

VILLAGE OF NEW PALTZ PLANNING BOARD
REGULAR MEETING
APPROVED MINUTES
May 6, 2014

Present: Maurice Weitman, Chairman
Richard Steffens
Elizabeth Harschow
Michael Zierler

Absent: John Litton

Also Present: Brenda White, Village Planning Director
Brogan O'Donnell, Village Planning and Zoning Board Secretary

Call to Order:

Chairman Weitman, called the May 6, 2014 Regular Meeting of the Village Planning Board to order at 7:07PM

ZBA Referral

ZBA14-07: Proposed Banner Signage – Historic Huguenot Street

Use Variance Application

Applicant: Rebecca Mackey

Zoning District: H, Historic District

00:02:10-00:014:45

ZBA14-07 is a proposal to hang 36 double sided 2' by 6' banners throughout Historic Huguenot Street to delineate the district.

The Planning Director's memo regarding ZBA14-07 was read aloud at the table for discussion and reads:

This Use Variance application requests permission to hang three (3) double-sided 24"x72" banners from poles throughout the Historic District on a long-term, permanent basis. While the idea of district-identifying banners along Historic Huguenot Street do not seem inappropriate, I am almost always inclined to recommend against granting Use Variances. New York State has strict regulations concerning the granting of such Variances, stating that "no such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship".* It also requires that strict criteria be proven by the applicant – none of which have been met here.

I have advised the applicant of the Use Variance process and suggested that Historic Huguenot Street be prepared to go to the Village Board to request a Code amendment allowing banners in the Historic District. To that end, the Planning Board may want to consider what size and style may be appropriate so that they can give feedback to the Village Board if the applicant decides to proceed in that manner.

* General Village Law §7-712-b(2)(b)

The Planning Board Attorney's memo regarding ZBA 14-07 was read aloud and reads:

Rebecca Mackey has requested a sign permit to hang 36 double-sided banners from poles on a long-term basis to outline the Huguenot Historic District. CEO Jaffee has denied a sign permit on the grounds 1) that under 212-25D(8), banners with a non-commercial message are permitted for only 2 weeks, and 2) that such banners are prohibited under 212-25D(8), which prohibits representational signs and advertising signs in residential districts. These determinations are on appeal to the ZBA.

The EAF needs correcting. First, there are issues with the answers. Page 1, Item I should be “no”, Item 2 should be “yes” and the agency identified as ZBA. Page 2, Item Sb, question whether it is consistent with the Comprehensive Plan if not permitted by the zoning. Item 6, question whether 36 banners are consistent with built or natural landscape. These are issues for the Planning Board to address.

Second, under 6 NYCRR 617.4(b)(9), any unlisted action occurring wholly or partly within or contiguous to any historic district or building listed on the National Register or proposed by the NYS Board on Historic Preservation for listing, or is listed on the State Register of Historic Places, is a Type 1 action, requiring preparation of a Full (long) EAF. The ZBA should declare itself lead agency and circulate to the Planning Board.

To all appearances this is a request for a use variance or a request for an interpretation by the ZBA that CEO Jaffee’s determination is incorrect. Section 2 12-60 regarding variances is no longer valid, as the courts have held that the provisions of the NYS Village Law must be applied as it preempts any inconsistent local law.

Under Village Law 7-712-b, a use variance may be granted only if the applicant shows that the applicable zoning regulations have caused unnecessary hardship. In order that to prove unnecessary hardship, Ms. Mackey must demonstrate that for every permitted use under the zoning regulations for the H District,

- (1) that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.

Determining whether the four tests have been met is the responsibility of the ZBA, not the Planning Board. It is unlikely the applicant or anyone can meet these standards. The purpose of the high threshold in 7-712-b is not to block change, but to pass the question to the Village Board as a legislative issue. Where a zoning law clearly prohibits an action which is desired by the ZBA, the Planning Board and the Village Board, it is the responsibility of the Village Board to amend the zoning law.

As an alternative to a zoning change, the ZBA could interpret the code to allow the banners as it is currently written. Such a determination would be reviewable by an objecting resident in an Article 78 proceeding. All that the Planning Board can do in this context is indicate by resolution whether it is in favor of the project, opposed, or would approve with modifications.

The Board noted that The Historic Preservation Commission will discuss ZBA14-07 during their May 19, 2014 meeting. They decided to table this application until hearing back from HPC, for the May 20, 2014 meeting.

ZBA Referral

ZBA14-08: Proposed change of use from vacant barn to 1 bedroom apartment – 36-38 Main Street Area Variance Application

Applicant: Zenon Christoforou

Zoning District: B-2, Core Business

00:14:49-00:26:25

The Building Inspector's letter of determination regarding ZBA14-08 was read aloud and reads:

The property has 10629 sf. of area. In order to have two business and three rentals, the minimum property size required is 20000 sf. You will need a 9371 sf. variance. The existing garage with the proposed dwelling will need an 8 ft. rear setback variance.

The Planning Director's memo regarding ZBA 14-08 was read aloud and reads:

This application requests to allow the conversion of a vacant barn into a one-bedroom apartment which requires Area Variances for lot size and rear yard setbacks.

The Area Variance for lot size is a substantial one, which is one of the criterion that NYS requires be considered by the ZBA. Village Code requires 20,000 ft for this combination of uses while this parcel has slightly more than half that size – 10629ft. The owner currently has two commercial businesses and two rental units on the property which may impact the Board's thoughts on any alleged hardship (another criterion required by NYS). The applicant has also not expressly proven in the application any of the other three criteria that the Board is required to consider.

As for the Area Variance for rear yard setback, since the rear of this parcel is basically on South Chestnut Street and the barn already exists, I see no problem with granting that Variance. But of course, if the ZBA is inclined to deny the Area Variance for lot size, this additional Variance would be rendered useless.

It is also unclear based on the current Site Plan whether the parcel in question has adequate parking for the proposed additional residential use.

The Village Attorney's memo regarding ZBA 14-08 was read aloud and reads:

Zenon Christoform has applied for a building permit to convert a garage to a one-family dwelling. He needs substantial lot size and rear yard area variances. The following is from last month's meeting memo.

Neither the Code nor state law provides a legal standard for the PB review. In contrast, under NYS Village Law 7-712-b(3)(b), the ZBA must explicitly consider 5 factors: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The role of the PB in this context is not necessarily to duplicate the ZBA's task, nor is it to interpret any particular section of the Code. It is rather to apply its broad understanding of planning principles and its understanding of the Comprehensive Plan and Zoning Law in determining whether this is the type of area variance the Village should be granting. I realize this is a fine distinction, but there is no clearer guidance. The PB should adopt a resolution by voice vote. The person who moves the recommendation should state the reason for the recommendation. Brogan can then transmit a copy of the minutes to the ZBA as the report.

Mr. Steffens moved to deny ZBA14-08 based on lot size and proximity to lot line. Ms. Harschow seconded. 4 Ayes. 0 Nays. 1 Absent – Mr. Litton. Motion Carried.

ZBA Referral

ZBA14-09: Proposed mixed use apartment above existing business - 44 North Chestnut Street Area Variance Application

Applicant: Chestnut Business Suites

Zoning District: B-1, Limited Business District

00:26:30-00:31:55

The Building Inspector's letter of determination regarding ZBA14-09 was read aloud and reads:

After reviewing the proposed change of use, this department has come to the following determinations. The proposed mixed-use apartment over business is an allowed use. A 1110ft requirements are within minimum requirements except for lot size. The minimum requirement for the commercial is 5000 sf.

The minimum requirement for the residential is 7260 sf. You will need a total of 12,260 sf. A review of a past application from someone else for two units above a business has had recommendations from the Zoning Board to allow one residential unit over the business of which you are requesting. You will need to apply to the Zoning Board for a variance for 212-13 E (4).

The Board decided to table ZBA14-09 until more information is provided.

Adoption of Draft Planning Board Minutes from April 15, 2014

00:32:04-00:33:04

Mr. Zierler motioned to adopt the Draft Planning Board Minutes from April 15, 2014. Ms. Harschow seconded. 4 Ayes. 0 Nays. 1 Absent – Mr. Litton. Motion Carried.

Discussion of PB13-07 Application

00:33:09-00:37:35

Mr. Zierler motioned for the Planning Board Secretary to contact by phone and send a written notice to the applicant, Mr. Johnson, to submit a completed application or an official comment on the status of his application by Tuesday, May 13, 2014. Otherwise, the Planning Board will open the public hearing, deem the application abandoned, and close the public hearing. Mr. Steffens seconded. 4 Ayes. 0 Nays. 1 Absent – Mr. Litton. Motion Carried.

Adjournment

Mr. Steffens moved to adjourn the Planning Board Meeting. Ms. Harschow seconded. 4 Ayes. 0 Nays. 1 Absent – Mr. Litton. Motion Carried.

The Tuesday, May 6, 2014 meeting of the Planning Board was adjourned at 7:47pm.

Respectfully submitted by,

Brogan O'Donnell

Planning and Zoning Secretary for the Village of New Paltz