at issue. ZBA does not have to interpret the meaning of the Code, but only what Mr. Stirpe did. There is not need to get bogged down with other issues. This process is there for recourse for people who disagree with his decisions. Only need to decide if Frank was correct when he said that for a building permit, site plan was required.

ZBA member Patricia Bacon asked Mr. Leja about his comment that they were putting everything back the way it was. Understood that the canopy was to be lifted a bit. Mr. Leja said that the footprint would be the same, but the canopy would be raised a few inches. Will have the same support – 2 pillars, and attached to the Bank building the same. In general it will look the same, but have a few more inches clearance.

ZBA member Jim Voodre asked about the pillars being replaced. Mr. Leja reported that the canopy with the pillars comes as a unit. Designed to be the same as what was there and serve the same function.

ZBA member Vito Morgese asked if the pillars are load bearing. Mr. Leja said yes, there were two originally and will have two more in place.

Mrs. Bacon asked the load limit for the pillars. Mr. Leja did not know, but could check with the engineers for the design.

Richard Robb asked to speak as a 20 year resident of the Village, who also happens to serve on the Planning Board. Familiar with the information presented. A lot of it is not relevant. How the incident happened is unimportant. It has to be re-built – the foot print is immaterial. All know that there is nothing there now. Cannot repair what is not present. Simple dictionary definitions tell us that. If it's not present now it can't be repaired or reconstructed. Agrees with Mr. Stirpe – a building permit is required. Accessory structures require a building permit.

Mr. Robb also commented on the sketch from the Planning Board. Was involved in that. The sketch was simply a suggested option, used to invite comment and responses. Those discussions ended months ago. Nothing came from it. It was not a requirement. Would hate to think that it kept a wonderful community neighbor from proceeding with their plans. Key Bank needs the canopy for the ATM and their business. NYS DOT said the curb cuts were unsafe and disrupt traffic flow. Can't see how can tell the State on a State road that will not comply with their requirements. Now in a difficult spot. Hoped that the Planning Board comments would be an aid, not a demand.

Mr. Robb concluded by stating that he finds that a building permit is necessary and that Mr. Stirpe did his job as he was supposed to.

Mr. Morgese noted that he has reviewed the building permit process in the Code. Code states that if altering or repairing a load bearing structure a building permit is required. But also think that it is harsh to require a site plan for a simple replacement. The number

of curb cuts should not enter into it. And the Vision Plan and any new regulations do not enter into these discussions either. Village wants to work with Key Bank. There may be some gray areas in the Code, and may not want site plan review for something that was already in place, but can only deal with what we got.

Mrs. Robb appreciates the time that everyone has put into this matter. Everyone wants Key Bank to remain on the main street. But things change. Permit issues evolve. The Village is trying to clean up and rejuvenate its main street. That will require help from us all. Transitions can get difficult. Code is clear when a need site plan and a building permit is required. Agree that Mr. Stirpe did his job and made the correct determination.

Hearing no other comments, Chairperson Sweeney accepted the **Motion** – by E. Robb, seconded by J. Voodre – to close the hearing.

Polling the Board: P. Bacon – aye, J. Voodre – aye, E. Robb – aye, V. Morgese – aye, and Chairperson R. Sweeney – aye. Motion carried. Hearing closed at 7:30PM.

The members of the Zoning Board of Appeals deliberated the matter, asking the Planning and Zoning Attorney to draft sample resolution. Mr. Marzocchi proposed:

“Was Code Enforcement Officer Stirpe correct in determining a building permit would not be issued because site plan approval was required first?”

Mr. Leja stated Key Bank position that no building permit is required, but the appeal is for site plan review.

Mr. Marzocchi advised that the Zoning Board is simply charged with deciding if Frank was correct in determining that building permit not be issued because site plan review was required.

Zoning Board of Appeals members continued deliberations, commenting on: section of Municipal Code – Zoning and Part 70-Building & Fire Code; exemptions and exceptions stated in Code; repairs and/or reconstruction; consistency; building permit requirements; modifications; ZBA and Planning Board authority and responsibilities; revitalization goals (not relevant); the accident; site plan review process; and compliance with Code and Zoning.

Motion by E. Robb, seconded by J. Voodre – That the Village of East Syracuse Code Enforcement Officer Frank Stirpe acted correctly interpreting the Municipal Code when he denied the building permit for Key Bank.

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

Chairperson Sweeney thanked the Board for their time and attention. Key Bank will receive formal notice of decision.

The meeting adjourned at 8:00PM

Respectfully submitted by,

Patricia J. Derby
Village Clerk