

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

ZONING BOARD OF APPEALS
Thursday, July 25, 2024 • 7:00 p.m.

The following minutes are the official and permanent record of the actions taken by the Town of Middlesex Zoning Board of Appeals, as recorded by the Zoning Board Clerk.

Meeting called by: Rebecca Parshall, *Chairperson*

Board members present: Ted Carman
Richard DeMallie
Win Harper

Alternate: Position vacant

Staff present: Dawn Kane, *Code Enforcement Officer*
Beth Altemus, *Zoning Board of Appeals Clerk*

Ms. Parshall called the meeting to order at 7:01 p.m.

NEW BUSINESS:

1. App. # 060124 - ZBA

Dan O'Brien, representing property owners on South Lake Road, Middlesex, NY, 14507, is requesting an area variance to place a welcome sign at the southwest corner of property at Tax Map ID#: 11.82-1-13.

Mr. O'Brien explained that he is representing the South Lake Road Working Group, which has received a license by the Ash family trust to place a sign on their property. The sign was originally designed in two parts with a small banner underneath, however because it exceeded the size limit per Town code they will take the banner off to stay within the size limits. This banner was to have indicated that families, children and pets have right of way. Only the oval portion in the middle of the sign will now be used. Mr. O'Brien indicated that the architect who designed the sign says it will now be a little over nineteen square feet.

Mr. O'Brien explained that because they would like the sign to be closer to the road, and therefore closer to the Town right of way, they are asking for a variance. He commented that the purchase price of the sign included installation, and they want it installed before Labor Day.

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He also indicated that he would be willing to meet with the Highway Department to be sure all is in order, and that the reason for wanting the sign is because it's a curvy and narrow road, and those unfamiliar with the area often drive too fast. He indicated that it would be a good reminder of the 25 mph speed limit.

CEO Kane commented that this has been a fluid application, which first came conceptually and has since been modified to reduce the sign size and omit the language about who has right of way (see above), as the latter was not within New York State law. She explained that her denial was based on zoning codes. She indicated that the applicants have a license agreement with the Ash family, who approves of the sign, and she has letters from Ron Papa and Richard Dollinger expressing support for the sign. CEO Kane read to the Board New York State Law 267-b1, indicating that the Zoning Board of Appeals has the final decision about this sign, and while her determination was based on zoning codes, the ZBA's decision will be based on their power to reverse, uphold or modify the decision of the CEO.

Mr. DeMallie inquired which part of this they now need to decide, and CEO Kane indicated they should proceed with their usual questioning. Ms. Parshall opened the public discussion.

Mr. O'Brien commented that the post closest to the road would be seven feet from the edge of the road, and he doesn't believe it would obscure the speed limit sign. He reiterated where on the map the sign will be located and that he can work with the Highway Department to make sure it's OK.

There was general discussion about what would be considered setbacks in this case, and that it is not a permanent sign. Mr. Carman inquired if there would be any concern with damage to it, or who would be responsible if it had to be pulled for highway work.

CEO Kane indicated that the Board could make the condition that maintenance falls wholly on the Ash family or the group that holds the license.

Mr. O'Brien commented that if someone were to run into it they'd look to the Ashes, and the license with the Ash family holds them harmless, so it would ultimately go to Ron Papa, Richard Dollinger, David Seconi and himself.

Mr. Harper commented that he doesn't see in the zoning code where this type of sign is permitted.

Mr. Carman inquired how they should address the sign with respect to code 706.1.3, indicating that other than an official traffic sign or sign required by law, no sign shall be erected in the right of way line.

CEO Kane indicated that it is up for question where the right of way line is at this location, and that this sign is separate because it falls on private property. Mr. Carman commented that this code is therefore immaterial in this case.

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Mr. O'Brien commented that the width of the road is determined by use, and after the new paving perhaps the use has changed, but the Town wanted to not assert legal responsibility onto the side of the road. CEO Kane commented that because the road meanders and is of inconsistent width the right of way is not always clear.

Mr. Harper indicated that the issue would be the setback from the centerline of the private property.

Mr. DeMallie asked whether everyone understands exactly where the sign is going, and Mr. O'Brien commented that it will be in front of the path down to the lake from the farmhouse, and across the street from the yard south of the former Lersch residence, about fifteen feet to the south of the 25 mph sign.

Mr. DeMallie asked if he needed to recuse himself as a resident of South Lake Road, and CEO Kane indicated that he does not.

Mr. Harper inquired why CEO Kane denied the application, and CEO Kane explained that it was over the size limit and the originally proposed wording was unacceptable under New York State law, however these issues have all been resolved.

Mr. Harper inquired what is the purpose of the sign, and Mr. O'Brien indicated that it's to encourage people to slow down. Mr. Harper commented that it's already a traffic law to slow down, and Mr. O'Brien indicated that the proposed sign is not inconsistent with the traffic law but rather is complementary.

Mr. O'Brien also indicated that lots of people walk along the road, and Mr. DeMallie commented that many people with dogs and strollers often walk the road as well. Mr. O'Brien commented that local etiquette is that northbound traffic pulls over because they have driveways to pull into, whereas southbound traffic is lakeside.

Mrs. Parshall asked if there were any other comments from the public. CEO Kane read the letters in support from Mr. Dollinger and Mr. Papa.

Mr. Harper inquired whether this would be considered an institutional sign, and CEO Kane indicated it would not be. She also commented that ultimately the sign will be going into the ground in poles, so it could be considered temporary, however it's not intended to be removed. Mr. O'Brien indicated that the Ash family can revoke consent at any period of time and in such an event they'd remove the sign.

Mrs. Parshall closed the public hearing.

Mr. Carman made a motion to approve the sign with the condition that it be constructed as a temporary sign. He proposed the idea that they install PVC sleeves into which the posts can be

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inserted and bolted to reduce opportunity for theft while also meeting the stipulation of it being temporary and removable. He asked if this sounds feasible.

Mr. DeMallie indicated it did, but the issue is still the distance from the road. Mr. Carman indicated that the issue doesn't apply if it's temporary and removable.

Mr. DeMallie seconded, there was no further discussion.

Per the criteria (see attached documentation), Mr. Carman answered the following:

1. No, the property owners granted a license for the sign to be there, and it looks like the sign is in good taste and fits with the nature of the neighborhood.
2. No, the benefit couldn't be met or achieved without an area variance because of the nature of the zoning code and the desire of the community to place some type of sign designating the entrance to the South Lake Road community.
3. Yes, it is substantial but the Board is working between Town zoning code and the desires of the community to be able to delineate the entrance to their residential area.
4. No, it will not have an adverse effect or impact as long as it doesn't block or impair the nearby speed limit sign.
5. Yes, it is self created, but under the circumstances and with what's taken place with modifications from the original submittal it ends up being a palatable situation.

Mr. DeMallie, Mr. Carman and Mrs. Parshall voted in favor, Mr. Harper opposed, and the motion carried.

2. App. # 071024-ZBA

David Bero, Jr., owner of property on Mertz Road, Middlesex, NY, 14507 (Tax Map ID #: 22.01-1-38) is requesting an area variance to use an existing driveway as a shared driveway to access a proposed new residence on the property.

Mr. Bero explained to the Board that he previously went to the Planning Board for construction of a residence and was approved with the condition that he get a variance for a shared driveway. He indicated that the Planning Board expressed the opinion that a shared driveway was better environmentally and financially, and they would require a legal requirement for right of way where his driveway will cross over his brother's property. Mr. Bero indicated that he would provide this legal agreement to the Planning Board if approved for the shared driveway.

Mr. Harper inquired whether the driveway had been approved by the highway department, and CEO Kane indicated that it had.

There was discussion that the driveway will remain fifteen feet wide and will be designed for emergency vehicle pull off and turn around, and will be built to code.

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Mr. Carman inquired whether the legal agreement will have cost sharing written into it, and CEO Kane indicated that the maintenance agreement can have cost sharing and that will be handled by the Planning Board if they're inclined to go that way.

Mrs. Parshall asked Mr. Bero if he had any more to share, and Mr. Bero indicated that the driveway doesn't involve utilities, just a means of access to a residence. Mrs. Parshall asked if he had any letters of support, and Mr. Bero indicated that he did not.

Mr. DeMallie inquired if there are any other shared driveways in the Town, and CEO Kane indicated that there are many. She commented that currently the definition of a private road is use by two or more parties, but it should be three, and the Planning Board needs to deal with this definition.

Mr. Harper inquired whether the agreement stays with the land, and there was general discussion that it would go with the property in perpetuity.

Mrs. Parshall asked if there were any questions or comments, and there were none.

Mr. Harper made a motion to approve the shared driveway to the property on Mertz Road, Mr. Carman seconded, and there was no discussion.

Per the criteria (see attached documentation), Mr. Harper answered the following:

1. No, there are no other properties nearby and it won't be seen from the road.
2. No, another method is another driveway which would cause more disruption, so it wouldn't be feasible.
3. No, the driveway will still be fifteen feet wide.
4. No, it's probably a benefit not to have two driveways.
5. Yes, every difficulty is self created, but it does not preclude the granting of a variance.

All Board members voted in favor and the motion passed.

OTHER BUSINESS:

Mr. DeMallie made a motion to approve the April meeting minutes, Mr. Harper seconded, all Board members voted in favor and the motion passed.

Mr. Carman moved to adjourn the meeting at 7:42 p.m., Mr. Harper seconded, all Board members voted in favor and the meeting was adjourned.

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Attached Documentation:

Criteria for Zoning Board of Appeals Variance Findings and Decision

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created:

Yes _____ No _____

Reasons: _____

2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance:

Yes _____ No _____

Reasons: _____

3. Whether the requested variance is substantial:

Yes _____ No _____

Reasons: _____

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district:

Yes _____ No _____

Reasons: _____

5. Whether the alleged difficulty was self-created:

Yes _____ No _____

Reasons: _____