

**VILLAGE OF NEW PALTZ PLANNING BOARD
WORKSHOP and REGULAR MEETING JANUARY 20, 2009**

Call to order: The meeting was called to order at 7:08 p.m.

Members Present: Raymond Curran, Chair; Terence Ward, Linda Welles

Members Absent: Marion DuBois

Board Consultants: Drayton Grant, Grant & Lyons; David Clouser, David Clouser and Associates

Also present: Michael Rizza, Kenneth Casamento, Dino Toscani, Bruce Kazan, Vicky Kazan, Tobias Lake, Naomi Gaskin, Jane Bullowa, Shari Osborne, Village Trustee; Jean Gallucci, Village Trustee; Michael Zierler, Village Trustee and other members of the public.

Announcement from the Chair:

The Chair reviewed the revised order of tonight's agenda. He noted there was one public hearing for a lot line revision and two applications for discussion and "completeness" determination prior to their submission to the Ulster County Planning Board. Review and recommendation concerning the ZBA application was tabled until next month.

Approval of Minutes:

A motion was made by Mr. Ward to approve the minutes of December 16, 2008 per the correction noted by Dr. Welles. The motion was seconded by Dr. Welles and carried unanimously by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye.

Applications with Public Hearings:

PB08-170: Michael Rizza. 93 & 113 N. Chestnut Street [SBL: 86.26-1-15 & 86.26-1-14.2 (B-3)]
Lot line Alteration.

Applicant Present: Michael Rizza; Kenneth Casamento, CPESC
Planning Board: Drayton Grant, Attorney; Dave Clouser, Engineer.

Description of Project

The applicant described the project showing that the number of three existing lots would be maintained; only the property line would be altered to increase the size of two of the lots; the middle lot @ by 6,204 s/f and lot 3 by 5,778 3 thereby making both of those lots code compliant.

There was a brief conceptual discussion regarding the future use of the property and the proposed pedestrian bridge path along the Park & Ride. The applicant noted that at present neither the Village Board nor County had expressed interest in expanding the Park & Ride.

Public Hearing:

Mr. Ward made a motion to open the public hearing. The motion was seconded by Dr. Welles and carried unanimously by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye.

Ms. Gaskin said that crossing the road was hazardous. The Chair said that issue was under the purview of the Village Board and believed a stripped crossing and flashing light was being considered. Mr. Casamento said there will be signage to identify the crosswalk, stripping of the area, and lights along the front of the Park & Ride when the project is completed. The plan, which does not include a traffic light, has been reviewed by DOT for safety and approved by the Village Board.

Ms. Gallucci said that 2 crosswalks had been approved by DOT. In response to her question about the distance from Tributary 13, the applicant replied that it was more than 35.'

After some questions about proposed/intended use, the Chair clarified this application was exclusively for a lot line revision; the designation of a proposed use would be review in a future application for site plan and special use, if required.

Although a parking lot is a permitted use in the district, Ms. Grant noted there could be constraints on one of the lots due to stormwater issues and its location in the flood plain.

There were no further comments from the public. A motion was made by Dr. Welles to close the public hearing. The motion was seconded by Mr. Ward and carried unanimously by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye.

Discussion and Vote

It was noted that lot 2 is currently non-confirming with a variance; lot 3 included a commercial building and that this action would make those lots more conforming.

A motion was made by Mr. Ward that this application had no significant environmental impact and therefore no SERQ review was required. The motion was seconded by Dr. Welles and passed unanimously by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye.

A motion was made by Mr. Ward to approve the lot line revision as presented. The motion was seconded by Dr. Welles and passed unanimously by the Board. The vote was as follows: R. Curran – aye; T. Ward – aye; L. Welles – aye.

Applications for Discussion and Determination of Completeness

PB08-163: Rascals Bar & Grille. 127 Main Street LLC [SBL:86.34-6-11 (B-2)]

Special Use Permit/Site Plan to extend the restaurant to the second floor as a catering hall and add a deck on the rear of the building (above the approved first floor deck).

Applicant Present: Dino Toscani.

Planning Board Consultants: Drayton Grant, Attorney; David Clouser, Engineer.

The classification of a catering hall was described as a place for events and parties (birthdays, weddings, parties, etc.) The applicant submitted the items requested from the building department to complete the application. The Chair said there were some aspects of those requirements that required clarification particularly concerning parking such as (1) the relationship to and use/non use of 123 Main Street and (2) the calculations associated with the parking study. Although Mr. Toscani said this application had no relationship to and did not include 123 Main Street, the Chair noted there has been a close/overlapping relationship between 127 and 123 Main Street in previous applications. Both properties were included in the site plan/special use permit approval for 127 Main Street in 2006 (PB06-05). Noting that modifications to 123 Main Street had been made which do not conform to the approved site plan for PB06-05, the Chair said he would like to take this opportunity to review the new application and revisit the issues/problems that evolved at 123 Main Street from the prior approval. The Chair said he would like the owner, who ever that is, to address the issue and violation.

The Chair explained the Board would review the application tonight only in terms of whether it was “complete” for review by the Ulster County Planning Board.

Guidelines for re-visiting the previous approval.

The Chair asked Ms. Grant to address proceeding efficiently through the review process. Ms. Grant said one of the issues of greatest concern to the planning board and the residents and also resulted in an enforcement case is the parking area at 123 Main. She noted the historic connection between the properties and said the Planning Board is the best vehicle for productively solving a land use design issue. She said if the problems cannot be resolved at this level and there is no other choice, it will become an enforcement matter. The review process of 123 Main should result in a plan that addresses both the current concerns and problems of the site as well as its future state. Although

property titles were not being tested tonight, the desired solution would resolve design issues at both 123 Main and 127 Main Street and therefore require participation from the owners of each location.

Because of the interconnection of these two sites, historically and in terms of use, she said it made sense to treat them as a common problem and noted that the most constructive way to deal with the issues would be in terms of an application – because that is the most common process used by the planning board.

If the issues are not resolved by this process, the planning board had other authority. She explained that if the prior approval failed to specify elevations and grade (and drainage) at 123 Main, it is within the Board's purview (upon a unanimous vote of the members present) to hold a re-hearing on the approval for 123 Main. The re-hearing would adhere to standard public hearing procedures and empower the Board to reverse, modify or annul the original order, decision or determination upon unanimous vote of the Board provided that the Board then found that the rights that may have vested in the landowners (or persons acting in good faith) are not prejudiced. She believed this would be applicable to correcting extra fill in a driveway.

Parking Agreements: Ms. Grant said that at the time the application for 127 Main Street was approved, the Planning Board believed/anticipated there would be changes in the code requirement for off-site parking (as a result of the traffic study conducted during the moratorium) and accepted the applicant's off-site parking agreements which were constrained in time. If the special use permit is in perpetuity and the parking agreement is restricted to one year; she said there is a time problem between what is accepted as a condition and the reality of the approval; and that problem must be resolved harmoniously. The approval for 127 Main Street dated 03/20/07 has a condition stating that any change in the relationship between the applicant and successor proprietors and any of the three parties who allowed off-site parking had to be referred to the building department immediately to determine what affect it had on the status of the approval. Noting this was a difficult decision to enforce, Ms. Grant said an easement for the lifetime of the designated special use permit is preferred because of its preciseness and enforceability.

Drainage/Fill: Ms. Grant said there are also drainage and fill issues to be considered. The conditions (of the 127 Main St approval) could read that the site has to be returned to its prior state or amended to the Board's satisfaction regarding drainage, a privacy berm, and buffer areas. The latter would require a new site plan.

Ms. Grant believed the resolution of these issues would benefit both the Village and the applicant. If changes were in progress, the building inspector would be advised to request the judge for a stay regarding the current violation on 123 Main Street concerning the berm (restoration of the berm is required by 3/18/09).

Despite the Board's interest in 123 Main Street, the applicant again stated that he was here for 127 Main Street only. Ms. Grant reaffirmed that the Board will be looking at both properties.

New Application: Additional Information

The applicant submitted the additional information requested by the Building Inspector which included elevations of the 2nd floor deck, a floor plan of the 2nd floor catering hall, the property owner's consent and a parking study. The Chair asked for a site plan of the proposed 2nd floor deck.

Ownership: Regarding the property owner's consent, Mr. Toscani said he was not the owner of 127 Main Street and referenced the submitted consent letter dated 01/12/09 and signed by Georgia Tufano (verify in SCA) as owner and president of 127 Main Street LLC. Ms. Grant said she would like to see the Articles of Incorporation or other legal verification regarding ownership of the LLC.

There was a brief discussion clarifying the scope of the requested special use permit and insuring the board and applicant understood the proposed use required the Board's review and approval in addition to the resolution of all the other building and site plan issues under discussion. The Chair

noted tonight's review focused on completeness issues and a detailed review would follow once the application was deemed complete.

Parking: The applicant submitted a parking study indicating sufficient on-street parking for maximum occupancy of both the 1st and 2nd floors. A letter granting permission to park at 123 Main Street was also submitted although the applicant said it was not necessary (per the report).

Applicant Discusses Previous Approval

- Parking: Mr. Toscani asked for the opportunity to clarify the previous parking situation. He said the minutes reflect that the restaurant on the 1st floor of 127 Main Street (Rascals) was approved with the off-site parking indicated in the parking study submitted with the application – without using 123 Main Street. (He said the same parking study was used by Blockheads for their approval.) Mr. Toscani said although there was sufficient off-site parking, the previous Chair requested a lease agreement at 123 Main Street in case it was needed. In response to his request, the applicant provided a one-year lease agreement with that site.

The secretary said the minutes reflect such a discussion but it was not referenced in the decision.

- Fence/Berm: Mr. Toscani said the Board had requested a fence be placed to buffer the view from the neighbors but he suggested a berme instead since he had extra dirt from another property. He said that was also for one year as he only rented it for one year. (He felt he was being held hostage about 123 Main Street.) He said he does not own 123 (Main Street) and repeated that he was approved for off-site parking and did not need 123 Main Street for the approval and that the lease was for one year. He said the prior Chair make a mistake (indicating parking at 123 Main Street on the site plan).

Board Discussion:

Ms. Grant showed the site plan indicating 123 and 127 as a co-joined project application. She said either the problems at 123 Main Street can be remedied in a constructive fashion or the Board can make a separate action to reopen the approval. She said you cannot have a permanent approval with temporary parking; that situation has to be resolved. The applicant again insisted that the approval did not require parking at 123 Main Street.

Mr. Toscani said the parking study recently submitted will confirm adequate off-site parking (150 spaces) for the existing first floor and the proposed 2nd floor catering hall and deck without private leases. He said it is the same study used for the previous approval, just updated for the increased occupancy. The Chair will have the study reviewed for accuracy.

The applicant said that 127 Main Street comes with nine (9) spaces

In addition to the site plan for the 2nd floor deck, The Chair requested a site plan of 127 Main Street with the deck. Mr. Clouser said the special use permit also requires a site plan and noted there are usually 10-15 items required on a site plan (depending on the application) and some additional information required by the Ulster County Planning Board.

Mr. Clouser said some of those items may not be applicable to this application. He will review the submitted site plan and determine what additional items are required from the applicant.

The Chair said the application as presented is not ready for county review. The applicant will receive a list of outstanding items required for “completeness.” The new submissions will be reviewed by Mr. Clouser for completeness and code compliance.

Before moving forward on this application, Ms. Grant said one of the concerns that still confront the Planning Board is 123 Main Street. She advised it be placed on next month's agenda for discussion, including the possibility of holding a public hearing.

Because of the connection between the two properties, the Chair asked if the owners were the same for 123 and 127 Main Street. The applicant said there were a few different people. The Chair said

the owners would be notified of the board's review and asked if the applicant wanted to alert them prior to formal notification. When asked about the address of the owners, the applicant said that information could be obtained from the building department.

Mr. Toscani confirmed that if all the requested information for completeness is submitted to and reviewed favorably by Mr. Clouser, the Planning Board will not require any other additional material for further review.

Regarding the information and concerns about 123 Main Street (a vacant lot) regarding fill, the berm and drainage at the site, Ms. Grant asked if the Board was ready to hold a re-hearing to review any approvals previously granted for the use of that site and to determine whether the terms of such approvals were inadequate or in some way have been superseded. If Ms. Grant confirms the applicant's claim that the approvals related to 123 Main Street have expired, the planning board would continue jurisdiction over this site based on the fact that all land use approvals must come before the Board.

Mr. Ward made a motion to examine the prior decision approving the site plan/special use permit for 127 Main Street (PB06-05) to determine whether any errors were made by the Planning Board and if so, to remedy those conditions. The motion was seconded by Dr. Welles and approved unanimously by the Board. The vote was as follows: R. Curran - aye; T. Ward - aye; L. Welles - aye.

A public hearing will be scheduled on this matter.

PB08-171: Bruce Kazan. 175 Main Street. [SBL: 86.144-1-10 (B-1)]

Amended Site Plan: compliance with Health Department regulations and other changes.

Applicant Present: Bruce Kazan, Owner; Vicky Kazan; Tobias Lake, Attorney.

Planning Board Consultant: Drayton Grant, Attorney.

Description of Changes:

The applicant described the origin of the modifications to the approved site plan and showed them on the drawing. Alternations included, but were not limited to the following:

1. The handicapped ramp was adjusted to meet ADA requirements. The angle of the original ramp was too steep.
2. The kitchen was relocated to the new addition in order to meet required ceiling height clearance for the ventilation hood.
3. The loading/unloading area was changed. The original plan to load/unload trucks inside the garage did not meet Health Department standards. The applicant replaced the overhead garage door with double glass doors. The new loading area will be a blind at the back of the building; trucks will pull into the southwest part of the parking lot for loading/unloading within a 15 minute time frame. There will be fencing along the rear of the property, the north side of the addition, which will shield and buffer the HVAC unit and the loading area from the adjacent neighbors.

There was a brief discussion about the parking area. The applicant said he was short 2' of the required aisle space and may have to eliminate either the fence or 2 parking spaces. He would prefer to leave the fence in place to protect the neighbor's viewscape.

Since the change in the garage doors was implemented last May, Dr. Welles noted a procedural question of whether the applicant should have returned to the Planning Board regarding changes to the approved site plan rather than proceeding with the modifications.

The applicant said they had followed due diligence. At the time of the change, their architect had spoken with the Building inspector regarding these changes. Ms. Grant clarified that the applicant as well as the Building Inspector and Planning Board Chair had been following the past practice of the Planning Board. She explained there was a standing Memorandum of Understanding between an

earlier Building Inspector and Planning Board Chair which has continued through the years. It stated that for small changes (to the site plan), the Building Inspector and Chair would review the changes and decide whether it should be brought back to the Planning Board. She emphasized that Mr. Kazan's architect (as well as the building inspector and Chair) believed they were proceeding appropriately as they were acting in accordance with the same procedure that was past practice in the Village for a long time. Ms. Grant said she only became aware of the discrepancy between the MOU and the local code when a lawsuit was brought by the neighbors. The *applicant* is now returning to the board in order to rectify the situation.

Because the applicant does not know who will be leasing the space and how the space will need to be divided to accommodate new tenants, he added extra doors by converting two windows to French doors in the front of the building (facing Main Street). The original plan showed 1 door and 2 windows and now there are three doors.

The Board noted the memo from the building inspector itemizing additional changes to the original plan which included, but not limited to, the following:

- Some windows have been replaced with more cost effective and aesthetic ones; windows will not be changed on the side of the building facing Millrock.
- The ventilation system was upgraded.
- Two doors were necessary for egress on the first floor per NYS Building code.

The Board was concerned that the change in the loading area location, as shown on the amended site plan, could have potential noise impacts on the neighbors. The applicant said that was why he was creating the "blind" and plans to have plantings along the property line with Ms. Bullowa and fencing on the north side of the area.

Dr. Welles believed that changing the loading location was a significant modification to the site plan with potential impact on the neighbors. Ms. Grant said the Board would have the option to approve the changes, require additional changes or have the changes removed.

The Board determined the application as an unlisted action and no SEQR review was required.

A motion was made by Dr. Welles to approve the application complete for review by the Ulster County Planning Board. The motion was seconded by Mr. Ward and passed unanimously by the board. The vote was as follows: R. Curran - aye; T. Ward - aye; L. Welles - aye.

Other Business:

Changes in the referral process to Ulster County Planning Board: At the Board's request, the presentation by Ruth Elwell was postponed to the February 3, 2009 workshop.

South Side Apartments: The Board accepted the applicant's request to postpone review of their application until the spring so they can revise the project to better conform to the Board's comments. Ms. Welles said their current situation includes a violation (a storage unit that had never been approved). Ms. Grant noted a "pending" application would help the applicant argue that they should not be subject to enforcement. The Chair will send a letter to the applicant informing them that if they fail to return with a proposal remedying the situation, the Board will recommend the building inspector take steps to enforce the outstanding violation.

Changes in the EnCC: In response to a question from the Board, Ms. Gallucci explained recent changes in the Environmental Conservation Committee (EnCC) including the reduced size of the membership committee (from 9 persons to 5 persons) and their expanded role as an advisory board to the Planning Board as well as the Village Board.

Adjournment:

Dr. Welles moved to adjourn the meeting at 9:40 pm; Mr. Ward seconded the motion, and all voted in favor. The vote was as follows: R. Curran - aye; T. Ward - aye; L. Welles - aye.

Respectfully submitted,

Alison Shestakofsky
Secretary to Village Planning Board
Copies to: Trustee Michael Zierler
David Clouser, Engineer

Drayton Grant, Attorney; Bob Chamberlin, Traffic Engineer
Ted Fink, Planner

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