

**VILLAGE OF COXSACKIE
ZONING BOARD MINUTES
June 27, 2022**

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

A motion to approve the minutes from the June 6, 2022 Zoning Board Meeting was made by Chairman Bevilacqua and seconded by Christopher Chimento. Chairman Bevilacqua voted yes. Christopher Chimento voted yes. Brian Tighe voted yes. The motion carried.

Correspondence Received

An emailed letter was received from Katherine Higgins to the ZBA, Village Board and Planning Board regarding Flach Development's Empire State Development Grant Award (ESD) for the Newbury Hotel.

An emailed letter was received from Brian Rowe regarding additional considerations for the Newbury Hotel Area Variance request and general amended Site Plan.

An email was received from Demetri Chriss regarding Zoning and Planning Board reviews of recent submissions for 60 South River St.

New Business

Village Attorney, Robert Stout, stated that he has prepared a Resolution in relation to Mr. Wolford's request to build a garage on his property at 27 Lafayette Avenue. The finding proposed by this Zoning Board at the last meeting was to find that section 155-25C of the Village Code requires 10 foot setbacks from the side and rear property lines for accessory structures, which is consistent with what is being proposed here. There is not a greater setback requirement. This Resolution essentially makes that finding as well as reverses the Building Inspector's decision to the extent that the application was denied due to Area Variance relief.

Motions & Resolutions

A roll call vote was taken on Resolution No. 1-2022-To Interpret the Village Zoning Code Chapter 155-25C Regarding Side Setbacks for Accessory Structures in the Medium Density-2 Zoning District for SBL# 56.15-2-33. Chairman Sal Bevilacqua voted yes. Christopher Chimento voted yes. Brian Tighe voted yes. The resolution passed.

New Business

Robert Stout stated that he will prepare a final version of the resolution that corrects some typos,

and he will send it to the Clerk so that it can be signed and entered.

Mary Beth Bianconi, of Delaware Engineering, stated that from here it should be sent to the Code Enforcement Officer so that he is aware that he can issue the Building Permit.

Chairman Bevilacqua stated that the next order of business is the continuation of review of the Area Variance application received from Empire Riverfront Ventures for the height of the Newbury Hotel at 60 South River Street. Since the Board last met, they have asked the applicant for a plan view with north arrow of the floor area of the fifth floor of the building in a completed state depicting at a minimum, areas that will be under roof and/or enclosed and those that will be open to the sky, labels to express the intended uses of each area of the fifth floor plan, and details regarding the built elements of the portions of the fifth floor plan that are open to the sky. For example, seating areas, lighting, amplifiers for sound systems, etc. Also requested, was elevation views of the fifth floor for all four faces of the structure depicting finished wall materials or spaces that are open to sky from vantage points as will be seen by the public. This would be views from the North looking South from the vicinity of the Gazebo in the park, from the South looking North from the vicinity of 79 South River Street, from the West looking East from the vicinity of Church Street at the bend in the road looking across the backyard of 34 Ely Street, and from the East looking West from the southernmost extent of the park. Also requested, was a statement regarding the proposed business model for the operation of the facilities to be located on the fifth floor. For example, a restaurant is proposed, so the Board would be interested in seeing the hours of operation, seasonality of the use, use of outdoor amplified sound, live music, open to the public or guests of the hotel or other on-site users, outdoor grills, smokers, or other equipment that could produce smoke or odors, lighting etc. Lastly, a line of sight analysis was requested depicting in rendering-style the visible aspects of the fifth floor of the building from vantage points. This would be vantage points from the public right of way at Riverside Avenue and Mansion Street looking southeast at the structure, and with permission, backyard views from homes on Ely Street located between New Street and Church Street. If backyard access permission is not granted, then the view from the vicinity of Church Street at the bend in the road looking across the backyard of 34 Ely Street is requested. So, the Board has received a plan view of the fifth floor that is an interior bird's eye view, fully rendered elevation views of the sides of the building, as well as a business model and a line of sight analysis.

Mary Beth Bianconi stated that it may be helpful to walk through the documents submitted by the applicant. Starting with the bird's eye view of the fifth floor plan, it is a top down view showing that to the west, north, and south, there is a parapet wall, which is a wall that extends upward. This would essentially create an enclosed space around that portion of the structure. So, the open space is facing east towards the Hudson River. The rest of the fifth floor is essentially enclosed space, with the exception of approximately a quarter of the surface area facing east. You can see that inside the building under cover, there is utility space for heating, ventilation, and air conditioning. There is additional utility space, around the area under cover but on the roof, for elevator banks, an indoor kitchen, indoor dining, indoor bar area, various indoor seating areas, and two restrooms. There is also some storage areas. Outside, you can see that there is a patio area that predicts various seating options.

Chairman Bevilacqua stated that he had noticed in one of the emails received from one of the neighbors that they were asking about the outdoor area facing west to Ely Street. They had asked about the nature of its use, as to whether it's a balcony or something similar. It looks like the plans show that it is for HVAC and utilities behind the restaurant space.

Mary Beth Bianconi stated that that is correct, and it would be behind a parapet wall so it wouldn't be visible.

Brian Tighe asked what it would be made of and what color it would be.

Mary Beth Bianconi stated that looking at the elevation views, you can see that essentially that center area appears to be slightly gray.

Aaron Flach, of Empire Riverfront Ventures, stated that the top is blue with a darker gray color that is there now.

There was discussion between Mr. Flach and the Zoning Board about what the floor will look like, materials, color, planters, shrubbery etc.

Brian Tighe asked Mr. Flach about the windows in the plan view.

Aaron Flach stated that on the rendering it shows that the windows are much smaller, meaning that there's wall section in between. The windows are going to have black out drapes where the dining will be inside with banquette seating. He stated that on the side facing the water, shrubbery was planned, but something can also be done on the side street.

Attorney Stout stated that a reference was made to blackout drapery. He asked Mr. Flach if that was proposed to be whenever it is dark outside it would be blacked out.

Aaron Flach stated that the blackout drapery would just be up all of the time. There is banquette seating there, so people would be sitting against it.

Brian Tighe asked Mr. Flach what banquette seating was.

Aaron Flach stated that banquette seating is where one side is against the wall, and there are regular seats on the other side of the table. This is ideal with larger groups of people who may want to squeeze the tables together. Going back to the floor plan, people will only be on the river side.

Chairman Bevilacqua asked if he was correct in understanding that there would be no vantage point of the HVAC equipment from the west because of the wall.

Mr. Flach stated that that is correct. There is a four foot parapet wall there as well.

Brian Tighe asked Mr. Flach if there are noise expectations of what the HVAC sound will be like.

Aaron Flach stated that the HVAC sound is pretty light. It is similar to the sound of a small fan running.

Chairman Bevilacqua asked Mr. Flach if these fans would be there regardless of a restaurant being there or not.

Aaron Flach stated that these fans would still be there to serve the hotel.

Chairman Bevilacqua stated that he knows that Mr. Flach provided clarity via email on someone's question regarding the outdoor patio area between the hotel and spa. Mr. Flach stated that the illustrator took artistic licenses and added people to it to give it scale.

Aaron Flach stated that on the backside of the spa building it was scheduled to have some seating, benches, and landscaping to allow for people to hang out outside if they wanted. However, it is not for outdoor dining.

Mary Beth Bianconi stated that she knows that artists can take a lot of license with renderings. She said that it looked like an outdoor dining area, and she checked all of the plans and there was no outdoor dining area there, so she wanted to verify.

Attorney Stout stated that ultimately at the end of this review it would be helpful to get a revised submittal that indicates that this area in fact won't be used for HVAC, but instead proposed certain plantings there. Also, indicate that there will be permanent drapery there behind the banquette.

Chairman Bevilacqua stated that he thinks an interesting rendering to have would be a more elevated view from some of the homes on Ely Street, other than the provided upwards shots.

Attorney Stout stated that whatever the refinements of this submittal come out of this process should go to the Planning Board when they are evaluating the project for State Environmental Quality Review (SEQR) purposes. It should be the most up to date proposal.

Mary Beth Bianconi stated that while they are talking about the restaurant, they can walk through the business model that was described. She thinks there is some value there and Mr. Flach can jump in. She said that she will preface this by saying that the Board has a developer in front of them that intends to be the owner and operator of this facility. However, they need to think about that there may be a day where it has a different owner and operator. If the Board is thinking that relief may be granted for the fifth floor, they need to think in terms of conditions that are reasonable, that are protective of the neighborhood, and that are durable. This way they outlast this owner into the future owners. They would be conditions of use of this aspect of the building if the Area Variance is approved. The business model that was put forward was evening

operating hours Monday through Saturday, brunch mid-day Saturday and Sunday, outdoor spaces utilized seasonally, pre-recorded background music and live acoustic acts planned, all cooking to occur indoors and no smoking allowed, and typical restaurant indoor and outdoor lighting. So, if the Board were to think about if there was an approval for this fifth floor and it is intended to be a restaurant, they need to think about any reasonable conditions to mitigate any impacts on neighboring properties on the basis of the business model as well as built environment.

Attorney Stout stated that they have to take into account the difference of it being on a particular level in excess of the height limitation as opposed to being within that level.

Chairman Bevilacqua stated that the business model states a possible May 1st to September 30th outdoor season, with a 9:00 p.m. cut off.

Mary Beth Bianconi stated that typically with restaurants the kinds of things that you think about as off-site impacts are noise in terms of restaurant patrons, and in terms of amplified outdoor sound. If there is consideration of relief for this, the Board may want to consider things like the positioning of any speakers, and/or any governance on the volume of the sound. The sound should be preferably pointing east away from residences. The Board should also consider odors. Something the Board may want to condition on use of the floor is no outdoor cooking.

Christopher Chimento asked Ms. Bianconi if the Board needs to come up with a list of conditional items right now.

Mary Beth Bianconi stated that the Board has a list of criteria under NYS and local law which they need to consider granting relief for this Area Variance. As discussed before, the relief can be granted as requested, granted with modifications, granted with conditions, or it can be denied. That is the range of options. One of the things that she generally encourages Zoning Boards to do in their deliberations is to consider at the same time the criteria for granting relief and consider any potential reasonable conditions. The reason she suggests that, is because it aids in determining whether this should be approved as requested, with no conditions and no impact on the neighborhood. Or, if relief is granted, what the nature is of that relief. Meaning, that the building has been built to a certain height. Above the 50 foot height of the zoning district. So, that is one way of thinking about relief. If that relief were to be granted, under what conditions would substantially reduce any negative impacts on the neighboring properties and the character of the Village. Acknowledging the fact that the Village's Code restricts building heights to 50 feet. Presumably when the zoning was adopted there was a legitimate public purpose and reason in that restriction.

Attorney Stout stated that the running list the Zoning Board is keeping is a list of things in respect to what the potential adverse effects of granting the variance would be, and how they would mitigate those adverse effects. He stated that he thinks its fair for the Board Members to keep list of the things they're considering, and then as these plans are refined, the items on the list can be refined as they move through the balancing test before the Public Hearing.

Christopher Chimento asked if the 9:00 p.m. noise ordinance applies to everyone in the Village.

Mary Beth Bianconi stated that the noise ordinance is 10:00 p.m.

Brian Tighe asked if there was a way to monitor or control the sound level.

Mary Beth Bianconi stated that there is in the way of decibel meters that can be used. All sounds are not the same. Background sounds will absorb other sounds. Melodic sounds such as bird calls, and percussive sounds such as gun shots are very different in the way we perceive them and the way they travel through the air. She stated that she has seen many places where they attempted to use decibel meters, but she has not seen it be effective. What she has seen be effective is the use of modern digital sound systems. If you have amplified outdoor sound, there can be restrictions on the system requiring the use of a governor that is built into it. This will not permit the sound level to be raised above a certain number of decibels. Another potential thing that she has seen be very effective in situations like this, is if there was to be a live performer, they would be required to use the amplification system that is built into the building, as opposed to bringing their own speakers. So, there are technological measures that can be put into place. Also, speaker placement can be evaluated. In this case when the Board is looking at the floor plan, they are looking at an outdoor area that is largely facing east, is blocked to the south by the building and the parapet wall, but to the north there is a small section that is open. So, that would be something that the Board would want to consider conditions stating that the speakers cannot point towards the community and would have to point in towards the facility. She thinks that this is an important consideration for outdoor dining areas. There is a reason that these things are in most codes. There are a series of criteria that have to be met for outdoor dining. Whether that is on grade level or on top of a building, a lot of those reasonable restrictions are to prevent having unintended negative impacts on neighboring properties. Concerns are generally less about lighting because most outdoor lighting at night is dim. Things like odors and sound are larger concerns. Particularly outdoor amplified sound.

Attorney Stout stated that he would also that they consider the nature of the outdoor dining. Such as if it is in fact seated table service for those hours. That's different than a cocktail party serving several hundred people. The depiction before them does appear to show seated table service with some chairs. If it were to be stand up cocktail hours on certain nights of the week, that would be a different examination and maybe different controls.

Mary Beth Bianconi stated that those are things the Board can think about if they are thinking about granting this relief with conditions. Again, if approved, the operator of this facility needs to have something that is viable in the marketplace. It does not make sense to approve something that would not be economically viable.

Chairman Bevilacqua stated that the Board is only focused on anything above the fourth floor.

Mary Beth Bianconi stated that that is correct. The Board is really focusing on the fifth floor, and what the use is, how it functions, and where are the spaces that are intended to be on the fifth

floor. As discussed, there are really two aspects to think about here. The built environment of what is physically there, and there is also the operational environment that needs to be considered.

Attorney Stout stated that also what needs to be considered is what the additional impact may be for having this type of activity above the 50 feet, and to what extent does it differ if the same activity were happening 50 feet or below. Things like if noise will be projecting out further, if light will be projecting out further, just by virtue of the level at which it is occurring.

Andrew Millspaugh, of Sterling Environmental, stated that he has a question on behalf of the applicant about noise. The Village does have proposed standards for noise, such as established decibel levels. He asked if the Board would be considering something more stringent than that, or since it is an enforceable metric for noise that could be considered as part of submissions.

Attorney Stout stated that he thinks part of this Board 's review would be to determine whether those existing restrictions are adequate, and to what extent they need to be supplemented if at all.

Mary Beth Bianconi stated that they should recognize that those restrictions in the Code are intended to be for buildings 50 feet or less. So that is why there is this discussion, because the question will be whether that is protected enough at 65 feet versus 50 feet.

Andrew Millspaugh stated that he would add that the decibels are measured at the property lines regardless of the height.

Christopher Chimento stated that it seems reasonable that the applicant shouldn't have speakers or lights to where it effects the neighboring community, but he doesn't see why they can't still fit in with the existing Village Code for everything else in terms of things like the noise ordinance. the Village wanted to have an event space down there. It was part of the Village plan from 10 years ago.

Mary Beth Bianconi stated that that is correct. That is why this is an Area Variance about dimensions, not about use. Use of the sight as proposed which includes hotels, restaurants, event centers, and things of that nature, are all permitted within the Village's code. The Board is not addressing whether there should be a restaurant or hotel here. That is permitted per the Village's zoning which was adopted in 2008 by the Village Board after a Comprehensive Plan was completed with a lot of public input. It is their job to legislate those things. What the Zoning Board is looking at is simply that this use that is allowed by the code is occurring in a higher area that isn't permitted by the Village Code. She stated that what she can do for the next meeting is provide some sections of the Village's code relative to things like lighting, design standards for things like parapets and roofs, and noise standards.

Chairman Bevilacqua stated that he feels it would be good to review the material further.

Attorney Stout stated that it would be fair to incorporate those standards into any approval

because those standards are legislatively issued and can change over time. They can change outside of the context of somebody considering the Area Variance criteria. To the extent that those standards become part of the approval, that then travels with the structure to any subsequent owners or operators.

Chairman Bevilacqua stated that in terms of sound, it is going to be difficult to mimic the restaurant in operation before a relief is set forth. You have the sound from the speakers as well as conversational sound. He said that he doesn't know that there is a way to measure or quantify ahead of time.

Mary Beth Bianconi stated that there are several studies that planners use regarding typical background sounds and how many decibels they are. This would include a typical background sound for something like a restaurant. It can be hard to look at decibel numbers on a sheet of paper and be able to equate that to something experienced in real life. So, there are a few tables to show, for example, the decibels of a lawn mower, versus a train going by 20 feet from your car, and versus a restaurant background sound. Restaurant background sounds are substantially larger than we all appreciate. Part of it is our perception of those sounds. When you hear an orchestra, it is perceived as beautiful, but it is also very loud. A lawn mower or a chainsaw is often quieter than an orchestra, it is just that one is more enjoyable. The Village's Code does have decibel limits at the property line, but that is hard for a Board to interpret what that means in everyday life.

Chairman Bevilacqua stated that a lot of the restaurant space seems interior, and everything else is facing the river, which is noteworthy as far as property line sounds to the west is concerned.

Mary Beth Bianconi stated that sound will not travel through a wall in that respect. It will bounce off the wall and head back out the direction it came from and up into the air. The river, because it is a flat reflective surface, will carry the sound across it. It is possible that you may be able to hear people's conversation across the river, but you may not be able to hear it on Ely Street.

Brian Tighe asked if there is an end time for the weddings.

Mary Beth Bianconi stated that the Zoning Board is not looking at weddings as part of the application in front of them. The Wire Event Center would be part of the Planning Board's review. The Zoning Board's focus is very narrowly on the requested relief for the height of the hotel. What would happen from a practical perspective if the Board were to determine that the Area Variance should be issued with conditions, after SEQR has been completed by the Planning Board, the conditions will be enumerated in writing via a resolution. The resolution will then go to the Planning Board, and they will take into consideration the Zoning Board's conditions, and they will also get embodied, along with any other conditions by the Planning Board, in their approval or denial of the amended Site Plan and Special Use Permit. If that process concludes with some kind of an approval, then the Variance, Site Plan and Special Use Permit with all of the conditions would go to the Code Enforcement Officer who will then be entertaining a Building Permit Application from the applicant to construct something, or continue construction,

in accordance with your approvals. The Building Permit would get issued, and once the building is completed, the operator will be asking the Code Enforcement Officer for a Certificate of Occupancy. The Occupancy Permit will be conditioned on all of the things that came from the Zoning Board's review and the review of the Planning Board.

Attorney Stout stated that he would add that to the extent that the applicant is present and getting a sense of the direction the Board is generally heading with some of these conditions, he thinks it would facilitate the process to the extent that the developer would modify the project to incorporate some of those conditions. For example, in respect to noise, to show where you will go beyond what the current code requirements are. That would be beneficial in not only for this Board to know, but beneficial for the Planning Board to know as they progress with SEQRA.

Aaron Flach stated that the kitchen is planned for electric cooking equipment and is relatively small. The food program will be relatively simple with small plates etc. The intention is for most of the dining and table service to be inside, with most of the outdoor seating being for conversation, waiting area, and to have a drink.

Mary Beth Bianconi stated that one of the things that would be helpful is if Mr. Flach could give the Board an idea as to capacity of diners in both indoor and outdoor space. There is a metric of how many square feet you need per person based on the type of seating you would like to have. This would be helpful to understand the outdoor space. She stated that to her it looks small, with not a lot of building surface. So, it is not going to see hundreds of people. Hundreds of people would not be comfortable in that space. She asked him if it could show standing cocktail area versus seated area.

Chairman Bevilacqua stated that the Board has also received the line-of-sight analysis including actual photographs.

Mary Beth Bianconi stated that the bottom pictures on each page show the pre-construction of the hotel using Google Earth.

Andrew Millspaugh stated that the first 14 or so pages are prepared with photos from before using Google Earth taken from various vantage points, compared to photos taken within the last month and a half from the same vantage points. The only exception is on the last page which includes pictures from vantage points in Riverside Park.

Christopher Chimento stated that he feels that these pictures are helpful, and there seem to be only a couple of them that are even questionable in terms of view impact.

Chairman Bevilacqua stated that he agrees. The crux of the visual issues being mostly on Ely Street.

Brian Tighe asked if this application and material was publicly posted on the Village website.

Deputy Clerk/Treasurer, Shannon Slater, stated that she did not know and would have to check with the Village Clerk.

Mary Beth Bianconi stated that on the Village's website there is a Google Drive link where all the documentation that is submitted in relation to this project is uploaded.

Deputy Clerk/Treasurer Slater stated that she just heard from the Village Clerk who confirmed the information is on the Village website.

Mary Beth Bianconi stated that she would like to walk through what the purpose of the line-of-sight analysis was. When we build something, we are in that very nature going to change the way a street looks, or area looks simply by building something. Even if you build a doghouse, it looks different. The mere presence of a structure isn't really what the Board is looking at. This part can be difficult, but the Board is also not considering the first four floors of the building, because those were previously approved. So, what the Board is really looking at, is from these vantage points from a couple of different perspectives, that top floor of the structure. When we think about buildings, we think about them in terms of their mass. So, when thinking about the concept of mass, it isn't looking at size, but more so what the physical presence of the structure is as we observe and encounter it. We would have encountered a four-story building in this site if it had been constructed in accordance with the Planning Board's approval. Now there is the added fifth floor. So, what the Board is trying to evaluate is if the additional mass of that fifth floor a detriment to the character of the community, and if it impacts neighboring properties in a more substantial way than it would have as a four-story structure. We think about mass, and we think about bulk, which has a lot more to do with the style of the building which hasn't changed since the approval of the Planning Board. So, this is where this gets a little challenging because the Board is really trying to evaluate what impact that additional 15 feet may have on the character of the community and neighboring properties.

Christopher Chimento stated that the only properties that may have an issue are B9 which is a property on Ely Street, B12 which is a property on Church Street, and #4 which is lower Mansion Street at the intersection with Riverside Avenue. He stated that the criteria says, "an undesirable change produced to the character of the neighborhood, or a detriment to nearby properties." He said that he thinks that an argument could be made about the fact that the building is higher than the telephone company building in front of it while travelling down Mansion Street. He said that the other two properties on Ely Street and Church Street (B9, B12) could have an argument about undesirable change or detriment as well.

Chairman Bevilacqua stated that the Board has also received photos from the homeowners of these properties via email as well. As for picture #4, he would say that the fifth floor is visible from this location, but he doesn't know if it effects the view of anything you would be trying to see past it besides the top 8 foot of a tree.

Mary Beth Bianconi stated that picture #4 is a view from lower Mansion Street where it intersects with Riverside Avenue.

Christopher Chimento stated that with that location it is less about the loss of view, and more about the fact that it is the Historic District of the Village and the keeping of the character of the area.

Chairman Bevilacqua stated that maybe the Board can have the pictures submitted by residents printed for the next meeting. He had looked at them quickly before the meeting and a lot of what is being seen is the top three stories or more. This is primarily in the Church Street and Ely Street areas.

Christopher Chimento stated that residents in those areas lose sight of the river with that fifth floor.

Chairman Bevilacqua stated that that is the case with some of them on lower Ely Street. Some of them would have still lost their view even with four floors.

Attorney Stout stated that that is a good point for the next meeting to have any received photos printed out. That would be helpful.

Chairman Bevilacqua stated that the pictures in the analysis are helpful in general.

Mary Beth Bianconi stated that one thing that is important to recognize, and this is a challenge, is that as much as we would like to think that when we purchase property, we are sort of guaranteed the environment that we purchased that property in. The challenge is that others around us also have property rights. When they purchase property as long as they are in conformance with the code, they can do various things on those properties. So, to some degree, this building could have been built to a 50-foot height in conformance of the code, and some of these residents on Ely Street, between New Street and Church Street, would have had their view impacted regardless. The difficult question is if the building was built to 50 feet tall, and we have some residences that would have their view of the river blocked with the 50 feet, and now they are going to have 14 more feet of their view of the river blocked, from a practical perspective, is that 14 feet any more impactful than the original 50 feet.

Attorney Stout stated that he would add to the question that if it is more impactful, does that detriment outweigh any benefit. Taking into consideration other factors that may be self-created etc.

Brian Tighe asked if they have the criteria before them.

Mary Beth Bianconi stated that the criteria are on page 5 of the memo from Delaware Engineering. The standards by which an Area Variance is considered are: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created, whether the benefit sought can be achieved by another feasible method, if the request is substantial, whether the variance will adversely affect or impact the physical or environmental conditions of the neighborhood, and if the condition is self-created, and if so, it

shall be considered but not preclude granting the variance.

Christopher Chimento stated that he feels photos 9 and 12 speak to the second half of the 1st criteria. It is detrimental to the neighboring properties. Because of the fifth floor they lose sight of the river. With the Mansion Street photo, #4, it shows an undesirable change to the character of the neighborhood. Even with photo #9, that is an old historic home in the Village's Historic District.

Mary Beth Bianconi stated that we need to be clear about where the Historic District is. She stated that she does not believe that these buildings being discussed are in the Historic District. This is another one of those challenges. The Historic District is a geographic boundary that was based on someone putting together an application quite some time ago and listing certain buildings or physical spaces as contributing to an area that has significance for some reason. These structures that are being discussed, while they may be old, are not in the Historic District. So, that is just an important distinction for the Board to make, that there is a difference between old buildings and the Historic District.

Christopher Chimento stated that it still changes the character of the district.

Mary Beth Bianconi stated that that is understood, she just wants to be clear for the record about the Historic District for people who can't see what the Board is looking at, and to be specific in stating that the properties that are being discussed are not located in the Historic District.

Brian Tighe stated that this is something to review at the next meeting.

Mary Beth Bianconi stated that the next Planning Board Meeting is 6/21 where they will continue to evaluate SEQR. This information that has been presented to the Zoning Board has also been presented to the Planning Board for their consideration in SEQR.

Attorney Stout stated that he thinks the Board's conversation tonight has been helpful with respect to the photographs, and that they are really narrowing down on those issues that concern them and that merit a little more review and focus at future meetings.

Chairman Bevilacqua stated that would be helpful to receive from Mr. Flach is some views from Ely Street backyards, showing what those residents would be looking at, such as greenery etc.

Mary Beth Bianconi asked if Mr. Millspaugh can confirm the dates of the photos.

Andrew Millspaugh stated that most of the photos were taken in May, and Riverside Park was taken a week ago.

Mary Beth Bianconi stated that it is important to note that most trees are deciduous, and now their view is blocked, but they will drop their leaves.

Attorney Stout asked Mr. Millspaugh about picture #9, and if he has a sense of how much of what is showing there of the new structure is the height exceedance.

Andrew Millspaugh stated that everything in green is what the variance is for.

Mary Beth Bianconi discussed different effective greenery screens. If this space is 7 feet high, the Board and applicant can talk about having different plantings at different heights. You can also have different types of leaves, with some more broad and some more narrow. You can have different colors and density of foliage to make an effective greenery screen.

Aaron Flach stated that the area is 7 feet high by about 30 feet or so. He stated that he can do some cool stuff with the greenery like what is common in the city.

Christopher Chimento stated that the green that is on the building now is so bright and obvious, but if it's blue it will blend in better.

Aaron Flach stated that he will get together with the person he has that does landscaping work to discuss ideas.

Mary Beth Bianconi asked if Mr. Flach could obtain a traditional planting plan to submit to the Board along with the renderings from the street etc.

Attorney Stout stated that the Board should consult with the Planning Board as they progress with SEQRA, and to see if a joint Public Hearing would be merited. A joint Public Hearing may be easier for members of the public so they could comment on the project as a whole rather than individually.

Chairman Bevilacqua stated that he feels that a joint meeting would be helpful for the public. He stated that the next Zoning Board Meeting will be on August 1st.

Mary Beth Bianconi stated that as far as this Board is concerned, this application remains incomplete. The Zoning Board cannot act until the Planning Board has concluded with the SEQRA process and further information is provided.

Christopher Chimento asked if the Board can talk about the letter received from a lawyer representing the property owner of 38 South River Street in regard to an ongoing property dispute with Empire Riverfront Ventures.

Attorney Stout stated that a response has been requested, and the Planning Board is not going to proceed with making any determination until that issue has been resolved. There has been discussion with the applicant's consultants, and they understand that this dispute over property ownership needs to be resolved before anything can move forward with the Planning Board.

Andrew Millspaugh stated that they will be presenting documentation including survey maps that

show that Mr. Flach is the owner of the property. He claims the title, and there is no active lawsuit. He asked if the Planning Board were to complete SEQR at their next meeting on 7/21, would it be possible to have a joint Public Hearing after that with sufficient public notice.

Attorney Stout stated that on 7/21 we will see what happens at the Planning Board meeting. If it is determined that they are ready for a Public Hearing, we could poll the Zoning Board to see their availability throughout the month of August compared to the Planning Board's availability and set a Public Hearing accordingly with sufficient public notice.

Mary Beth Bianconi stated that the next scheduled Zoning Board meeting will be Monday, August 1st at 6:00 p.m. at the Village Building.

Chairman Bevilacqua announced that the Zoning Board is going to reserve public comment for this particular meeting, but anything can be submitted at any time, and it will be part of public record.

Aaron Flach asked if people can submit comments in writing.

Mary Beth Bianconi stated that that is correct.

Attorney Stout stated that people have been sending in written comment already. They have been trying to make it clear that in person public comment will commence when the Public Hearing commences. Notwithstanding that, the Board has received a ton of comments that the Board would still like to be able to respond to, and not force people to resubmit the same comments. Those have been posted online under correspondence received. He said that those can be compiled, and they will make sure that Mr. Flach's team has them because they should have input to help address issues.

Katie Higgins stated that the residents on Ely Street and Church Street have not been contacted by either Aaron Flach or the development group about accessing permission on their properties in order to take pictures. She stated that they welcome the opportunity to allow them in their backyard to take photos. She encourages the developer to perform that outreach to them.

Aaron Flach stated that he tried to reach out to Demetri Chriss after the last meeting, but he didn't respond.

Katie Higgins stated that she is a permanent resident of Church Street, and she hasn't yet received any communication. There are about 8 residents including herself that are impacted. A letter is fine, email, or phone calls. She would just like to be sure that the Zoning Board has the materials in the end to include in their consideration. It seems like there is a contingent lack of submission in both architectural renderings and photographs. It just feels important to have that available.

Brian Tighe asked if someone wants to reach out for public comment is it clear on the website as

to how they do that. He just wants to make it really easy for people to understand how to make comment.

Attorney Stout stated that perhaps on the website it should clarify that comments can go to the Village Clerk, and she can be the clearinghouse rather than public having to hunt down individual members of the Board. If we were noticing a Public Hearing, as we will at some point, we typically provide the contact information for the Clerk asking for the public to provide comments to her and then they will be dealt with. So, we can do something similar.

Brian Tighe stated that if a homeowner wants to submit pictures that the Board should entertain that.

Katie Higgins asked about the criteria and asked if there were additional options available. She asked what the responsibility or accountability is of the developer to have to submit other options.

Attorney Stout stated that it is the applicant's obligation to define the benefit that they're seeking, and in this instance it's the height increase. The question is whether or not that same benefit can be achieved by any other feasible methods. So, it is incumbent on the applicant to say what the goals are for the project, and why other alternatives are not feasible for them to achieve those goals. It might be that the goal is to have a fifth story in the place that it is located now. In which case, there are no other feasible means of doing that. If that's the answer, then the Board has to take that into consideration and insert it into its balancing test. It's the applicant defining what the goal is and examining how it's feasible to achieve that goal.

Mary Beth Bianconi stated that one thing that she feels is important since receiving comments regarding the process that the Board is undertaking, is to recognize that the Village of Coxsackie is a village under NYS law. It has local regulations. Under those regulations, there is a permitting process for the construction of structures and other things. Applicants select the things that they want to request these boards, whether it be Planning or Zoning Board of Appeals, to evaluate. These boards do not make determinations about the nature of projects or their financial viability for those kinds of things. Applicants apply for projects that they want to seek an approval for. These boards receive those applications in an objective manner. So, these boards are obligated to process the applications received. There is not an opportunity for these boards to substitute their judgement for applicants, or to receive an application and determine that they will not proceed through the processes laid out in law. These boards receive these applications, and they are obligated to carry out their review under the code and law. So, that is something that is really important for public to understand. The boards do not get to substitute their judgements as to whether or not there is financial viability, or whether or not a certain activity should be occurring. The zoning of the Village dictates the use of land, its scope, its scale, and its location. These boards did not make those determinations. Those were made by the Village Board in 2008 and subsequent approvals that were done to the zoning code. She just wanted to make it really clear that these boards are objective and evaluate the application as presented to them by the applicant.

Katie Higgins asked if there are additional considerations for variances submitted after the project has been built.

Attorney Stout stated that one of the criteria is whether or not the condition is self-created. The fact that construction went ahead is self-created. So, yes, that is part of the analysis.

Pamela Minnick stated that because the work has stopped on the building, it has been covered with plastic that is now coming off. She just wanted to mention that there could be a concern about the plastic coming off and blowing into the river.

Attorney Stout stated that that was actually addressed last week with the Code Enforcement Officer. The applicant had submitted several requests for limited Building Permits to go ahead with portions of the project unrelated to aspects that are under review under the ZBA or the Planning Board. With respect to the hotel that Building Permit application was denied. Not only because of the fact that they need a height variance, but because of the location and means by which the hotel was constructed. That said, there was an acknowledgement that the building is not watertight, the siding isn't up throughout the building, and there's plastic up in some areas. In fact, the building needs to be watertight per the property maintenance code, and the Village Code as well. So, that was dealt with by issuing another Notice of Violation and Order to Remedy to the applicant, citing the specific revisions of the property maintenance code which requires for the building to be watertight. The ordered remedy was to abide by those conditions and make the building watertight. So, the public might be seeing some changes within the next several days in terms of how the building is secured, and perhaps that plastic will be addressed as part of that situation.

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

The meeting was adjourned at 7:37 p.m.

Respectfully submitted,

Shannon Slater
Deputy Clerk/Treasurer