

**Minutes of the Town of Perinton
Zoning Board of Appeals
Meeting of June 24, 2013**

Zoning Board Members present

Thomas Young, Chairman
Vincent Arcarese
John N. Moose
Melissa L. Barrett
Seana Sartori
Robin Ward Ezell

Absent

Sam Space

Conservation Board Members present

Robert Salmon
Chris Fredette

Town Officials present

Robert Place, Town Attorney
John Beck, Zoning Officer
Lori Stid, Zoning Board Clerk

Mr. Young called the meeting to order at 7:30 pm, introduced the Board and staff present, and explained the procedures.

Mr. Young states that DPW comments are included in CED comments for all of tonight's applications.

NEW APPLICATION(S):

1. Son Xuan Neuyen as owner of property located at 5 Lambeth Loop, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (2), to allow a 6 foot fence in front of the front setback (Macedon Center Road) instead of a 3 foot fence.
Said property being located in a Residential B District.

Mr. & Mrs. Neuyen presented the application to the Board. They are seeking this variance for the fence for privacy (noise, sight and dust) from Macedon Center Road. They are proposing the gothic board fence to match up with neighbor's existing fence.

Ms. Ezell states that a number of other homes on this street have asked for and this request make sense.

Mr. Young asked for questions or comments from the Conservation Board. Ms. Fredette states that the Conservation provided comments as follows:

This application is similar to a previous application for #3 Lambeth Loop, as both properties have two front yards. The 6 foot fence will provide some privacy as well as a safety feature in the rear yard.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

1. **Application is consistent with neighboring properties featuring fences that screen Macedon Center Road from their backyards.**
2. **The applicant previously signed an Easement Encroachment Agreement, which is on file with the Town.**
3. **A building permit should be issued within six months.**
4. **The CED Dept. recommends approval of this application.**

Mr. Young asked for questions or comments from Attorney Place, and there were none.

Mr. Young asked for questions or comments from the audience, and there were none.

Ms. Ezell made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (2), to allow a 6 foot fence in front of the front setback (Macedon Center Road) instead of a 3 foot fence, subject to the following conditions:

1. Applicant to obtain a building permit within 6 months from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void. If you decide that you are no longer going through with the proposal that required the variance on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing of your decision, and we will mark the variance null & void.
2. Proposed fence is gothic board.

This applicant has two front yards according to Town Code and is impeded by this. This is not a substantial request given the property location. A 6' fence will offer privacy from noise, sight, and dust from Macedon Center Road. There will not be any undesirable change to the neighborhood, as others in the neighborhood have 6' fencing also on Macedon Center Road. There will not be any adverse physical or environmental effects caused by granting this variance, as there is already an easement encroachment agreement on file with the Town. The difficulty is not self-created; the applicant has two front yards and traffic on Macedon Center Road is high volume and creates dust, and granting this request will offer some relief from that.

Mr. Moose seconds the motion.

Motion carries 6 – 0.

2. Richard Coyne, as agent for Carl Arena / Burgundy Basin Inn, owner of property located at 1361 Marsh Road, requesting a Temporary Activity Permit under Section 208-54 F, to allow Tuesday Night Cruise Night to be held from June 25th 2013 through September 3rd 2013 from 4pm to 8pm.

Mr. Coyne & Mr. DiLullo present the application to the Board, as per letter of intent as shown below:



10 Heatherwood Road
Fairport, New York 14450
May 5, 2013

Town of Perinton
Perinton Zoning Board
1350 Turk Hill Rd.
Fairport, New York 14450

In Re: Letter of Intent

Dear Zoning Board:

This is our Letter of Intent for the 2013 Tuesday Cruise Night at the Burgundy Basin Party House located at 1361 Marsh Road, Pittsford New York 14534

The cruise night will commence on May 28th and continue each Tuesday through Sept. 3rd, 2013. Weather, in the form of rain or excessive heat will be a factor in cancelling Cruise Nights on any respective Tuesday. The staff will arrive at the Burgundy Basin at approximately 4:00 p.m. to setup the required traffic cones on the grounds and work with the Burgundy Basin Party House staff to make the outside area ready for the cruise cars. The cruise cars will begin arriving at approximately 5:00 p.m. and end at approximately 8:00 p.m. After the cruise cars have departed for the evening, a full cleanup of the grounds will be done by the cruise staff. Food, drinks and ice cream will be provided by the Party House. Restrooms are available for use by the public. There is ample parking on the grounds of the Burgundy Basin Party House for the cruise cars as well as for spectator cars. Cruise cars will be parked on the grass behind the Party House adjacent to the Warming House. The spectator cars will be directed to the parking lots on the property. No cars will be allowed to park on Marsh Road.

Thank you for your attention to our request.

Sincerely,


Richard W. Coyne

Larry DiLullo

Mr. Young asked how many cars are on display. Mr. DiLullo states that last week there were about 20 classic vintage cars on display; they don't anticipate there would ever be more than 150 cars on display. There will be music and food. Two nights so far have been rained out. They expect attendance to draw about an additional 150 cars of spectators. Mr. Young feels that there is plenty of room for parking in this location.

Mr. Moose asked about the music. Mr. DiLullo states that there are bands that will play until 7:45 PM. Last week they noticed that some of the neighbors walked over to hear the music.

Ms. Barrett asked if it is similar to what happens at Perinton Square Mall (Tops Plaza). Mr. DiLullo states that they are similar. Ms. Barrett asks if there is a big interest in this. Mr. DiLullo states that it helps the local economy by supporting the local businesses in the area. Cruise nights are very popular.

Ms. Sartori asked if the vintage cars are parked on location, or does someone drive them around. The applicant states that they are parked.

Ms. Ezell asks if there is signage and advertising of this event. The applicant states that there is no signage. There is some advertising on line, but mostly by word of mouth. Ms. Ezell asks if there are vendors on site. The applicant states that the Burgundy Basin will offer food and drinks. They do have sponsors who offer trophies and shirts. The sponsors this year are the Hess gas station in Bushnell's Basin and Kitty Van Bortel Chevy car dealership.

Mr. Young states that the Conservation Board had no comments on this application.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. The hours of the event shall be from 4 p.m. to 8 p.m.**
- 2. Any outside music shall face towards the rear (facing the canal).**
- 3. Show cars shall not exceed 125 in number, and shall be parked on the grass areas behind the party house adjacent to the warming house.**
- 4. All food, drinks, etc., will be provided by the Burgundy Basin Inn.**
- 5. Clean-up will be done by Cruise Night staff immediately following the event.**
- 6. There shall be no parking along Marsh Road.**
- 7. Applicant to provide traffic control personnel at the entrance to the Burgundy Basin Inn during the hours of the event.**
- 8. Applicant shall provide letters to Monroe County Sheriff, Perinton Ambulance, and Bushnell's Basin Fire Department advising them of the event; copies of letters shall be provided to the Code Enforcement and Development Dept. (attn: Zoning Board of Appeals Clerk).**
- 9. Approval shall expire one year from approval date. To renew Special Use Permit, applicant shall reapply to the Zoning Board of Appeals.**

Mr. Beck states that the Town granted several administrative approvals for this event over the last month until the applicant could be heard by the Zoning Board of Appeals for this request. The Town has not received any complaints to date. The applicant expects no more than 125 classic vintage cars to be included in the event and approximately 150 cars for spectators.

Mr. Young states that they still require notification to Monroe County Sheriff, Perinton Ambulance and Bushnell's Basin Fire Department. The applicant states that those letters went out on May 18. Mr. Beck asks the applicant to provide a copy to Zoning Board of Appeals Clerk.

Mr. Young asked for questions or comments from Attorney Place. Mr. Place states that a SEQR determination is required.

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Arcarese made a motion to grant a Negative Declaration of SEQR. The use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts. The public health, safety, general welfare, or order of the Town will not be adversely affected by the proposed use in its location. The use will be in general harmony with and promote the general purposes and intent of the most recent Comprehensive Plan of the Town and the Zoning Ordinance. The proposed use will not interfere with the preservation of the general character of the neighborhood. The physical characteristics and topography of the proposed site make it suitable for the proposed special use. The proposed special use provides sufficient landscaping and/or other forms of buffering to protect surrounding land uses. The property has sufficient, appropriate, and adequate area for the use, as well as reasonably anticipated operation thereof. Adequate parking and internal traffic circulation can be accommodated on the property, and there is no parking allowed on Marsh Road.

Ms. Sartori seconds the motion.

Motion carries 6 – 0.

Mr. Arcarese made a motion to grant a Temporary Activity Permit under Section 208-54 F, to allow Tuesday Night Cruise Night to be held from June 25th 2013 through September 3rd 2013 from 4pm to 8pm, subject to the following conditions:

1. The hours of the event shall be from 4 p.m. to 8 p.m.
2. Any outside music shall face towards the rear (facing the canal).
3. Show cars shall not exceed 125 in number, and shall be parked on the grass areas behind the party house adjacent to the warming house.
4. All food, drinks, etc., will be provided by the Burgundy Basin Inn.
5. Clean-up will be done by Cruise Night staff immediately following the event.
6. There shall be no parking along Marsh Road.

7. Applicant to provide traffic control personnel at the entrance to the Burgundy Basin Inn during the hours of the event.
8. Applicant shall provide letters to Monroe County Sheriff, Perinton Ambulance, and Bushnell's Basin Fire Department advising them of the event; copies of letters shall be provided to the Code Enforcement and Development Dept. (Attn: Zoning Board of Appeals Clerk).
9. Approval shall expire one year from approval date (June 24, 2013). To renew Special Use Permit, applicant shall reapply to the Zoning Board of Appeals at least several months prior to expiration date.
10. If you no longer wish to have this permit on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing that you have discontinued the use, and we will mark it null & void.

This will be a nice event to have in the Town. The applicant has held the event in the past with administrative approval from the Town, and there have been no complaints to the Town.

Ms. Sartori seconds the motion.

Motion carries 6 – 0.

3. Flour City Bagels/DBA Bruegger's Bagels, agent of property owned by Rapowitz Associates, LP, and located at 707 Pittsford Victor Road, (tax account # 179.10-1-46) requesting a Special Permit under Section 208-41 A (4)(b), to allow an outside dining area in the front of the building from April 1st to October 30th. Said dining area to consist of 10 tables with two chairs per table.
Said property being located in a Commercial District

Ken Green (Bruegger's) states that they wish to add a patio to the right of the front entrance. They have staked out the area and intend to remove the mulch and put in some sort of hardscape; stamped concrete or brick patio. Other Bruegger's stores that already have outdoor dining, do not create more traffic; the people who would normally be eating inside are now eating outside. It is a convenience for the consumers for the few months of good weather that Rochester has.

Ms. Ezell states that the side area that he is talking about has flowers planted in it and looks nice. She inquires if any of the plantings can be relocated on site. The applicant states that anything that can be relocated on the property will be.

Mr. Young states that the Planning Board offered comments on this application as follows:

In general, the Planning Board supports outdoor seating.

Mr. Young asked for questions or comments from the Conservation Board. Ms. Fredette inquires if there will be a fence around the area. The applicant states no. Ms. Fredette asks if the diners exit the building right onto the patio. The applicant states no; they exit the building onto the sidewalk and take the sidewalk onto the patio without being on the driveway. Ms. Fredette asks if there will be a trash container outside and if an employee will pick up any trash on the ground. The applicant states that there will be a trash container and an employee will pick up any trash on the ground.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. Applicant is proposing outdoor seating in a 351 sf patio located in a nook along southeast portion of building.**
- 2. The Town of Perinton Comprehensive Plan (2011), the Bushnell's Basin Canal Access Plan (2006) and Bushnell's Basin Land Use Study (2001) identify the goal of creating pedestrian-friendly amenities in Bushnell's Basin. Outside dining helps strengthen image of Bushnell's Basin as a safe and eminently walkable area. It will encourage people to access the Hamlet by foot or bicycle instead of motor vehicle, thereby reducing greenhouse gas emissions and traffic.**
- 3. Green space is in conjunction with neighboring property at 683 Pittsford-Victor Rd. (old firehouse). Both properties total 35 percent, according to the existing site plan. The Town is considering Hamlet of Bushnell's Basin for Mixed Use District zoning, which would require 25 percent green space.**
- 4. The proposed seating area is currently a mulched planting area that will need to be hardscaped to accommodate the proposed seating. The CED Dept. recommends that the applicant be required to submit a plan to DPW showing the modifications to the proposed location so it can be reviewed administratively.**

Mr. Young asked for questions or comments from Attorney Place. Mr. Place states that a SEQR determination is required on this application.

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Young made a motion to grant a Negative Declaration of SEQR. Based on the conditions that CED would like to see put in place, this outdoor dining will be in harmony with the general purpose of the Code. Taking into use the size of the use, the location, and the intensity of the operations, it will not tend to depreciate the value of any adjacent property. It will not create a hazard to health, safety, or general welfare or be detrimental to the flow of traffic in the vicinity. It will not alter the essential character of the neighborhood.

Ms. Barrett seconds the motion.

Motion carries 6 – 0.

Mr. Young made a motion to grant a Special Permit under Section 208-41 A (4)(b), to allow an outside dining area in the front of the building from April 1st to October 30th. Said dining area to consist of 10 tables with two chairs per table, subject to the following conditions:

1. The proposed seating area is currently a mulched planting area that will need to be hardscaped to accommodate the proposed seating. The applicant is required to submit a plan to DPW showing the modifications to the proposed location so it can be reviewed administratively.
2. Outdoor dining permit to run from April 1 to October 30
3. Outdoor dining area to consist of 10 tables with two chairs per table.

Approving this application will not prevent the orderly and reasonable use of adjacent properties. Public health, safety, and general welfare of the Town will not be adversely affected by approving this use. It will be in general harmony with the general purposes of the most recent Comprehensive Plan. This use will not interfere with the general character of the neighborhood. The physical characteristics of the proposed site make it suitable for the proposed use. The property has sufficient and adequate area for this use.

Ms. Barrett seconds the motion.

Motion carries 6 – 0.

4. Damaca LLC/Shooters Sports Bar & Grill Bar, as agent for 1226 LLC (Michael Law), owner of property located at 1226 Fairport Road, requesting a renewal of an existing Special Permit under Section 208-41 A (4)(b), to allow outside dining for both the front and rear outside dining areas. Said property being located in a Commercial District.

Mike Marra presents the application to the Board. This is a renewal. Shooters is under new ownership.

There was discussion regarding when the current parking agreements expire. Mr. Marra states that they plan to extend all parking agreements, and all of the parking agreements will remain in place.

Mr. Moose asks Mr. Beck if there have been any complaints. Mr. Beck states no.

Ms. Ezell questioned if people actually eat outside or if they just stand outside to smoke. The applicant states that it is a mix. The outdoor dining doesn't draw more people to the location; some of the people who would normally sit inside are now seated outside. He states that most people sit; some stand, but not all. He states that Fairport Hots also has outdoor dining. There has not been any visual or sound problem from the outdoor dining at Shooters.

Mr. Young states that the Planning Board offered comments on this application as follows:

In general, the Planning Board supports outdoor seating.

Mr. Young asked for questions or comments from the Conservation Board and there were none.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. The CED Dept. has no issue with this application and recommends approval.**

Mr. Young asked for questions or comments from Attorney Place. Mr. Place states that this is a renewal and no SEQR determination is required.

Ms. Barrett questioned the parking agreements and potential extensions, and what would happen if they were not renewed. She voiced concern for any potential administrative approvals in the future and how that would be monitored. The applicant states that he can provide copies to the Town of the parking agreements as they are renewed. Mr. Young feels that should be a condition of approval.

Mr. Arcarese made a motion to grant a renewal of an existing Special Permit under Section 208-41 A (4)(b), to allow renewal of outside dining for both the front and rear outside dining areas, subject to the following conditions:

Regarding the rear dining area:

1. This is a renewal of a previously approved special use permit for the rear outside dining area (smoking area). This permit will run for three years, and will expire on 6/24/2016, and may be renewed administratively provided the applicant has supplied the Town of Perinton Office of Code Enforcement & Development with copies of parking agreements to the satisfaction of the Office of Code Enforcement & Development, and no later than April 1, 2014. If the applicant is unable to provide the Town with copies of parking agreements to the satisfaction of the Office of Code Enforcement & Development, then this permit shall expire on 6/24/14 and applicant is to return to the Zoning Board of Appeals to seek re-approval.
2. Three tables and chairs are to be removed from the inside upper dining area.
3. Three tables and chairs are to be removed from the existing rear outside dining area.
4. There is to be no music outdoors or any type of speaker system outdoors.
5. Applicant to comply with all required Health Codes.
6. Hours of operation of the outdoor dining are the same as the hours of the business.

Regarding the front dining area:

1. This is a renewal of a previously approved special use permit for an outside dining area in the front of the building along Fairport Road with 6 tables (4 chairs each table). This permit will run for three years, and will expire on 6/24/2016, and may be renewed administratively provided the applicant has supplied the Town of Perinton Office of Code Enforcement & Development with copies of parking agreements to the satisfaction of the Office of Code Enforcement & Development, and no later than April 1, 2014. If the applicant is unable to provide the Town with copies of parking agreements to the satisfaction of the Office of Code Enforcement & Development, then this permit shall expire on 6/24/14 and applicant is to return to the Zoning Board of Appeals to seek re-approval.
2. Three tables and chairs are to be removed from the inside upper dining area.
3. Three tables and chairs are to be removed from the existing rear outside dining area.
4. There is to be no music outdoors or any type of speaker system outdoors.
5. Applicant to comply with all required Health Codes.
6. Hours of operation of the outdoor dining are the same as the hours of the business.

There will be no undesirable change to the character of the neighborhood by granting this renewal. There will be no adverse effect or impact on the physical or environmental conditions in the neighborhood. There will be no negative impact on the flow of traffic. The Office of Code Enforcement & Development has not received any complaints regarding the outdoor dining.

Mr. Moose seconds the motion.

Motion carries 6 – 0.

5. Eagle Vale Golf Club & Learning Center Inc., owner of property located at 4400 Nine Mile Point Road, requesting renewal of a Special Permit under Section 208-41 A (4)(b), to allow outside dining on the existing deck and patio area.

Said property being located in Residential A District.

Jerry Locurcio presents the application to the Board. This is a renewal of an existing Special Use Permit.

Mr. Young asked if the applicant has received any complaints from the neighbors regarding the outside dining in this location. The applicant states no. Mr. Young asked if the Town has received any complaints and Mr. Beck states no.

Mr. Young states that the Planning Board offered comments on this application as follows:

In general, the Planning Board supports outdoor seating.

Mr. Young asked for questions or comments from the Conservation Board, and there were none.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

1. The CED Dept. has no issue with this application and recommends approval.

Mr. Young asked for questions or comments from Attorney Place. Mr. Place states that this is a renewal and no SEQR determination is required.

Mr. Moose made a motion to grant renewal of a Special Permit under Section 208-41 A (4)(b), to allow outside dining on the existing deck and patio area, subject to the following conditions:

1. There are to be no more than three tables on the patio and four tables on the deck. The tables are to seat generally four people each, but could be up to 6 people each.
2. The use a seasonal use and will be from approximately April 1 through December 1, as weather allows.
3. There is to be no outdoor music.
4. There will not be any additional lighting outside for the deck or the proposed patio for the dining, other than what exists today; candles will be allowed to go on the tables.
3. This permit will run for three years and will expire on June 1, 2016 and may be renewed administratively in the future through the office of Code Enforcement & Development, provided there have been no changes to the request or any complaints to the Town regarding the outdoor dining. This permit is required to be renewed prior to this expiration or permit will be null and void.

This is a renewal of an existing special use permit, and there have been no complaints to the Town or to the applicant regarding this use. There are no material changes in the request from what was originally approved by the Town.

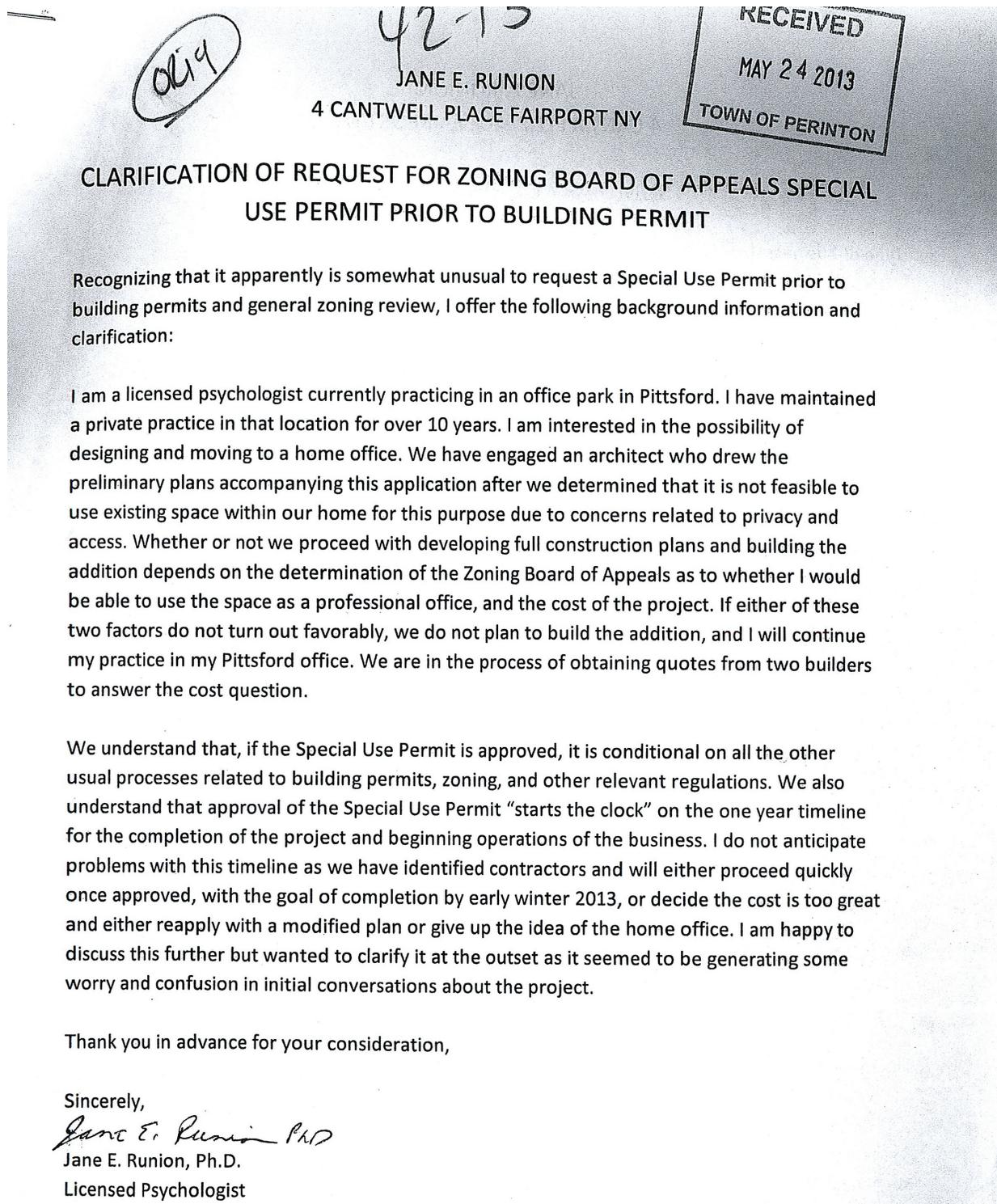
Mr. Arcarese seconds the motion.

Motion carries 6 – 0.

6. Jane E. Runion, owner of property located at 4 Cantwell Place, requesting a Special Permit under Section 208-32 A(7) "Customary Home Occupation", to allow a psychologist office to be located in a future addition to the home.

Said property being located in a Residential B District.

Ms. Runion presents her application to the Board as per letter of intent as shown below.



JANE E. RUNION
4 CANTWELL PLACE FAIRPORT NY

SUMMARY OF PROPOSED CHO

Type of business: Licensed Psychologist – Private Practice

Clients will be seen by appointment only.

The space used for the business will be the areas labeled in the floor plan as “Waiting Room” and “Office.” Clients will also have access to the portion of the bathroom adjacent to the waiting room.

The space utilized for the business is approximately 515 square feet; the total area of the home with the addition will be somewhat more than 3000 square feet. The business thus would utilize approximately 17% of the space in the home.

Days and hours of operation will vary based on client scheduling, but will fall within the range of Monday through Saturday from 7:00 a.m. to 7:30 p.m.

Number of clients per week also will vary, but will not exceed 30 per week. Between 15 and 25 per week would be typical.

There will be no employees other than the home owner / psychologist (Jane Runion)

There will be no signage, other than a sign indicating the office entrance. The size of this sign will be 2' X 2' or smaller and unobtrusive (on the entry door or on or near the garage).

There will be no advertising other than a Yellow Page listing under the category “Psychologists,” and potentially a web page.

There would be no routine or frequent deliveries of any kind.

Clients would park in the driveway, and consistent with Town of Perinton restrictions, only one client would be scheduled to be on the premises at a time.

As can be seen from the floor plan, the space has been designed to maintain the residential appearance of both the interior and exterior of the home, and allow for utilization of the space as a first floor master or in-law suite in the future.

Ms. Runion states that she has been practicing in the area for about 20 years; 9 years at Strong Hospital, and 11 years in private practice in Pittsford. She and her husband have lived in this home for 19 years. The home office would be part of an addition that she is proposing to be built onto the house and has been designed so that eventually the space will be used as a downstairs master bedroom and bath, so that they can age in place. It could also be used as an in-law suite in the future. Clients would be seen by appointment only and they would park in the driveway. Each appointment would be 45 minutes with at least a 15 minute interval between appointments to prevent overlap and minimize impact on traffic in the neighborhood. The number of clients per week would vary between 15 and 25 and would decrease as she approaches retirement. The actual number seen is generally lower due to cancellations, which she cannot predict ahead of time. She is proposing a small sign 12” X 4” indicating where the office entrance is, which would be on the garage/office area entrance. The addition has been designed to maintain the residential character both interior and exterior consistent with other homes that have in-law suites. She feels that this practice would be a value to the community and barely noticeable to neighbors.

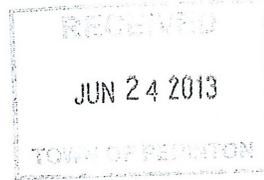
Mr. Young inquires what areas in psychology she specializes in, or is it a general practice. The applicant states that she sees people primarily with depression and anxiety; occasionally an eating disorder. She specializes in treating

children and adolescents. She sees adults also. Mr. Young states that he is struggling with the type of profession. Psychology is different than accounting or a real estate broker, or a music teacher. He states that the Board has received comments from neighbors at #'s 1 and 2 Cantwell Place on this application. (see below)

From:
Sent: Sunday, June 23, 2013 9:02 PM
To: Lori Stid
Subject: TownOfPerinton : Contact Message

Name	John Larmann
Company	
E-Mail	
Address 1	1 Cantwell PLace
Address 2	
City	Fairport
State	NY
Zip	14450
Phone	
Fax	
Contact By	E-Mail
Comments	This note is relative to a Special Use permit application for #4 Cantwell Place, asking for allowing private practice from the residence. (This is my input for a meeting being held on 6/24/13). As a homeowner in the Culdesac I am a bit concerned with what the impact might mean to our home values (negatively), as well as with the potential negative impact of having 25-30 patients per week of automobile traffic of strangers coming and going. This change could definately change the character and potential safety of this location, with the current residential charm and privacy being altered.(We have several small children who live in this culdesac). Note that I am not against the owners plans for proposed their architectural modifications, but not in favor for using the residence for professional business purposes. Sincerely John Larmann

June 24, 2013



To: Zoning Board of Appeals-Town of Perinton

Re: Application number 42-13 requesting Special Permit under section 208-32 A(7) at location of 4 Cantwell Place, Fairport NY

Dear Board Members,

We respectfully ask the Board to consider our objections to granting a Special Use Permit for 4 Cantwell Place as requested in the application being reviewed during the Zoning board of Appeals meeting on June 24th, 2013.

As stated in the general form application, the boards approval "... can only be given when the applicant offers proof that his proposed use will not violate any of the following factors: ...". We would submit that the proposed use will violate many of the specific factors the Board has outlined based on the following information.

In respect to Factor B:

1. The proposed use will "tend to depreciate adjacent property".

- a. Attached is an email by Robert Ruhland, AKA "Mr. Perinton", a highly active real estate agent in Perinton, which clearly indicates multiple negative marketability issues will arise for adjacent properties. The issues outlined by Mr. Ruhland will certainly cause adjacent properties to lose appeal in the market place to prospective home buyers. By reducing the potential market of prospective buyers it naturally increases the time it may take to sell the home and reduces the maximum value that properties may be able to fetch. In addition, if one house on a cul-de-sac has its value reduced, it tends to reduce value of the other houses on the same cul-de-sac.
- b. Attached also is an email from Beth Forester, a real estate agent with over 30 years experience and a number 1 agent in the Fairport / Perinton area for 20 years. Based on her experience Beth also states that if this business at 4 Cantwell Place is allowed to go forward it will have a negative impact to buyers of the adjacent property and to traffic on our cul-de-sac.

2. The proposed use will "alter the character of the neighborhood".

- a. As stated in the application, if special use is granted, the applicant intends to modify their existing residence via significant construction for the purpose of having patients visit. The nature of this business will have a more commercial / retail flow of customers than just an existing in-home office where a single individual primarily conducts their business via phone, computer, etc.
- b. The privacy and quiet enjoyment for the adjacent property owners at 2 Cantwell Place will certainly be infringed upon. The backyard deck, patio area, master bedroom window, and living room window of this adjacent property are all within view and are very close in proximity of the proposed entrance for the business. Having up to 30 patients arriving and leaving 6 days a week from the early morning up until early evening will definitely alter the current level of

privacy and quiet enjoyment that neighbors have enjoyed. And it will alter enjoyment and privacy for any future buyers to come.

3. **The proposed use may negatively impact “the general welfare of the neighborhood”.**

- a. The attached article from Ofer Zur, Ph.D. (Director of the **Zur Institute, LLC**), indicates there are safety issues beyond even the therapists’ well-being with a psychology home office setup. Please see excerpts from the article below. (The full article has been provided as a separate item.)

“Therapists seeing clients from their own homes is clearly a boundary issue as it involves professional relationships outside the traditional place of business and the blurring of the personal and professional aspects of therapists’ lives (Gutheil, & Gabbard 1993; Zur, 2003, 2007). The home office arrangement invites clients into the therapists’ most personal domain, their homes. It exposes numerous aspects of the therapists’ lives to their clients, which would not be exposed in a traditional psychotherapy office. It also can easily expose clients to therapists’ family members, neighbors, pets or whoever else resides in or near the house and vice versa, although this will vary from practice to practice.”

“Safety considerations are of paramount importance in the home office setting, as it normally does not provide the therapist with the same level of protection as a standard medical or business office (Zur, 2007). When working with potentially violent clients in a standard office, there are often other therapists, staff or receptionists in close proximity. In extreme cases, therapists may resort to the use of panic buttons, the door to the consulting room may stay open or another therapist may be present during the interview. These options are not very readily available or even advisable in the home-based setting.”

“Safety issues go beyond the therapist’s well being as the home office setup may expose children, spouse or other family members and pets to potentially volatile or violent clients. The concern with a dangerous client in the home office is that if he or she was not screened out on the phone or identified in the course of some other pre-therapy interview, that client has become privy to the location of the therapist’s residence and with whom the therapist lives, who lives nearby and even the layout of the house.”

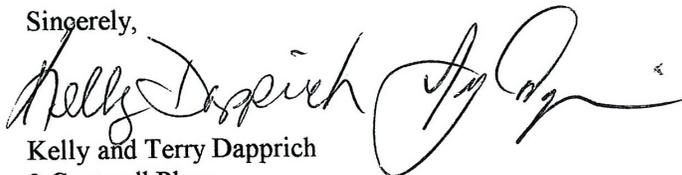
In respect to Factor C:

1. **The proposed use will significantly alter the flow of traffic.**

- a. It is undeniable that with 30 possible patient visits per week, the traffic pattern in the Cantwell Place cul-de-sac will change significantly. On an annual basis, this would mean over 1400 additional vehicle trips in and out of the cul-de-sac would occur. The additional vehicle trips would also impact Mason Valley’s primary navigational access roads in order to get to Cantwell Place. In a neighborhood with many walkers, bikers, joggers, dogs, and children combined with no sidewalks, this additional traffic can only be seen as a negative to safety for the surrounding neighbors.

Lastly, by granting a special use permit the Board would in effect be benefiting a single individual (actually their business) and negatively impacting multiple residents. Given the issues outlined above and the opinions of local real estate professionals, we submit that the application does not meet the “proof that his proposed use will not violate any” of the factors the board must consider for a Special Use Permit. Respectfully we ask the Board to deny the Request for a Special Use permit at 4 Cantwell Place.

Sincerely,



Kelly and Terry Dapprich
2 Cantwell Place
Fairport, NY 14450

The comments from #2 Cantwell Place included a letter and an e-mail from two real estate brokers and copies from a web based article regarding the use.

Mr. Young states that he is struggling with the use.

Mr. Arcarese asks why the applicant wants to work out of her home and not her current office. The applicant states that she wants to continue to be able to work and spend time at home with her retired husband. This will allow her to do household tasks and spend time with her husband while working during the day. She plans to reduce the practice as she ages. Mr. Arcarese feels this use in this neighborhood will alter the character of this neighborhood, especially given the volume of clients she is proposing and having a sign on the home. The applicant states that if signage is an issue, she won't have one. Mr. Arcarese feels that hours of operation that may start as early as 7 AM are early for this neighborhood. The applicant states that the advantages for setting up a wider range of hours of operation are that the same number of people come in across a wider span of time. This allows the appointments to be spaced out more easily and offers flexibility without crowding. She does not plan to work a 12 hour day non-stop.

Mr. Moose asks what the workload is now for an average week. The applicant states 20. He asks when her business may slow down and have the number of clients reduced. She states that she would like to work another ten years and does not plan to reduce it immediately. Mr. Moose states that it is troubling, in part, because this is a cul-de-sac. In general, there is not a lot of traffic in a cul-de-sac. This business would add traffic to this neighborhood. The applicant states that she does not have children or any family in the area, and she feels that neighbors with children create more use and more volume of traffic, especially if the kids are of driving age.

Ms. Barrett feels that the definition of a customary home occupation as defined under Section 208 in the Code is an accessory use which is secondary. The fact that she is contemplating an addition to the home to create a business is not a secondary use. The applicant states that the floor plan has been designed to allow them to age in place, or it could be an in-law suite. Ms. Barrett states that the application states that if the variance is not received then she would continue to operate her business out of her office. The applicant states that it is cost prohibitive to have the addition without the offset of not paying rent for the next 10 years. She states that she is very sincere in her wish for a downstairs bedroom and bath to allow them to age in place. She can't have an office in her home if she does not have an addition, as there is just not room for it. Ms. Barrett asks if the children/adolescents are brought to the appointment by a parent. The applicant states that most of them are. Ms. Barrett asks how many people are in the home office visit in that type of situation, and the applicant states two; the client and a parent generally. Ms. Barrett asks how many patients would be seen a day. The applicant states that would vary from day to day and week to week, as it depends on client work schedules and school schedules. It could be 3 a day; it could be 5 a day. Ms. Barrett asks what the maximum number a day would be. The applicant states that the most she has ever seen in a day was 8, but that would be on one day just before she would go on a vacation or something like. Ms. Barrett asks if there is a busy time or season. The applicant states that the weeks during school breaks are often slow, but there are clients who want to come in during those breaks so that they don't have to miss school.

Ms. Sartori asks if she feels that there may be any boundary issues or safety concerns by having clients in her home. The applicant states that the way the space is designed there are not boundary issues. As far as safety issues, there are always safety issues in almost anything that people do, but it is important to screen. She screens all of her clients. These are people just like everyone here tonight. They are people who have some anxiety, stress in a relationship, worried about something, etc. She sees teachers and doctors. She states that she is taken aback by the response she has received from her neighbor and this Board regarding the clientele. This is a private practice. She does not treat people who have drug addictions, violent behaviors or sex offenders. She screens people on the phone and also ongoing as they are being seen. Ms. Sartori asks how many clients she has in total right now. The applicant states about 25; some come once a week, some come once a month. Ms. Sartori asks if it is possible to schedule the clients in her private office part time so that she can spend more time at home. The applicant feels that this question is beyond the scope of the meeting. She states that it would not be worth it to go back and forth between her home and her office. Ms. Sartori asks where her clients would go when she retires. The applicant states that she would refer them to other therapists in the area with the right expertise. The applicant states that there is attrition; people don't come forever. Ms. Sartori asks if she prescribes medication. The applicant states that she is not a prescriber.

Ms. Ezell supports this request. She has been in practice for 20 years. She states that some of the clients are adults and some are children. The applicant has states that she does not deal with violent, sex offenders or drug addicted clients. She states that some people have come to the Board for a customary home occupation and have asked to remodel, but she doesn't think anyone has ever asked to build an addition. She states that she is ok with that. She states that the applicant has states that it would be about 20 patients a week, and even though it seems that she is open 12 hours a day; if you divide it up over the week, it is an average of three cars a day. She states that in her own household, all five of them have cars and they go in and out numerous times a day. This additional traffic that is being proposed is not excessive. It sounds excessive when you say you are open from 7 AM to 7 PM, but many people work 9 – 5 and need the flexibility of being able to come before or after work or school. There will be gaps in the day. This is not any more excessive than a piano teacher may have with people coming for lessons after school or on a weekend. This is a way for the applicant to age in place, which is something that the Town is trying to move toward. This has been designed so that when the use of the office is no longer needed it could be used for in-laws or aging in place. She understands the sensitivity of the nature of the business and those not in the profession may think that this could be a safety issue. The applicant feels that those fears are exaggerated and the concern of the neighbor is re-sale. Ms. Ezell asks if the applicant has gotten along with the neighbors in the past. The applicant states yes; there have never been any issues in the past before this. Ms. Ezell asks if she was aware of the concern of the neighbors. The applicant states yes; they have had several conversations about this, and she has received copies of the documentation that has been submitted to the Town from the neighbors. The applicant states that there is already a psychiatrist that has been approved in the Town of Perinton to operate a Customary Home Occupation who is allowed to prescribe medication and in general, those types of clients have more significant impairments. Ms. Sartori asks if that approval is in a cul-de-sac, and the applicant states no. It is a residential area with the same speed limit.

Ms. Barrett asks if there are a minimum number of patients that would need to be seen per day in order to operate the business out of the home. The applicant states that the number that she needs to schedule is not necessarily the number she ends up seeing. She would like to be able to schedule 6 patients a day, which would allow her to work 4 days and still have enough space. She wrote it broadly so that she would not have to come back to the Board if she decided to see 6 patients on one day and 3 patients on another day. She would not see 6 patients per day 6 days a week, but she would like to be able to see 6 patients on a given day if need be.

Ms. Ezell asks what happens if the patient doesn't show up. The applicant states that generally, the appointment is cancelled and they reschedule.

Mr. Young asked for questions or comments from the audience. Kelly Dapprich, 2 Cantwell Place, states that she is respectful of this profession and of her neighbors; this is not personal. She states that she has met with her neighbor so that they could try to understand where each of them is coming from. She will be looking to sell her home next year. She shows the Board pictures of her walkout basement and the neighbor's garage door and where the driveway is (proposed entrance). She shows the view from the master bedroom, living room, and from the deck. They are on a cul-de-sac with only 6 homes and she has an acre of land, but the houses are close together in the front. She asked a couple of realtors for their opinions, and was told that it would be a negative impact when she tried to sell her home. She expresses concern as to being unable to predict what people may do who are having mental health issues and bringing this type of business into the neighborhood. She supports the addition to allow a first floor bedroom and master bath to allow them to age in place. She is opposed to having strangers being brought into the cul-de-sac for a business.

Mark Marschark, 4 Cantwell Place, states that he is Jane Runion's husband. The agents who spoke to the Dapprich family realize that they plan to sell their home soon and have a vested interest. He spoke with Mike Knowlton, who works with David O'Brien, who sold all of the houses in Mason Valley originally. He told him that one of the agents from Nothnagle indicated that this business would negatively impact the sale of a neighbor home, and he said that it was absurd. He states that other neighbors, who have children, support this request.

Ms. Dapprich disagrees with that statement.

Ms. Runion states that Beth Forrester told her that having a sign in the yard could be a negative impact.

Mr. Young asked for questions or comments from the Conservation Board. Mr. Salmon states that the Conservation Board issued comments as follows:

The home currently has storm sewers to the property and would assume that the new addition will have gutters and downspouts connected to the storm sewer. The drawings show a hand rail at the proposed entrance to the office, which is an excellent safety feature as the grading drops off considerably in that location.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. Applicant meets criteria and would be categorized as "physician" under Customary Home Occupation provision of Town Code.**
- 2. Applicant intends to utilize 515 sf of approximate 3,000 sf home (including 589 sf addition) for professional office, which is 17 percent of the total space of the home.**
- 3. Customary Home Occupation permits up to 30 percent of total floor space in home dedicated to professional office. Applicant is well within floor space range.**
- 4. Applicant schedules one 45-minute appointment per hour to ensure there is only one customer at a time as required by code.**
- 5. Hours of operation are 7 a.m. to 7:30 p.m., Monday through Saturday. Applicant states that she would have 15 to 25 appointments per week.**
- 6. The CED Dept. recommends approval of this application with renewal to occur before the Zoning Board of Appeals one year from Certificate of Occupancy for the addition.**
- 7. A building permit shall be issued within six months of Customary Home Occupation approval.**
- 8. The area of the home where the Customary Home Occupation will occur shall be inspected by the Town of Perinton Fire Marshal prior to the issuance of a Certificate of Occupancy.**

Mr. Beck states that after discussion tonight, he feels that the hours of operation are excessive. If the Board goes forward, perhaps the Board would consider Monday through Friday from 9 AM – 5 PM, which are what typical doctor office hours are. Additionally, the addition should meet all setback requirements and not require a variance. He has spoken with the architect, Rick Hunt, and he will be re-designing a floor plan so that all setbacks are met. A sign would be permitted, but it could not exceed 2 square feet in area and 1 foot in height.

Mr. Young asked for questions or comments from Attorney Place. Mr. Place states that he has seen a number of customary home applications over the years. Typically, it is someone who is just starting a business and is trying to build it up, or perhaps someone who has retired and wishes to do their business part time. This proposed use doesn't seem to be a secondary use to the primary use of a residence. That is what makes this different in his opinion. Mr. Place states that the Board needs to determine what the primary use is. His own office is in the Village in a residential area and it seems to work fairly well. His office and parking is somewhat contained. Typically, Zoning looks favorable upon professional uses out of the home, as they don't tend to be as disruptive as some other types of use.

Ms. Ezell asks the applicant if she would have 40 hours of face to face client time during any week. The applicant states it would be 18 – 22 hours per week of face to face client time. Ms. Ezell asks if the applicant could work this from 9 AM to 5 PM. The applicant states it would be easier for her to limit the number of days per week than the number of hours, as she needs to be able to offer appointments first thing in the morning before people go to work, and also late afternoon, early evening hours for those clients who would come after work.

Mr. Young asked for questions or comments from the audience or the applicant, and there were none.

Mr. Young closed the public hearing.

Mr. Young made a motion to deny a Special Permit under Section 208-32 A(7) “Customary Home Occupation”, to allow a psychologist office to be located in a future addition to the home, with the following findings of fact:

He states that he is not in favor of this application because he feels that psychology is a qualitatively different profession from an accountant, a real estate broker, or a travel agent and from most of the other ones that are listed in the Code as customary home occupations. This profession involves dealing with troubled individuals at some level, and the Town has no ability or any expertise in trying to constrain the types of troubled individuals that are seen. Applicants are not entitled to have a customary home occupation simply because they asked for it; they need to demonstrate some basis on which this relief is granted. Taking the next door neighbors (#2 Cantwell & #1 Cantwell) objections into account, and considering them seriously is something that is incumbent on the Board to do. He does not feel it is important what the realtors said; it is not relative to the Board that the neighbor at #2 Cantwell may be moving in a year or so. Allowing this request would substantially negatively alter the character of the neighborhood; whether or not the addition to the home is built, based on the substance of the profession involved and the proximity of location. The houses in this cul-de-sac are wedged lots and with the addition that the applicant is proposing to build, they are very close to the living area of the next door neighbor at #2 Cantwell. It is understandable that these neighbors are concerned about a professional business being carried on right next to the living area of their home. Mr. Young states that a couple of years ago an officer in the Rochester City Police Department wanted a Special Use Permit for a Customary Home Occupation to operate a gun dealership from his home, and the Town has granted those in the past. Each application is looked at individually. This particular one was denied as he lived right across the street from one of the elementary schools. He feels that allowing a psychologist office in this location would alter the character of the neighborhood in a close cul-de-sac to carry on a private practice psychology practice. He feels that allowing this would interfere with the public health, safety and general welfare of the Town in this location. He does not feel that allowing this type of use would be in general harmony with the purposes of the Town Comprehensive Plan. He does not feel that the physical characteristics and topography of this location make it a suitable site for this type of use. He does not feel that there is sufficient room for the estimated vehicular traffic that will be generated in that short street in the cul-de-sac area to assure public safety.

Mr. Arcarese seconds the motion.

Motion fails 3 – 2 with Ms. Ezell and Ms. Sartori opposed, with one abstention of Ms. Barrett.

Ms. Barrett states that she is not in favor of the reasons as set forth; she supports the denial, but not for those reasons.

Ms. Barrett made a motion to deny a Special Permit under Section 208-32 A(7) “Customary Home Occupation”, to allow a psychologist office to be located in a future addition to the home, with the following findings of fact:

She feels that the application does not meet the criteria for the elements of a customary home occupation. She feels that the use is not secondary in nature to the dwelling purposes. There has not been any demonstration that it will not negatively change the character of the neighborhood. There has not been any demonstration that this request meets the elements of a customary home occupation as defined by the Town Code.

There was no 2nd to the motion.

Motion fails.

There was significant discussion regarding the use of this particular profession, in this particular neighborhood, on these pie-shaped wedge lots, as to if the use is or is not acceptable, and if the use is or is not secondary to the dwelling use of the property.

Mr. Young made a motion to deny a Special Permit under Section 208-32 A(7) “Customary Home Occupation”, to allow a psychologist office to be located in a future addition to the home, with the following findings of fact:

He states that he is not in favor of this application because he feels that psychology is a qualitatively different profession from an accountant, a real estate broker, or a travel agent and from most of the other ones that are listed in the Code as customary home occupations. This profession involves dealing with troubled individuals at some level, and the Town has no ability or any expertise in trying to constrain the types of troubled individuals that are seen. Applicants are not entitled to have a customary home occupation simply because they asked for it; they need to demonstrate some basis on which this relief is granted. Taking the next door neighbors (#2 Cantwell & #1 Cantwell) objections into account, and considering them seriously is something that is incumbent on the Board to do. He does not feel it is important what the realtors said; it is not relative to the Board that the neighbor at #2 Cantwell may be moving in a year or so. Allowing this request would substantially negatively alter the character of the neighborhood; whether or not the addition to the home is built, based on the substance of the profession involved

and the proximity of location. The houses in this cul-de-sac are wedged lots and with the addition that the applicant is proposing to build, they are very close to the living area of the next door neighbor at #2 Cantwell. It is understandable that these neighbors are concerned about a professional business being carried on right next to the living area of their home. Mr. Young states that a couple of years ago an officer in the Rochester City Police Department wanted a Special Use Permit for a Customary Home Occupation to operate a gun dealership from his home, and the Town has granted those in the past. Each application is looked at individually. This particular one was denied as he lived right across the street from one of the elementary schools. He feels that allowing a psychologist office in this location would alter the character of the neighborhood in a close cul-de-sac to carry on a private practice psychology practice. He feels that allowing this would interfere with the public health, safety and general welfare of the Town in this location. He does not feel that allowing this type of use would be in general harmony with the purposes of the Town Comprehensive Plan. He does not feel that the physical characteristics and topography of this location make it a suitable site for this type of use. He does not feel that there is sufficient room for the estimated vehicular traffic that will be generated in that short street in the cul-de-sac area to assure public safety.

Ms. Barrett seconds the motion with the additional rationale that the proposed use is not a secondary use to the dwelling and does not establish the elements of a customary home occupation. She feels that the application does not meet the criteria for the elements of a customary home occupation. She feels that the use is not secondary in nature to the dwelling purposes. There has not been any demonstration that it will not negatively change the character of the neighborhood. There has not been any demonstration that this request meets the elements of a customary home occupation as defined by the Town Code.

Mr. Young accepts the additional rationale.

Motion to deny carries 4 – 2, with Ms. Ezell and Ms. Sartori opposed.

Discussion:

Minutes – 5/20/13

Mr. Arcarese made a motion to approve the minutes of May 20, 2013, as amended.

Ms. Sartori seconds the motion.

Motion carries 6 - 0

There being no further business before the Board, the meeting adjourned at 9:26 PM.

Respectfully Submitted,

Lori L. Stid, Clerk