

**VILLAGE OF NEW PALTZ PLANNING BOARD
REGULAR MEETING JANUARY 16, 2007**

Call to order: The meeting was called to order at 7:04 p.m.

Members Present: George Danskin, Chair; Ray Curran, Marion DuBois, Ms. Elwell.

Also present: Moshe Plotkin, Bracha Plotkin, Jeannie Zetterstrand, Susan McNaughton, Ann Finn, William Schnitzer, Dino Toscani, Paul Caltagirone, Jayne Daly, Frank Mandy, Cynthia Rosenberg, Dorothy Jessup, Bob Hughes, David Porter, Terry Dungan, Michael Zierler; Village Trustee and Planning Board Liaison, and other members of the public.

Announcements from the Chair:

The following information was submitted to the Board:

1. The Village Board Agenda for 1/17/07; several items were related to the Planning Board issues.
2. An e-mail memo from the Board's attorney Drayton Grant to be referenced later in the meeting.

The Chair reviewed the order of tonight's agenda: (1) public Hearing on the site plan application for Rabbi Plotkin; (2) continued review of Mr. Toscani's application(s) and (3) Woodland Pond site plan issues

New Applications with Public Hearings:

PB07-01: Moshe Plotkin. 10 South Oakwood Terrace [SBL: 86.34-11-14 (R-2)]

Site Plan: Construct addition on rear of existing house.

UCPB Review: No County Impact

The public hearing was opened at 7:07pm. Comments and questions from the public and the applicant's responses later in the session included but not limited to the following:

Buffers/Landscaping: Ms. Zetterstrand (located adjacent to the east of the applicant) voiced concern about adequate buffering when the garage is taken down. She said a fence was not adequate. She recommended landscaping/plantings of arbor vitae (emerald greens), a basically maintenance free shrub, and specified the height and planting distances along the property line. She requested the Board designate a specific time for the shrubs to be planted (e.g. when the garage is removed) and guarantee their permanence (require dead shrubs to be replaced). She also requested that the existing Roses of Sharon remain since they do provide some buffering and she had tended them for many years. (The applicant's recent survey now located them to be on the applicant's property instead of hers).

The applicant confirmed Ms. Zetterstrand's information (hardy, low maintenance etc.) and agreed to plantings 5' high shrubs, 5' on center, and 2-1/2' off the property line. He added that he had recently heard the arbor vitae may not do well in shade and in close proximity to salt (by the side of the road) and therefore would be amendable to using another evergreen of similar nature recommended by the Board.

He said he would give the Rose of Sharon to Ms. Zetterstrand and replace them with the designated evergreens, noting that the Arbor vitae would grow to create a complete walled boundary between the properties. (He noted that the trees under 5' were mass produced and easily accessible while those over 5' were expensive and had to be specially ordered.) He said he would also put up a 4' wire fence on his side of the hedge (similar to a chain link fence) to prevent his children from wandering off the property.

Condition of the Backyard: Ms. Zetterstrand also brought in photographs of the applicants' backyard indicating what her viewscape would be without a buffer. In response to a question from the audience, the Chair later described the photos noting, in general, a fair amount of material on the lawn (bicycles, suitcase, couch, stroller, plastic toys) and a fence on the ground with a car wheel on it.

The applicant was recently notified that he must remove the couch and is making plans to do so. He identified a lot of the items on the lawn as his children's toys. He said the yard was a "mess" around the time of Hanukah as he was preparing to put up his large menorah; he identified the suitcase as his toolbox and the "white stuff" as pipes he was painting to attach to the menorah.

Duration of Special Use Permit: Ms. McNaughton asked about the correlation of the special use permit (as a House of Worship) and future owners of the property. The Chair explained the permit would continue (1) uninterrupted by a new owner or (2) if there was a period of dormancy no longer than 6 months. If the use ceased for more than 6 months, the special use permit would expire.

Property Line: Ms. McNaughton gave a history of the property boundaries and said she is legally disputing the property line the Rabbi presented from his recent survey. The applicant was surprised to hear about the litigation and said the results would be determined by legal proceedings. The Chair stated that the Board had accepted the applicant's survey prepared by a licensed surveyor. Since the determination of property lines is not in the Board's purview, the issue would be resolved either through the courts, mediation, or an agreement between the two parties.

Drainage System: Ms. McNaughton asked about the applicant's proposed drainage system and its affects on her property, given that underground springs are prevalent in the area. The applicant said

the proposed drainage system would help conditions on his lot without affecting her property and if a spring surfaced in his basement, the problem would be resolved at that time. In the meantime, he said he is waiting for approval from the Building Inspector and DPW. The Chair said the drainage plan included footing drains around the existing property and a dry well system that would collect water from both the roof and the ground and channel it into the storm water system. The Chair will have the Board's consultant engineer and DPW review the plan.

Character of the Neighborhood: Neighbors again noted such a large addition would be disproportionate and not in keeping with the character of the neighborhood. Ms. Finn (who lives across from the applicant's backyard) agreed the applicant's backyard was an eyesore. Since the building in question is within 100' of her home, which was recently declared an historic landmark, she asked the Board to wait for comments from the Historic Preservation Commission (HPC). A memo from the acting chair of the HPC was handed to Mr. Danskin requesting the Planning Board defer their decision until the HPC could review the application.

The applicant briefly described the long process of obtaining a special use permit and a variance for the addition. He noted the current iteration of the addition was much smaller than the original plan and that the ZBA had addressed the size issue when granting his variance. He wasn't aware of, or didn't understand why this application might possibly involve the HPC or what their role would be.

Planning Board Issues:

Based on the conditions of the special use permit, the Chair reviewed the following issues:

1. Certificate of Occupancy: Regarding the first condition, the applicant brought a copy of the Certificate of Occupancy dated January 9, 2007 and a building permit issued on June 23, 2006 permitting minor repairs to establish a House of Worship and related residence. The applicant said he has made many repairs/improvements and the building inspector has been to his house often to review the situation.
2. Buffers/Landscaping: Condition 5b stated that "If the garage is taken down, the applicant must return to the Planning Board and address a buffering configuration to mitigate the impact of noise and light." In response to the Board's question, the applicant said he wanted to remove the Rose of Sharon because they would compete with the shrubs and most probably be overshadowed and pushed out by the taller plants. He felt having 5' shrubs along the property line planted 5' apart and the Rose of Sharon would reduce his yard by about 10' (20% of his backyard), even with omitting the fence. There was a brief discussion about this issue. The Chair was not comfortable having the Roses of Sharon removed (they can grow to 10-12' and provide a good secondary buffer), and the Board agreed to have their landscape consultant review the property, discuss the situation with the applicant and Ms. Zetterstrand, and submit his recommendation to all parties prior to the February workshop. The applicant agreed to this although he didn't feel it was fair to require two layers of buffering.
3. Refuse enclosure: Condition 6 stated that except on trash collection days, all trash containers must be stored in a sturdy four-sided enclosure so they are not visible from the public way or adjacent properties. The applicant said he believed this condition was to be effective when the addition was approved. Ms. Elwell reminded the applicant that during the SUP review he said he would continue with the SUP application even if the variance was denied. Therefore this condition was included as part of the SUP approval and must be adhered to regardless of the building expansion.

A motion was made by Ms. DuBois to close the public hearing and leave the record open until January 31, 2007 to receive written comments from the Historic Preservation Commission, the Board's landscape and engineering consultants, and the DPW. The motion was seconded by Ms. Elwell and carried unanimously by the Board. The reports will be reviewed and discussed at the February workshop with a possibility of voting on the application on February 13, 2007.

Pending Applications:

PB06-41: Dino Toscani. 123 Main Street [SBL: 86.34-6-16.3 & 17 (B-2)]

Site Plan for 13,200s/f of retail space, 24 apartments and parking.

Applicant Present: Dino Toscani, Jay Samuelson, P.E., Jayne Daly, Atty. Engineering Properties and

PB06-33: Dino Toscani. 127 Main Street [SBL: 86.34-6-11 (B-2)]

Site Plan and Special Use Permit: To build an outdoor dining area for the restaurant downstairs and create a catering hall upstairs.

Applicant Present: Dino Toscani, Paul Caltagirone, Attorney, Sall, Caltagirone & Coleman Esq.

Ms. Elwell read a disclosure statement that she had met Jane Daly (one of Mr. Toscani's lawyer) when Ms. Daly worked at the Glenwood Center, a non-profit organization in Putnam County. Over the course of several years, Ms. Elwell had worked with her in conjunction with the Pace Center Law Center Community Leadership Alliance Training Program and in the Glenwood sponsored working groups on regional and agricultural issues. She continued to see her socially after she left Glenwood. In 2005 Ms. Elwell worked with a video production on an informational video for a project in the Town of Shangunk for which Engineering Properties was a consultant. Since that time she has not had any direct or indirect relationship with Engineering Properties and believes her prior connection

with Ms. Daly and/or with Engineering Properties will not cause her to be biased in any way in reviewing Mr. Toscani's application.

127 Main Street

The Chair distributed a copy of Ms. Grant's email (Board's attorney). When the Board became aware that Mr. Toscani had changed his proposal by no longer providing parking for 127 Main at 123 Main Street, the Chair consulted with counsel regarding the following issues:

(1) The Moratorium: Ms. Grant said "*Since there was nothing in or with the law from the Village Board to the Planning Board at the time of adoption to contradict this conventional interpretation, the moratorium applies to this application.*"

(2) Reopening the Issuance of the approval of the Special Use Permit (SUP) for a restaurant at 127 Main Street for failure to comply with the terms of the SUP. (The approval was predicated on the Board's understanding that the requisite parking spaces would be provided on the 123 Main Street lot and only learned recently this was no longer the case). Ms. Grant said: "*While reopening approvals is not favored it does occur and the courts have upheld it when it is clear that the approval included a mistake.*"

The Chair then distributed a letter from Trustee Terry Dungan raising questions concerning the accuracy and adequacy of the parking analysis submitted by the applicant.

The applicant didn't see what the problem was since the Board had approved the SUP with a one year lease for parking at 123 Main Street. The Chair said the Planning Board made a mistake. The applicant said a one year lease was needed to move the project forward during the moratorium and afterwards, it would not be needed; Mr. Toscani also cited the Mayor's comment regarding adequate available parking in the village. The Chair read the recommendation from their attorney as follows: "*First, the Planning Board in issuing the special use permit now in place, which does not expire within one year, made a mistake by accepting the off site parking that is only under contract for one year. This is inconsistent with the moratorium then and in place again.*" The Chair explained that at the time of the moratorium, the applicant's offer of on-site parking at 123 (for the restaurant at 127 Main Street) was accepted by the Board.

Ms Daly's Responses:

One Lease Year: In reviewing the Planning Board minutes Ms. Daly noted this was the only restaurant approved during the moratorium period. She noted that over the nine times the application was discussed by the Board, there was never any mention of the 34 spaces at 123 Main Street being anything other than interim parking for the restaurant, and cited the Board's request for a lease with a minimum duration of one year. She said there is no mention in the minutes or in the approval conditions requiring the applicant to make some other accommodations after the expiration of the lease. She continued that the rationale reflected in the minutes was that by the time the one year lease expired, the moratorium would be over and the parking issue would be somehow resolved and everyone could move forward on this issue based on the revisions and clarifications of the Village recommendations.

Moratorium Language: Ms. Daly stated that the second application (for outdoor deck and catering) was submitted on October 10, 2006. The six month moratorium expired on October 24, 2006; there was a gap between the expiration and the moratorium extension that was approved on December 8, 2006. The Village Board adopted specific language changing this extended moratorium to apply prospectively and quoted the minutes stating Mr. Zierler said the moratorium would not apply to pending applications.

Parking Study: Ms. Daly noted they used a lot of their calculations from the Blockheads and Interzone studies, which were accepted by the Board. She said their study showed adequate parking spaces (107) for the three uses at proposed for 127 Main Street.

There was a brief discussion regarding the use of term "prospectively" in the extended moratorium. Ms. Grant said it is used to clarify that a law is not applied retroactively. Mr. Caltagirone felt this was a very narrow definition and pointed out that the moratorium does not apply to existing businesses but to applications before the Board regarding on street parking. He felt a clearer definition would refer to applications submitted after the moratorium went into affect, not those pending at the time the moratorium is placed into effect.

The Chair noted the discrepancies in the opinions and summarized tonight's options as follows:

1. The Board could determine the moratorium applies. The Chair suggested the Village Board start working to extend the moratorium immediately since the process of revising the code is lengthy.
2. If the Board concludes the moratorium does not apply, the Board would present the following alternatives to the applicant:
 - Reopen the Public Hearing due to a material change in the application.
Since the public hearing parking changed from 107 on site spaces at 123 Main Street to no on-site spaces at that location with the bulk of parking now situated at public streets and municipal parking. The applicant's attorneys felt this was not a material change since the "use" of the application hadn't changed. They felt parking was an ancillary use and noted the ordinance requires either on-site parking or off-site within the 400' radius. The Chair

emphasized that when the Public Hearing was held, the parking was proposed at 123 Main Street and since that proposal is now different; he would like to hold another public hearing to reconsider the SUP and its affects on neighboring properties.

or

- Withdraw the Special Use applications for the 2nd floor catering hall and outdoor deck.

The applicant offered a counter proposal to drop the catering hall and retain the deck (60 patrons), since it had only minor parking implications and continue with the 123 Main Street site plan. Board members were more concerned about the deck's impact on noise, light and general disturbances on the neighbors in the residential district as well as the parking implications. Since they could not assess whether the initial impacts from the restaurant were adequately mitigated (the restaurant hasn't opened yet), the Board was hesitate to expand on any additional use(s). Members again expressed the desire to review the projects at 123 and 127 Main Street simultaneously.

Mr. Toscani noted that the landscaping and retaining wall proposed with the construction of a building at 123 Main Street would provide additional buffers for the activities at 127 Main Street. He also said he would close the deck at 9pm instead of 11pm and felt patrons would hang out outside (smokers etc) the restaurant without the deck.

and

- Open the restaurant at 127 Main Street; continuing to provide interim parking at 123 Main Street.
and
- Continue to discuss/review site plan development at 123 Main Street incorporating shared parking concepts that would accommodate parking at 127 Main Street.
and
- Once completed, return to the additional uses for 127 Main Street.

The Chair proposed that if this process was followed, the Village parking ordinance would likely be in place, addressing the issues of off-site and on-site parking with probably some reference to shared parking and hopefully some details concerning situations where one private owner relies on another private owner for parking (e.g. anywhere from a minimum demonstration in number of years to a permanent easement).

A number of ideas and issues continued to be discussed. According to NYS Village Law the Board has 62 days from the close of the Public Hearing to make a determination. The Chair suggested that if the applicant agreed to put the 2nd floor catering hall and deck on hold, without prejudice, until the site plan is completed for 123 Main Street; this would allow time to review shared parking at 123 Main that could accommodate parking at 127 Main Street. The Chair said he would like to consult further with their attorney before confirming the Board's direction.

The Chair said the Board could vote this evening to determine if (1) the current moratorium (12/13/06-3/13/07) applies or (2) a new public hearing is required due to a significant change in the application or their could vote to (3) deny/approve the application (or just the deck). Or, if the applicant preferred, the Board could postpone a decision until the February 7, 2007 meeting. By that time, there would be some clarification from the Village Board regarding the use of the word "prospectively." All parties agreed they would take a month to review the issues and options.

The Board will strongly urge the Village Board to immediately start proceeding to extend the moratorium beyond the March expiration (since it takes at least two months to adopt legislation) until such time as legislative revisions concerning parking requirements are adopted and incorporated in the code.

PB03-24: Kingston Regional Health Care System/New Life Management & Development Inc.

Woodland Pond at New Paltz, a proposed Continuing Care Retirement Community, North Putt Corners Road. [SBL: 86.2-1-7; 86.2-1-2-112; 86.2-1-12.100 (PB and R-1)]

Site Plan Issues

Applicants Present: Frank Mandy, NLMD; Cynthia Rosenberg, KRHCS

Mr. Mandy reviewed the status of the pending lawsuit and noted the site plan changes and compromises proposed regarding the wetlands and buffer areas were not accepted by the filers of the lawsuit. Mr. Mandy summarized the site changes and reduced infringement on the wetlands and buffer areas, showed briefly to the Board last week.

Ms. DuBois voiced concern about the wetlands on the eastern section of Woodland Pond, specifically the wetland AAA which has been identified by wetland specialists (Kiveat Inc.) as a vernal pool. She felt it was important for a specialist to check this wetland for vernal pool habitat (salamanders etc.) and said this is done in March/April. Mr. Mandy noted that the revised plan resulted in only one area of direct wetland impact of 1/10 of an acre representing less than 3/4 of one percent direct wetland impact for the entire project and clarified that the lawsuit concerned the buffer areas; the revised plan showed about one acre of the total @32 acres of buffer, representing @ 3% of the total, infringement

due to the construction of roads. The Chair reminded Ms. DuBois that the Board's consultants, their attorney, engineering, and landscape architect had all been included and reviewed all significant issues on this project to date and would continue to do so.

Before proceeding with discussing site plan issues for such areas as storm water management (the location of the retention pond), phosphorous loading, road treatment and landscaping, Ms. Rosenberg asked the Board to confirm their preference for either the revised plan or the plan presented at the time of the FEIS approval. The applicants reviewed the revisions in detail, showing where/how the infringed areas were reduced [including moving cottages, reconfiguring roads and parking, eliminating some landscaping and sidewalks (building locations remained the same)] and answered questions from the Board. Mr. Mandy said they would not eliminate the small backyards or parking spaces conveniently placed in close proximity to the senior residents.

Mr. Curran felt this plan illustrated the applicant's best efforts to achieve the protection of the buffer, and despite the loss of landscaping, it did not negatively impact on the overall plan. Since the revisions did not represent a substantial (but rather a minute) change to the overall project, the Board agreed to proceed with the revised site plan. The Chair read the following from the NYS SEQR regulations: "It's not the intention of SEQR that environmental factors be the sole consideration in decision making." He reminded the Board that projects must be reviewed as a balance of social economic and environmental considerations, and no one element should be considered more important than another.

In proceeding with site plan issues, the applicants preceded to review colors and signage. Two potential colors (Heather Moss and Mountain Sage) were presented for the hardy plank to be used in the apartment wings and cottages, and a Brandywine color was shown for the cultured stone. Samples of the actual colors will be submitted later. The applicants also showed a design for the monument sign noting that the signage throughout the development will be made from (left over) stone face and hardy plank. The sign will be down lit and located on N. Putt Corners Road to be seen from both sides of the road. Regarding signage throughout the development, Mr. Curran requested that the darkest colors be use on the side facing the preserve.

The Chair discussed two updates:

1. Interconnecting Roads: The Chair went to the site with Mr. Chamberlin's colleague (Mr. Clouser was not available). A copy of the applicant's plan was sent to Mr. Erman who responded with a different proposal that required more road work. The applicant will review and respond to that plan. The Chair noted that Mr. Chamberlin said he was not insisting on a paved road and will follow up on this matter with Mr. Clouser.
2. Trees: Mr. Wegener had walked the property and flagged the trees; the applicants' surveyors will now GPS the 49 identified trees next week. Chazen architects and engineers will be meeting with Mr. Wegener and Mr. Clouser to try to resolve outstanding issues regarding the western slope prior to the February workshop.

Adjournment:

A motion to adjourn was made by Ms. Elwell, seconded by Mr. Curran, and passed unanimously by the Board at 9:58 pm.

Respectfully submitted,

Alison Shestakofsky

Secretary to Village Planning Board

Copies to Trustee Michael Zierler
David Clouser, Engineer
Bob Chamberlin, Traffic Engineer

Drayton Grant, Attorney
Ted Fink, Planner