

**VILLAGE OF COXSACKIE
ZONING BOARD MINUTES
June 6, 2022**

Chairman Sal Bevilacqua called the Zoning Board Meeting to order at 6:00 p.m. Present were Zoning Board Members: Christopher Chimento, Glenn Haas, Debra Jung and Brian Tighe.

A motion to approve the minutes from the May 2, 2022 Zoning Board Meeting was made by Chairman Bevilacqua and seconded by Brian Tighe. Christopher Chimento voted yes. Glenn Haas voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

Correspondence Received

An email was received from Demetri Chriss regarding Empire Riverfront Ventures LLC - 60 South River St. Variance Applications.

New Business

Chairman Bevilacqua stated that the Zoning Board of Appeals received a request for an area variance from Todd R. Wolford of 27 Lafayette Avenue. He is building a new garage and is looking for area clearance between the building and property line use. The existing driveway is from Prospect Street to the south. His desire is to build 10 feet from the east property line adjacent to the DeFrancesco's property for efficient use of existing property layout. He will also be 10 feet from the north property line. This location is zoned Medium Density Residential-2. When this was first talked about, it was believed that it would have to be 25 feet. However, for an accessory structure it states 10 feet in Village Code. Since the Building Inspector sent it to the ZBA it will have to be reviewed. He has asked Mr. Wolford to provide some specs for this meeting, as well as some correspondence with his immediate neighbors. The Clerk is aware that he has sent out all of the required notices to residents within 500 feet of his property line. The application and associated documents will be reviewed tonight, and the Public Hearing will be opened.

Public Hearing

Chairman Sal Bevilacqua called the Public Hearing for the Area Variance for 27 Lafayette Avenue to order at 6:15 p.m. Present were Present were Zoning Board Members: Christopher Chimento, Glenn Haas, Debra Jung and Brian Tighe.

No public comments were offered.

A motion to adjourn the Public Hearing and return to the regular meeting was made by Chairman Bevilacqua and seconded by Glenn Haas. Christopher Chimento voted yes. Glenn Haas voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

New Business

Todd Wolford submitted plans showing the specs of the garage to be built at 27 Lafayette Avenue. He also submitted certified mailing receipts as proof of mailing the necessary notice to all residents within 500 feet of his property line.

Chairman Bevilacqua stated that some of the dimensions on the plans are difficult to read. He asked what the overall height of the structure is.

Todd Wolford stated that it is 18 feet.

Chairman Bevilacqua asked if it is 2 stories.

Todd Wolford stated that it is 1 full story with a loft storage area above.

Chairman Bevilacqua stated that they have discussed having Mr. Wolford speak to his immediate

neighbors regarding his plans.

Todd Wolford stated that he has spoken to his neighbors, and they did not have any issues with his plans. However, he does not have any written correspondence from them. He does have the certified mail receipts from the notice that was mailed out which he submitted to the Village Clerk. He stated that the garage will have two garage doors and a workshop space.

Mary Beth Bianconi, of Delaware Engineering, asked if a short Environmental Assessment Form was needed.

Robert Stout, Village Attorney, stated that it is considered a Type II Action and therefore is not subject to SEQR.

Chairman Bevilacqua stated that the standard in the Village Code is 10 feet for an accessory structure. Therefore, Mr. Wolford complies with the setback requirements.

Mary Beth Bianconi stated that this came before the ZBA for an interpretation.

Rob Stout stated that there was a Building Permit denial, then a Variance was sought with the ZBA. He said that if the Board is in agreement with the interpretation that the proposed garage meets the setback requirements per the Village Code, he can draft a Resolution for approval at the next ZBA Meeting.

Todd Wolford asked if the next ZBA Meeting will be the first Monday of July.

After discussion, the Board agreed to set the next ZBA Meeting date of Monday, June 27, 2022 at 6:00 p.m. tentatively to be held at the Village of Coxsackie Hall, 119 Mansion Street, Coxsackie.

Chairman Bevilacqua stated that the next item of business is the continuation of reviewing the Area Variance application received from Empire Riverfront Ventures for the 60 South River Street project. An Area Variance is being sought for 15.23 feet above the 50-foot maximum height.

Robert Stout stated that he can give a quick overview of the SEQR process, but first he wanted to clarify a comment that was made at the Public Forum regarding the number of variances. It was stated that there were 8 variances. This is not true. There is only 1 variance for the height. He believes that the confusion stems from the applicant's materials for the Planning Board application, where it was determined that there are 8 ways that the new Amended Site Plan application deviates from the previous Site Plan application. He said that since this Board last met, the Planning Board circulated their Notice of Intent to act as Lead Agency for the purposes of SEQR. At the April 21st meeting the Planning Board first indicated their desire to be Lead Agency. An updated Long EAF was submitted by the applicant, and on May 13th circulation for concurrence of lead agency status and jurisdictional matters was initiated. This is subject to technical review and there is a 30-day timeframe allowing other agencies to either consent or object to the Planning Board being Lead Agency. As it stands now, both the Planning Board and Zoning Board are SEQRA involved agencies. He said that he would like to read the definition of Lead Agency aloud. Lead Agency means an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required. So, the key purpose in determining which agency is lead, is the principally responsible for undertaking, funding or approving an action. Both involved agencies have a responsibility to review, approve and deny the request. Part of the facts surrounding the Planning Board's desire to act as Lead Agency is the fact that they were Lead Agency in the beginning of this project. Also, by its nature, the Site Plan and Special Use Permit touches on multiple aspects of the application. As opposed to the Area Variance which touches on one element of the application. Having the Planning Board act as Lead Agency when there are also variances requested is typically the norm during this type of process, because the Planning Board has to review the whole project. Rather than have the Zoning Board sit and do nothing while waiting for the Planning Board to become Lead Agency, this allows for the ZBA to express concerns, if any, with the Planning Board's request. He stated that he felt it was worth having a discussion on Lead Agency status.

Chairman Bevilacqua stated that he would agree that taking a bird's eye wholistic view of the project is the Planning Board's role, and them being Lead Agency is important to that process.

Motions & Resolutions

A motion to agree with the Planning Board's decision to act as Lead Agency on the Empire Riverfront Venture's hotel project was made by Chairman Bevilacqua. Christopher Chimento voted yes. Glenn Haas voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

New Business

Robert Stout stated that once the Planning Board has designated themselves as Lead Agency, which is anticipated to be at their next meeting in June, they will start conducting the SEQR review. So, as discussed before, the Zoning Board can't issue a determination until the SEQR review is completed. However, in the meantime, the Zoning Board can continue reviewing the application materials and review the Area Variance criteria. As the Board thinks about the criteria, they should think about the information they would want to see in the application that would satisfy that criteria. The Zoning Board is required to balance the benefit to be realized by the applicant against the potential detriment to the health, safety and welfare of the neighborhood or community using five factors. The first factor is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the Area Variance. The second factor is whether the benefit sought can be achieved by another feasible method by the applicant other than an Area Variance. The third factor is if the request is substantial. The fourth factor is whether the Variance will adversely affect or impact the physical or environmental conditions in the neighborhood or district. The last factor is if the condition is self-created, and if so, it shall be considered but not preclude granting the Variance. He stated that at this point the Zoning Board can discuss the application materials and consult with the Engineer.

Chairman Bevilacqua stated that he has taken the time to review the information submitted. There is a couple of things that he has taken note of. The first is in reference to viewshed. There is a map that shows 50-foot visual impact vs. 65-foot visual impact. He is trying to assess what the impact would be for some of the immediate neighbors to the hotel.

Mary Beth Bianconi stated that she is unsure how familiar everyone is with Visual Impact Studies. The purpose tonight is to determine if additional information is needed from the applicant when thinking about those criteria. It may be beneficial to walk through the different sections, have a discussion about what the Visual Impact Analysis is, what standard was used to prepare this analysis, and what do the maps show.

Chairman Bevilacqua stated that he had some questions regarding what the detriment to the overall character of the village would be in regard to viewshed, as well as what the west side of the structure facing Ely Street would look like.

Mary Beth Bianconi stated that these things should be on the list of things the Board would like to request from the applicant. The original application was dated April 11, 2022. The new updated application is dated May 2, 2022. What is included is the application materials, the maps, the Building Permit, Notice of Violation, and the original SEQR declarations. There is also a property survey, and narrative that does discuss from the applicant's perspective the 5 criteria. She stated that she would like to mention a couple of things to the Board for thoughts. The NYS DEC publishes a program policy document that's used by agencies in the state to evaluate visual impacts and various actions that were created by either being approved or rejected by the state. Right now, that standard is frequently referenced as at least a starting point for this type of analysis. So, as the Board goes through the visual assessment, the initial text for it tells you that this assessment was prepared in accordance with DEC's program dated December 2019. It is important to note that the DEC policy is focused in large part on viewsheds of areas that are publicly accessible or might be particularly damaged by a change in viewshed. So, the policy is written around views from a state road, or state highway etc. Looking at the broader

context, this project would include the state park, Reed Street, Historic District and some other downtown locations that would be more of a SEQR view that the Planning Board would look at. For the Zoning Board's deliberations, the Board would want to look at more of an impact on the neighborhood. This evaluation shows a ½ mile radius around the project site and does describe some important resources. It does also take into consideration the view from the west looking east. Interpreting the maps can be interesting and sometimes challenging, so she would like to walk through them with the Board. The first map is of the project site showing the location. The second map is showing the ½ mile radius including scenic roads, portion of Route 385, NYS historic sites, and the Hudson River Statewide Area of Scenic Significance (SASS). It also includes the Reed Street Historic District and Riverside Park. The ½ mile radius extends from Sutton Place/Molly White Drive/Beechwood Drive, to Sunset Boulevard, to the intersection of Route 385/Mansion Street, to where the Yacht Club is off of Riverside Avenue. The next map takes available information to show the area where the hotel is visible from different locations within a radius. However, it does not take into account trees and buildings that might be in the way. The fourth map is taking into account trees and buildings that could block the view within that ½ mile radius. Again, this map is using available data sets that is published by the state. This map is showing that when taking into account the trees and buildings, that the area of visibility is substantially smaller. The fifth map is called a Hillshade View. This shows the representing of trees in relation to the view of the building as a 50 foot vs. 65 foot similar to a relief map. The last map is a Site Analysis showing the view from the east side of the river looking west. It is showing the top of the Dolan Block and drawing a line across the horizon visually to show the heights of the buildings. It is showing the height of the 65-foot-tall hotel structure in relation to the surrounding buildings.

Chairman Bevilacqua stated that he had looked at that last image while thinking about the general character of the village. The cupola of the Dolan Block is non-conforming to the 50-foot height requirement.

Mary Beth Bianconi stated that the Dolan Block is considered a pre-existing non-conforming area dimension, which is not that all uncommon that that would be the case with a historic structure. She stated that some things she thinks might be helpful to consider while deliberating is to request a plan view of the hotel from a top view facing down. This would show what the top floor of the hotel looks like. Also, elevation views of the sides from perspective of standing on the streets in all directions. The Zoning Board is being asked to grant relief for what it would look like once built. So, she thinks having these would be very helpful. The Code Enforcement Officer has the construction plans, which is tough to figure out what you are really looking at. Another thing that she thinks would be extremely helpful is a Line-of-Sight Analysis. For example, if she is standing on Ely Street looking towards the river and is 5'7", this would show what is/isn't in way of the view. She would suggest selecting a couple of different points of view. The issue that is before the Board is the visibility to the water or other side of the river. This Line-of-Sight Analysis would be better suited to help determine this rather than showing the map of views from publicly accessible places. This would show the character of the village and what is seen from Ely Street, Church Street, Mansion Street etc. You can even do analysis from 2nd story windows of buildings on surrounding streets. She feels that a Line-of-Sight Analysis from some of these sensitive areas would be really helpful for the Board to request from the applicant. She stated that since the proposed use of the fifth floor is for a restaurant, it would be helpful to understand from the applicant what the operation hours would be, and if there will be amplified sound. She feels it is reasonable for the Board to ask the applicant to provide a concept as to what the intended business model for the restaurant is. It is reasonable to take those things into consideration with one footnote, which is that if an Area Variance is granted, the building can change hands in the future. You need to look beyond the applicant that stands before you and think more broadly about the functionality of the building going forward. Those five factors mentioned earlier need to be considered. A business model is a good place to start, but keep in mind the broader future.

Robert Stout stated that the Board will be taking into consideration any potential impacts to the community when reviewing the application.

Chairman Bevilacqua stated that he agrees that he would like to see some maps showing the

view from the west as well as the top view looking down. He also would like to see a Line-of-Sight Analysis where it shows views from different street locations at the 65-foot line.

Mary Beth Bianconi stated that this would be a good time for the Zoning Board to make some basic determinations as to what types of analysis the Board wants from the applicant. Does the Board want a line of sight to the water, or where water meets land, or where land ends and sky begins? Part of the viewshed analysis is determining what is valuable. In this case, it would be the river. One thing to note, this Statewide Area of Scenic Significance includes Coxsackie, and its boundary is Route 385 going down towards Athens and east. Which means the view that they are preserving and protecting is of the west of the Catskill mountains. So, the SASS is of the opposite direction than what is valuable to the village, which is the river. She said that she feels that it is reasonable to say that the Board is trying to look at where the water meets the land as their Line-of-Sight analysis.

Chairman Bevilacqua stated that he agrees that the shoreline view is what the Board would like to see in the analysis.

Mary Beth Bianconi asked from what perspective should the shoreline view be from. For example, from someone walking on the street, driving in the car, or from a 2nd story of a building?

Christopher Chimento asked if it had to be from a public spot.

Mary Beth Bianconi stated that for this analysis it is completed using a computer, so nobody is walking around and taking pictures etc.

Christopher Chimento asked if there was a way to get the perspective from property owners.

Mary Beth Bianconi stated that this is the interesting thing when pertaining to the character of somewhere. The streets are public streets, so if, for example, you are walking on Ely Street and look towards the river, you can determine what that view would look like. Same goes for determining what a view looks like from a second story window by using the height of a typical second story of a building. The only thing to remember is that as a property owner you don't own the air in front of your view on someone else's property. The only way to preserve and protect your view on someone else's property is to purchase that property yourself. As sad as that may be, you are not guaranteed that view. So, while that is important and may be a factor in someone making a real estate decision, unfortunately, that is the way it is with the whole concept of air rights. You can certainly request the analysis from the public right of ways, such as sidewalks or roads. So, Church Street and Ely Street would be good examples.

Christopher Chimento asked if Mansion Street could be included since you can see the hotel while coming down Mansion where it meets Riverside Avenue.

Mary Beth Bianconi stated that Mansion Street can be included. She said when looking at the Hillshade View map (figure 5) there isn't a huge amount of river view shown, but there is some value to conducting analysis for the intersection of Church Street and Ely Street. This information on the Hillshade View map is based on LIDAR, which stands for Light Detection and Ranging. LIDAR uses radar to evaluate the height of things. The LIDAR data used in the map is from 2016. The view may be different today then when this data set was created.

Chairman Bevilacqua stated that looking at that map his perspective is that anything in black and white cannot see the river.

Mary Beth Bianconi stated that that is correct. Where it is black and white on the map has no view.

Chairman Bevilacqua asked if he is correct in understanding that those on the west side of Church Street and Ely Street don't see the hotel, and therefore can see the river.

Mary Beth Bianconi stated that the Board can ask the applicant to take some pictures.

Robert Stout stated that he would suggest having the applicant take some pictures of the area in question.

Christopher Chimento asked if the existing map could be enhanced more on the pertinent area.

Mary Beth Bianconi stated that if the Board had the applicant go out and take some photos that would be better. Unfortunately, when trying to enhance the existing images it may become more difficult to read.

Mark Millsbaugh, of Sterling Environmental on behalf of the Empire Riverfront Ventures project, stated that they can go to the locations of concern and take pictures. However, one of the challenges in this particular situation is that there is pretty prominent escarpment. On Ely Street there is a break in the grade going east to west. In regard to visibility on Ely Street, as the grade breaks you are behind the line of sight. That is not well reflected on the submitted map. He stated that as a Line-of-Sight Analysis is done they will include that area from east to west to show what is happening with the view. They will also factor in trees and other houses around the project site. The existing submission includes a map of the view from the east shore showing that the hotel is not as tall as the escarpment of the trees. From Ely Street looking east, only four or five houses on the east side of Ely Street are affected. On the west side of Ely Street, the views are blocked primarily by trees.

Christopher Chimento asked if there was a way to take pictures from private property owners.

Robert Stout stated that there is no right, but they can ask permission from the property owner.

Mary Beth Bianconi stated that the houses in question are the four or five houses on the east side of Ely Street between the intersection of New Street and Church Street. There is still a fair amount of trees in this area. She stated that any time you are constructing something you are creating a visual contrast. This is one of those difficult things where the interpretation of keeping in character of the village is subjective. To evaluate the changes is the job of this Zoning Board. They need to determine whether it effects character. To simply say that you can/cannot see the hotel from someplace in itself does not answer that question. It is a little too simplistic.

Robert Stout stated that the Zoning Board needs to determine whether it is creating a detriment to neighboring properties.

Mary Beth Bianconi stated that with a Use Variance there are strict criteria that have to be met. With an Area Variance its more about balancing these criteria. So, its not a case of if I can see the hotel it shouldn't be permitted.

Mark Millsbaugh stated that when they were working on the visual assessment they inventoried the sensitive public spaces. What they were focusing on is the community at large, not necessarily a single property. The findings go a long way to show that there is not a significant adverse visual impact on the character of the community. They are not opposed to supplementing the application with additional information but would like to continue to keep the focus on impacts to the community and not a few properties on one street.

Chairman Bevilacqua stated that as far as the view of the property from the east, he personally viewed the project site from the Hudson River on a boat and took some pictures from several different directions. It shows the escarpment of trees as well as the Dolan Block. He shared the pictures with the rest of the Zoning Board Members.

Mary Beth Bianconi stated that she hopes that nobody should have to go through this process again, but it is nice to have these visual ques courtesy of Mr. Bevilacqua. She asked if the Zoning Board would like to request a Line-of-Sight Analysis from where Riverside Avenue meets Mansion Street, and on Ely Street between New Street and Church Street. She asked if the Board would like to request the applicant to try and obtain actual photos.

Christopher Chimento stated that it is a tough time of year to take photos on Church Street. He used to live on Church Street, and it has seasonal views.

Mary Beth Bianconi stated that on figure 3 of the existing map shows the area between New Street and Church Street a little bigger, but it is just showing raw land. It is not taking into account trees. She asked Mark Millsbaugh to submit a Plan View with some different elevations.

Christopher Chimento stated that he would like to see a top floor view from Mansion Street.

Mary Beth Bianconi stated for instance, it should show perspective from the park looking towards the hotel, as well as coming down Mansion Street, and South River Street/Greene Bedell Road.

Chairman Bevilacqua stated that just because of the crux of the issue with the houses on Ely Street that Ely Street should be included as well.

Mary Beth Bianconi stated that to recap what the Zoning Board is requesting from the applicant is a business model including intent and plans for hours of operations, a view looking down on the fifth floor, so the Board understands what the elements are in the 15-foot Area Variance area, some elevation views, Line-of-Sight from Mansion Street/Riverside Avenue, and photos of Ely Street between New Street and Church Street looking east. The Board has to think about the idea of character of the community. The Board can certainly ask the applicant to try and obtain permission from those four or five homes to take pictures.

Christopher Chimento asked if the figure 5 map can just be zoomed in.

Mary Beth Bianconi asked Mark Millsbaugh if they were to zoom in on figure 5 if it would become less clear.

Mark Millsbaugh stated that zooming in figure 5 may make it less clear. However, they will try to zoom in to capture Ely Street. He said he would like to comment on one more observation about community character, and that character is not just visual. The narrative in the Site Plan documents show that there was a concern about a deteriorating riverfront. Those documents went on to describe preferred uses including the lobby, hotel, event center, shops, restaurants, and wedding event center. In terms of community character, it is more than just visual. It is a multi-pronged assessment of character.

Aaron Flach stated that there are full color drawings at Village Hall as well.

Mary Beth Bianconi stated that tonight's objective was to confirm that the ZBA agreed with the Planning Board's Lead Agency status, to review the materials submitted in the application and ask for any additional items from the applicant. At the June 16th Planning Board Meeting they will be conducting their SEQR review. The Zoning Board cannot act until the SEQR findings are completed. However, the ZBA can continue deliberations.

Mary Beth Bianconi stated to Aaron Flach that although he mentioned that there were documents at Village Hall, they still need things to be entered into the project record via the ZBA so that they are part of the deliberations. Stepping forward the Zoning Board will determine whether they have everything in the application needed relative to the standard of issuance of Area Variances. Also, during deliberations, consider if the Area Variance is to be issued, then what type of conditions may be imposed to help mitigate any negative impacts. Because the fifth floor has plans to be a restaurant, some things to consider may be light and noise impacts, not just visual. There is a Lighting Plan that is attached to the application that may be reviewed. After SEQR findings are issued, the ZBA can approve the Area Variance as applied for, approve with conditions or modifications, or deny the application as submitted.

Public Comment Period

No public comments were offered.

A motion to adjourn the Zoning Board meeting was made by Chairman Bevilacqua and seconded by Christopher Chimento. Christopher Chimento voted yes. Glenn Haas voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

The meeting was adjourned at 7:26 p.m.

Respectfully submitted,

Nikki Berezna
Clerk