

**TOWN OF VIRGIL ZONING BOARD OF APPEALS**  
**Minutes of Public Hearings/Decision Meetings - Monday, 28 April 2014 - 6 PM**  
**Town Hall Meeting Room - Virgil, Cortland County, NY**

**Board Members**

Mary Beth Wright, Chair  
\*Jeannine Sprague  
Linda Edwards  
John Coulter  
Sheila Morse  
Niels Schulz, Alternate

(\*absent)

**Others Present**

Joan E. Fitch, Board Secretary  
Patrick Snyder, Town Attorney  
Craig Umbehauer, Town CEO

**Public Present**

Don & Mary Gerlach, Applicants; Attorney Meira Hertzberg & Steve Terwilliger for Empress Development, Applicant; Gary Wood, Mark Gleason, Mary McGee, Tom Williams.

**At 6:00 p.m., Board Secretary Fitch read aloud the Public Hearing notice as published in the Cortland Standard. Proof of Publication has been placed on file for the record.**

**PUBLIC HEARING # 1**

**Donald & Mary Gerlach, Applicants/Reputed Owners - 2034 Artemis Drive - TM #127.15-01-09.000 - Setbacks Closer Than Allowed**

Chair Mary Beth Wright recognized Mr. Gerlach who was seeking a variance to build a new home and detached garage at the locations shown on the drawing accompanying the application. He explained that he was trying to avoid the power lines, avoid having to remove existing trees, and lessen the amount of fill that would be required if no variance was granted. Mr. Gerlach stated that he had checked, and the proposed setbacks were within Arcadia (PUD) requirements, but did not conform to the Town's setback requirements as he found out later. He was asking for the garage to be ten feet from the property line on the power line side, with the house to be 60 feet from the centerline of the road. There are natural barriers on two sides which he would like to keep.

Chair Wright asked if there were any questions or comments from the public; there were none.

**With everyone being heard who wished to be heard,  
Chair Wright closed the Public Hearing at 6:12 p.m.**

DISCUSSION/DECISION

The Board then proceeded with the required questions (balancing test), with the responses being given by the ZBA members, as follows:

1. Will an undesirable change be produced in the character of the neighborhood, or a detriment to nearby properties be created?

Finding: No. All Board members present agreed.

2. Can the applicant achieve his goals via a reasonable alternative which does not involve the necessity of an area variance?

Finding: Yes, he could conform to the requirements. Vote: 3 aye, 2 nay.

3. Is the variance substantial?

Finding: Not substantial for the front setback, but is substantial for the side setback. Vote: 3 aye, 2 nay.

- 4. Will the variance have an adverse impact on physical or environmental conditions in the neighborhood or district?

Finding: No. All Board members present agreed.

- 5. Has there been any self-created difficulty?

Finding: 3 aye; 2 nay.

Chair Wright acknowledged receipt of the Cortland County Planning Department’s memo of 27 March 2014, signed by Kevin Pagini, Planner, which stated that the request for an area variance was technically adequate and had no State- or County-wide impact; therefore, it was returned to the Town for local determination.

**A motion was then made by Member Sheila Morse to grant the area variance to allow for a house closer to the road than allowed and a garage closer to the side property line than allowed, as requested. The motion was seconded by Member Linda Edwards, with the vote recorded as follows:**

<b>Ayes:</b> Chair Wright Member Morse Member Coulter Member Edwards Member Schulz	<b>Nays:</b> None  <b>Absent:</b> Member Sprague
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**Motion carried.**

**This becomes Action #6 of 2014.**

**PUBLIC HEARING #2**

(Note: Reference is made to the Minutes of 27 January 2014 regarding this matter. The request for a variance to allow for a sign with a height of 21 ft. 8 in. was denied.)

**Empress Development Corp., Applicant/Steve Terwilliger, Reputed Owner – 2964 Webb Road – TM #105.00-09-09.000 – Sign Variance**

Chair Wright explained to those present that the applicant had a new proposal for a 72 SF sign, a reduction from the previous request, with the sign height remaining the same. She then recognized Mr. Terwilliger’s attorney, Meira Hertzberg, who stated that in order to be visible, the proposed sign needed to be “bigger” than what was allowed in the Code. Attorney Hertzberg then provided examples of existing signs in the Towns of Virgil and Cortlandville. The 20 SF allowed for a sign in this Town is not sufficient to attract attention. She went through the questions which appear in the “balancing test.” The benefits sought by the applicant “cannot be accomplished by another means.” The hardship, she stated, is not a self-created hardship.

Member John Coulter reported he had investigated Sunoco signage on the web, where other types of signs were shown, e.g., monument signage. He read from the information found there.

Mr. Terwilliger commented that the traffic going by on NYS Route 13 is travelling 55 MPH, and the size of the sign makes a big difference. Member Coulter countered that most of the drivers going by this location already will know the station is there, as they commute two ways during the week.

Mr. Terwilliger added that he will be selling CoffeeMania coffee and wants to “pull people in; we are not just a gas station.” The size of the sign “does matter in this case.”

After continuing discussion with the Board, where there was continued objection to the overall square footage and the height of the proposed sign, Mr. Terwilliger suggested making the Sunoco sign smaller.

Chair Wright asked if there was anyone present who wished to speak on the matter. Comments were received as follows:

Mark Gleason – Didn't understand why such a big sign was needed. People will stop no matter what. Everybody knows gas station is there. Against granting of the variance. It's a bad corner to get out of onto Route 13. People will be slowing down.

Mary McGee – Agreed with Mr. Gleason.

Tom Williams – Don't need that big sign. Had large group at last public hearing who objected to this sign as proposed.

**With everyone being heard who wished to be heard,  
Chair Wright closed the Public Hearing at 6:53 p.m.**

Chair Wright then read from a 12/12/07 Memo to the Virgil Planning Board from Tim Buhl, PE, Mr. Terwilliger's engineer for this project. The memo was in response to the questions raised by the Board in the initial EAF review. Regarding signage, which at that time no decision had been made as to the type and style of the project sign, Mr. Buhl stated, "The developer will stipulate that any signage proposed will conform to the Town's ordinance, **and no variances will be sought.**]" Attorney Hertzberg stated that the engineer made an error when he made that statement.

Chair Wright then acknowledged receipt of a 13 March 2014 memo from the Cortland County Planning Department which stated that the request for a variance was technically adequate and had no State- or County-wide impact, so it was being returned to the Town of Virgil for local determination.

Chair Wright then read aloud the following from the Town of Virgil Planning Board's SEQOR Statement of Findings dated 16 July 2010 regarding this project:

*"1. County Item 14. Any proposed signage for the site being approved by the Town. Any approval of this Site Plan is also contingent upon any and all signs conforming to the Town's regulations."*

(It is noted that this Statement of Findings was included in the Town Planning Board's Final Site Plan approval on 14 July 2010, Actions #27 and #28.)

Attorney Hertzberg then proposed that the subject application "be modified to 15 ft. in height rather than 21.5 feet." The Sunoco emblem could be shrunk down. The Board members stated that they would like to see what this new sign would look like.

At the conclusion of the discussion, **a motion was made by Member Coulter to request that the applicant provide a more detailed drawing showing the dimensions of the proposed 15-foot high sign. The motion was seconded by Alternate Member Niels Schulz, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chair Wright</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Morse</b>		
	<b>Member Coulter</b>	<b>Absent:</b>	<b>Member Sprague</b>
	<b>Member Edwards</b>		
	<b>Member Schulz</b>		

**Motion carried.**

**This becomes Action #7 of 2014.**

Town Attorney Snyder advised the Board that another Public Hearing was not necessary as it is a modification of the application, modified for the sign to be smaller.

**APPROVAL OF MINUTES – 27 JANUARY 2014**

**A motion was made by Member Edwards to approve the Minutes of the 27 January 2014 (T) Virgil ZBA meeting, as submitted. Alternate Member Schulz seconded the motion, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chair Wright</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Coulter</b>	<b>Absent:</b>	<b>Member Sprague</b>
	<b>Member Edwards</b>		
	<b>Member Schulz</b>	<b>Abstain:</b>	<b>Member Morse</b>

**Motion carried.**

**This becomes Action #8 of 2014.**

**ADJOURNMENT**

A motion was made at 7:15 p.m. by Member Morse to adjourn the meeting, seconded by Member Edwards, with all members present voting in the affirmative.

  
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 Joan E. Fitch, Board Secretary

Submitted via e-mail to Town Clerk,  
Town Attorney, CEO & ZBA Members on 5/22/14.