

**MINUTES OF THE ZONING BOARD OF APPEALS PUBLIC  
HEARING AND MEETING HELD NOVEMBER 01, 2006**

Present: Donald Mordue, Chairman  
Michael Haley  
Anthony Muscolino  
William Henry

Absent: Rick Beaton

Others: Edward Hamilton, Tim Moyer, Doug Burton, Constance Zona,  
Jeri Souther, Dick Beyea, Kristi Musson-Moyer, Steve  
DeHond.

Recording: Rita J. Gurewitch, Deputy Clerk

The public hearing was called to order at 7:30 PM by Chairman Mordue. He directed the Deputy Clerk to read the public hearing notice and stated that the purpose of the public hearing was to hear Jerilyn Souther's (Contract Vendee of Edward Poinan property at vacant lot at 84 South Main Street) request for an area variance to appeal Section 100-35A(1)(b)(d) of the Village of Manchester zoning code that states *Drive in restaurants and eating establishments where a substantial percentage of sales are take-out customers, provided that such uses shall not be closer than two hundred (200)feet to a residential district.* Application shows only 25' to the north property line. Ms. Souther would like to have a food vending establishment at this location.

Chairman Mordue asked if everyone has signed in and that if anyone wants to direct the board to raise your hand, he'll call on you, stand up, state your name and direct all comments to the board.

Chairman Mordue requested Jerilyn Souther to tell the board what it was she wanted to do.

Ms. Souther stated that they would like to put a hot dog stand at this location. Mr. Beyea stated that he has been in business for 12 years, this particular stand he has owned for 8 years.

Chairman Mordue: This is a mobile stand.

Mr. Beyea: It is a mobile stand. I've been doing events with it. Fairs, festivals, parties and has been accepted by almost everyone. It's a great looking stand. I realize to go on this land that there will be variations that need to be dealt with. That is no problem.

Ms. Souther: We will skirt it and what not to make it look nice.

Mr. Beyea: I'm sure whatever we do there will be a great improvement as to what the land is right now. We have great plans to put and screenage and greenery, plants. It will look wonderful when we're done with it. The stand is 24 feet long and 8 feet wide. It is a restaurant on wheels and is a great looking unit.

Ms. Souther: What is the confusion, I would like to ask?

Chairman Mordue: You're answering some on my questions, so please continue.

Mr. Beyea: Right now, my stand is over on Ridge Road Station, on 104 West, Peter Mills owns it, it's the all year round Christmas Store. To be over there you can't have a sloppy looking outfit over there. I've been doing this for Pete for three or four years now. When people come up to my stand

they're always saying how nice and clean it is, that's why they come back to us. The Health Dept has check on me the past several years and haven't had any complaints from the health department. As a matter of fact, everytime they come everythings "A O.K." and the first thing they say, I should have brought it with me, the Ontario County Fair, the Wayne County Fair, one of the notations that the inspector made was "very clean stand". That's the way I keep it. I don't run a trashy outfit and it's always good. The food is great. The people love the hotdogs, hamburgs, sausage, steak and cheese, sodas, ice cream, French fries, mozzarella sticks, things like that. Quick food, pick up, grab for lunch or supper. We have a nice large serving window and we have Coca-Cola. In no way is it a trashy looking thing. If we can put it on the land, and the wheels have to come off and set on blocks, I'll do it.

Chairman Mordue: So this is not something, where somebody goes in and gets something to eat, you have to walk up to a window and get a sandwich and take it somewhere and eat it.

Mr. Beyea: Hopefully we can have some tables there where they can sit and enjoy lunch and go on their way.

Chairman Mordue: Is this seasonal?

Mr. Beyea: Spring, Summer, Fall.

Chairman Mordue: The parcel of land that you want to buy. Is this going from Mr. Poinan's driveway? On the north side where does it go from?

Mr. Beyea: They just did a new survey and it goes all the way back by his tree and half in his driveway.

Chairman Mordue: It starts basically at his (Mr. Poinan's) driveway and goes across...

Mr. Beyea: To about one foot from his brother's garage. Where the flag is placed.

Chairman Mordue to Doug Burton: So that driveway to your garage...

Doug Burton: It's not mine.

Chairman Mordue to Doug Burton: You don't own that.

Doug Burton: No.

Chairman Mordue to Mr. Beyea: So you're going to buy that.

Mr. Beyea: Yes. Where it says black top on the map. Hopefully the highway department will be putting in a new entrance after they take the bridge out. I have to talk to the state. Once they fill that in, when the bridge is taken out, this gentleman here will have a little more property and this property will too.

Doug Burton: My brother and I bought the place. (Edward Poinan owns parcel in question, Doug Burton own adjacent property).

Mr. Haley: Is there some reason dimensions on the sketch don't match the survey map?

Ms. Souther: You don't have the new survey.

Mr. Muscolino: I have other questions, if I may beforehand. You said you are at the Ridge Road Station. How long have you been there?

Mr. Beyea: Twice a year he has...

Mr. Muscolino: So you're not there permanently, correct?

Mr. Beyea: No, I go in the Spring and Fall. The Fall ends my season as far as doing fairs and festivals. So I stay there, weather permitting, I stay there right up until Christmas.

Mr. Muscolino: You're talking about coming here and setting this up on a semi-permanent basis.

Mr. Beyea: No, I've been traveling for 12 years and I would like to buy a piece of land and set the stand there and do business.

Mr. Muscolino: So it's going to be a permanent thing then?

Mr. Beyea: Yes.

Mr. Muscolino: And it would be open from...

Mr. Beyea: Probably from 10:00 am to ...

Mr. Muscolino: I'm sorry, I'm not making myself clear. From what time of year to what time of year?

Mr. Beyea: It would depend on the weather, March, April ... Spring, Summer, Fall.

Mr. Haley: Do you have a picture of the stand?

Mr. Beyea: Yes, I do. But I left them

Mr. Muscolino: My next question, you have been bouncing around at different places and having to go to different areas..

Mr. Beyea: Oh, yeah. That's how I do business. It's just getting to the point where I want to quit bouncing and I just want to stick and build up a nice business. The reputation is there. People know me, and they know it's good.

Mr. Muscolino: Ridge Road Station, it's in the Holly area, right? Why come here?

Mr. Beyea: Holly is just one of my stops. It's my last stop of the year.

Ms. Souther: I'm from around here.

Mr. Muscolino: Where else have you been?

Mr. Beyea: The Ontario County Fair, the Wayne County Fair. Batavia Fair. I have done several parties.

Ms. Souther: I live in Shortsville, he lives in Canandaigua.

Mr. Beyea: One day I was going by the land, we were in search of land and I drove by that land and I thought it looked like a great spot to me to do business on. I can see how nice it can be when developed.

Mr. Haley: What were you going to say the daily hours were going to be?

Mr. Beyea: Probably 10:00 am to probably 8:00 pm. Six days a week. Mondays off. I paid big dollars to have spots in other places. The setting up and tearing down. Why keep paying all this money for a week at a fair when a piece of property can be bought and do business and be happy.

At this time the Appeals board is studying the maps presented.

Mr. Henry: There is a question about lights. Lighting.

Mr. Dehond: This is going to have to go back to the Planning Board for site plan approval. They will address site plan questions.

Mr. Haley: Reading this there is no curb cut there.

There is a new map of the intersection of Merrick Circle, Route 21 and Smith Terrace where the Bridge Project (at grade railroad crossing) that is to start in April of 2007. A new design is projected for that area. A discussion followed as to an entrance to the Poinan property as a driveway to that parcel and what is entailed in the subject property.

Chairman Mordue: The only reason for this variance is the 200' to a residential district.

Chairman Mordue: You people are here. Do you want to say something. Doug do you want to start?

Doug Burton: As far as I understood is that you couldn't put a trailer anywhere. When we had a trailer for a post office we had to get rid of it. That's why the post office moved. I feel putting a trailer in front of my house is going to bring down the value of my property.

Ed Hamilton: I'm concerned with traffic. I have enough traffic. I'm concerned with the garbage and smell. Everyday I'm picking up garbage of somekind. Food wrappers, food container, pop cans, beer cans. I don't need anymore of that. And the traffic in the morning trying to get out onto 21, that's congested enough.

Tim Moyer: I live at 85 South Main and I'm concerned also about traffic. It's bad enough at that intersection now without extra vehicles pulling in and out. The smell. I'm concerned about the smell. I don't want to have to wake up everyday and have to smell something like that all day long. And like Doug said, a trailer...what's it going to do to the value of my property.

Ed Hamilton: It's a good place for loitering.

Chairman Mordue: Anyone else? (No further comments presented by others present)

Chairman Mordue: First of all, it's commercial and qualifies for a business. If it's commercial it's zoned for that. Keep in mind that it does qualify.

Mr. Haley: The difference being, the zoning concerning the 200 feet and in order for us to grant a variance that need to prove a hardship that they didn't create.

Chairman Mordue: The hardship is in our zoning.

Mr. Haley: I think the residents have a reasonable expectation that we go by the zoning.

Mr. Muscolino: and the residents have objected to it. If zoning is what it is, then we need to abide by it, then I don't know if we need to go further.

Mr. Beyea: Could you speak up a little more, I can't hear over the heating fan.

Chairman Mordue: What we're saying is that there is zoning for a reason. And a lot of the reasons these folks brought up are good reasons why we have zoning in place. One of the reasons these laws were put down was to protect the residents of the village.

Mr. Haley: My opinion is that the residents have a reasonable expectation that there is zoning in place unless the person that is going for the variance can prove that there is a hardship that didn't create, then we have to look at that.

Mr. Beyea: There are a lot worse things that can be put on that property. Let me just say. Garbage...there won't be any garbage. Cans...I don't put up with that. Loitering...that I don't put up with. I don't run a trash heap. This is a great looking unit. It's a business and I strive myself for all these years to look as good as it does. I just finished investing \$5,000 in redoing it. If there's something on the ground, I pick it up.

Mr. Haley: I don't think any of us are questioning of you running a good business. The question for me, as person on this board, is that we

having zoning for a reason. These people have legitimate concerns. There's no question that it is a business. It's probably a wonderful business. We just have to decide if we agree that this is the place it should be.

Mr. Beyea: I can assured them that their concerns, it just won't happen.

Ms. Souther: I'm a little confused. It is zoned commercial. So if anything that goes on that property going to have to go through this same procedure?

Mr. Muscolino: Yes, more that likely it is.

Mr. Henry: The building that was there is no longer existing. The building is down. If the building was there, existing, than it would be something different. But it's gone.

Mr. Haley: It's 200 foot because of the food service.

Ms. Souther: So if it was another commercial business it would be different.

Chairman Mordue: Each have codes to follow.

Mr. Beyea: I don't see these things happening down at the ice cream stand right down the road. They run a very respectable business. There are a lot of people that sit and have ice cream and I don't see any problem there. We are not going draw thousands of people, I wish I could, but we're not going to create more traffic, more people. We just going to try to catch the people that are already existing going down the highway to pull in, have a hot dog, have a hamburg, have lunch and that's that.

Mr. Haley: Understood. It just in my mind that whether the residents next door have a reasonable expectation that we would abide by the zoning if we can't prove a hardship.

Chairman Mordue: Are there any other questions?

Ms. Moyer: When you're talking about a hardship. A hardship for us or for them?

Chairman Mordue: People who are requesting a variance cannot create their own hardship.

Mr. Haley: It is a hardship for them, but they have to prove it wasn't created by them. It's hard for me not to think it's not created by them because they want to put the business there that doesn't fit. Another example, if you want to build a garage and your property is too narrow. That's a hardship you didn't create.

Mr. Burton: Is a trailer, in the village where you can't put a trailer, isn't that non-conforming? My parents wanted to put a trailer on that property in 1968 and they were told no.

Chairman Mordue: That was residential. That's the difference.

Mr. Henry: I don't think that is in question.

Chairman Mordue: That's not part of this.

The public hearing was adjourned on motion at 8:00 PM.

### **ZBA MEETING HELD NOVEMBER 01, 2006**

Present: Donald Mordue, Chairman  
Michael Haley  
Anthony Muscolino  
William Henry  
Absent: Rick Beaton

Others: Edward Hamilton, Tim Moyer, Doug Burton, Constance Zona,  
Jeri Souther, Dick Beyea, Kristi Mussor-Moyer, Steve DeHond  
Recording: Rita J. Gurewitch, Deputy Clerk

The meeting was called to order at 8:15 PM by Chairman Mordue.

A letter was received from Richard Carr who owns property along Merrick Avenue, within 500 feet of the variance request. He stated that *the 200 foot set back to the north and all property lines in a residential district should be strictly enforced. I am opposed to the applicant's area variance. Please deny.*

Mr. Haley stated that he feels people have a reasonable expectation that zoning is going to be followed. Unless, if everyone in the neighborhood came and said we want it, then that's a different story. The people present want us to uphold the zoning. After discussing the proposed request from Jerilyn Souther, the following resolution was offered by Mr. Haley, seconded by Mr. Muscolino who moved its discussion.

**WHEREAS**, Jerilyn Souther has applied for a variance to allow a drive in restaurant and eating establishment within 200 feet of a residential district at 84 South Main Street; and

**WHEREAS**, all residents of the village within 500 feet were notified of the public hearing; and

**WHEREAS**, it does appear to be a self created hardship and opposition was heard; and

**WHEREAS**, the members of this board are familiar with said location and the conditions and circumstances under which said variance is requested; and that the character of the area would be changed if the variance were allowed as requested; and

**NOW, THEREFORE, BE IT RESOLVED**, that this variance application be **DENIED** to allow a drive in restaurant and eating establishment within 200 feet of a residential district at 84 South Main Street.

The above resolution was put to roll call vote which resulted as follows;

Anthony Muscolino	Voting	"AYE"
Patrick Beaton	Absent	
Michael Haley	Voting	"AYE"
Donald Mordue	Voting	"AYE"
William Henry	Voting	"AYE"

The resolution was thereupon declared duly adopted.  
The meeting was adjourned on motion at 8:40 PM.

Respectfully submitted,

Rita J. Gurewitch  
Deputy Clerk/Treasurer