

Members Present:

Peter Klose (Chairman)
Daniel Jean-Gilles
Glen E. Keene
Peter Voletsky
Alan Englander

Also Present:

Walter Sevastian, Village Attorney
Don Yacopino, Building Inspector
Bob Galvin—Village Planner (present)

Absent:

Other Business:

A motion was made by Chairman Klose, seconded by Member Voletsky, to accept the September 2, 2013 Minutes. Passed 4-0.

- 1. 275 High Avenue. Sindi Landman. Application to renovate existing dwelling and add two story addition at rear, with deck, and request for recommendation to ZBA Property is in RMU Zoning District.**

Building Inspector The following existing dimensional and developmental standards are nonconforming: lot area of 3,929.61sf lot area where 7,500sf is required; minimum one side yard setback of 2.1ft or 7ft where 10ft is required: minimum side yard setback for both yards of 9.1ft where 20ft is required: existing height in stories of 2.5 where 2 is permitted. Per Article I VON § 360-1.9E Nonconforming buildings. The alteration, enlargement or horizontal extension of a building that is nonconforming with respect to dimensional and development standards, as specified in Article IV of this chapter, shall require a variance from the Zoning Board of Appeals. The increase in the height of a wall or roof that is nonconforming is prohibited. An area variance is required from Article I VON§360-1.9E for alterations to a building that is nonconforming to above referenced dimensional standards. Additionally, an area variance is required from Article IV VON §360-4.3 Table 4-1 for continuation of 2.1ft side yard where 10ft is required. Application approved and positive recommendation to ZBA for variances offered by ARB on 9/18/2013.

Applicant

By Kier Levesque, architect -- application 275 High Avenue -- two story addition with a basement and renovate the interior. House is non-conforming-- needs several area variances. Existing 2 ½ story building-- ARB-- had no issues. Proposing infiltration trench for the storm water runoff and provided calculations for the drainage-- 327 square feet of additional impervious surface which needs mitigation. Adjoining homes are all non-conforming since they are too close to the side yards. Front yards and porches all seem to line up. Intent of the building is a single family dwelling. It appears that there are no sight lines impacted by the proposal. All of the additions and porches in the rear line up and will not impact sight lines. The nearby houses across the street are of similar size.

With respect to site plan approval, the drainage is fully mitigated since there is no net increase in water run off. Landscape plans-- no change-- rear yard is clay and gravel-- nothing is growing there-- all lighting downward face and no spillover onto neighboring properties.

PUBLIC -- NONE

Board Proposed action is duly noted Type II Action under SEQRA, therefore it is not subject to SEQRA review and analysis. Mr. Klose moves to Close Public Hearing (Second by Mr. Englander) Vote 5-0.

Resolution-- The Planning Board makes a positive recommendation to the ZBA to grant an *area variance from Article I VON§360-1.9E for alterations to a building that is nonconforming to above referenced dimensional standards on the condition that house remain a Single Family Residence as that term is defined by the Zoning Code .*

The Planning Board makes a positive recommendation to the ZBA to grant an *area variance from Article IV VON §360-4.3 Table 4-1 for continuation of 2.1 ft side yard where 10 ft is required on the ground as long as the home remains a Single Family Residence as that term is defined by the Zoning Code; and as long as the Applicant complies with any reasonable conditions proposed by the ZBA or the ARB. Second Englander -- Positive Recommendation to the ZBA- 5-0.*

With respect to Site Plan approval Site Plan is Approved for for drawings Sheets A-1 to A-3 dated 7/29/13 and revised 8/28/2013 conditioned upon applicant's compliance with any reasonable conditions of the ZBA and ARB and all lighting is downward facing. Second Voletsky-- Vote- 5-0.

- 2. 277 High Avenue. Sindi Landman. Application to renovate existing dwelling, add two story addition, raise roof and add deck, and request for recommendation to ZBA. Property is in RMU Zoning District.**

Building Inspector The following existing dimensional and developmental standards are nonconforming: lot area of 4,522.23 sq ft where 7,500 sq ft is required; 2.3 ft one side yard where 10 ft is required; both side yards of 6.7 ft where 20 ft is required; building height if 2.5 stories where 2 stories are permitted Per Article I VON § 360-1.9E Nonconforming buildings. The alteration, enlargement or horizontal extension of a building that is nonconforming with respect to dimensional and development standards, as specified in Article IV of this chapter, shall require a variance from the

Zoning Board of Appeals. The increase in the height of a wall or roof that is nonconforming is prohibited.

An area variance is required from Article I VON§360-1.9E for alteration to a building that is nonconforming to above referenced dimensional standards. Additionally, an area variance is required from Article IV VON §360-4.3 Table 4-1 for continuation of two side yards of less than 10 ft where 10 ft is required. Design changes and positive recommendation to ZBA for variances offered by ARB at a special meeting of 9/26/2013.

This is similar to the previous application. The property is nonconforming for side yards and lot size. The residence is 2 ½ stories where two stories are the maximum allowed. The applicant is proposing a two story addition to the rear. The side yards cannot be moved closer, the proposal; extends the existing the nonconforming condition. The house still meets the height requirement but the number of stories are 2 1/2 rather than the maximum requirement of 2 stories. This appears to be an improvement over the dilapidated homes that exist now, and part of a reconstruction of both adjoining lots.

Public Comment-- NONE

Board --Duly Noted Type II Action for SEQRA, therefore, action is exempt from SEQRA review and analysis. Klose moves to Close Public Hearing (Second by Keene-) Vote 5-0.

Resolution-- The Planning Board makes a positive recommendation to the ZBA to grant an *area variance from Article I VON§360-1.9E for alterations to a building that is nonconforming to above referenced dimensional standards on the grounds that with the provision that the house remain a Single Family Residence as that term is defined by the Zoning Code.*

The Planning Board makes a positive recommendation to the ZBA to grant an *area variance from a lot area of 4,522.23 sq ft where 7,500 sq ft is required; 2.3 ft one side yard where 10 ft is required; both side yards of 6.7 ft where 20 ft is required; building height if 2.5 stories where 2 stories are permitted Per Article I VON § 360-1.9E on the ground that the neighborhood is not significantly going to be impacted, as long as the house remains a Single Family Residence as that term is defined by the Zoning Code; and as long as the Applicant complies with any reasonable conditions proposed by the ZBA or the ARB.* Second by Jean Gilles-- Vote 5-0.

With respect to Site Plan approval, Site Plan is approved with respect to drawings Sheets A-1 to A-3 dated 7/29/13 and 9/26/2013 as long as they comply with reasonable conditions of the ZBA and ARB and all lighting is downward facing-- Site Plan approval for drawings specified is granted. Second Voletsky-- Vote- 5-0.

3. 8 Hart Place. Cynthia Turner. Application for the removal of two significant trees. Continuation from September 2, 2013 Planning Board meeting. Applicant's Arborist's letter included.

Building Inspector Village Arborist's comments included.

At a prior meeting on September 2, 2013, Applicant requested removal of two specimen trees on the grounds that she wants more sun, argues that the nuts and leaves produced create a maintenance headache. The two (2) apparently fully healthy trees are: 1) Shag Bark Hickory -- very expensive and beautiful tree in the front yard visible along much of Hart Place and 2) Another large mature Oak tree, located in the rear yard of the applicant's house. The Applicant made no case that the trees were in any way ill or diseased, or pose any risk to persons or property; rather they were essentially inconvenient and required additional cleaning around the property. The Applicant when asked offered no remediation plan or willingness to provide same.

The Planning Board requested that the Village Arborist render a site inspection and opinion as to the situation, and his letter (Robert M. Helmke, letter bearing stamped date of September 22, 2013) has been submitted, distributed to all parties and is included herewith by reference.

In addition, the Board notes the letters/information in support of the protection of trees including the Benefits of Trees and Urban Forests Research and information materials submitted by ACTrees (Tree by Tree, Street by Street, Alliance for Community Trees) noting among other things the Green Infrastructure benefits, Public Health benefits, and Climate, Energy and Property value benefits provided from maintaining a healthy tree stock.

The destructive and indiscriminate removal of trees and related vegetation causes increased municipal costs for proper drainage control, impairs the benefits of occupancy of existing residential properties and impairs the stability and value of both improved and unimproved real property in the area of destruction, and adversely affects the health, safety, and general welfare of the inhabitants of the state. We agree with the General Municipal Law that an ordinance can have the purpose of promoting aesthetic considerations which bear substantially on the economic, social and cultural community. (see General Municipal Law § 96-b [1]).

General Municipal Law § 96-b, "Tree conservation," specifically allows for the adoption of tree preservation laws. There is a comprehensive plan under the newly revised code to address when and how the Planning Board should consider the removal of specimen trees. It is noted that among the various legislation and regulations enacted by the Village for the benefit and protect of the community

It is also noted that, this Board may grant exceptions:

(c) Exceptions. Upon written application to the Planning Board, the Board may, by resolution, grant an exception from any of the requirements of this chapter as may be reasonable and within the purposes and intent of this chapter if the enforcement of one or more of the provisions is impractical or will exact undue hardship because of specific conditions pertaining to the property in question, and only if a significant tree or trees to be removed are replaced elsewhere on the property or in the immediate neighborhood. The Planning Board may grant an exception from this chapter where the significant trees are to be removed in accordance with a landscaping plan approved as part of a subdivision or site plan application.

The issue for this Board is whether the Applicant has met her burden of proof with respect to the Exceptions to the general rule not to remove specimen trees.

Applicant has amended the application to leave the Oak in the rear yard, take out split Norway maple in the rear of the house and to take down the Hickory Tree in the front of the house.

Public—NONE The action is a Duly Noted Type II Action for SEQRA, therefore, is exempt from SEQRA review and analysis.

Klose moves to Close Public Hearing (Second by Keene) Vote 5-0. Member Jean-Gilles moved to approve the removal of the Hickory and the split Norway Maple and leave the Oak tree, second by Keene-[3-2]. Klose and Voletsky vote against.

4. ***53 Route 59. Danny Porco for Shell Service Station. Application to replace existing freestanding sign with another freestanding sign, and request for recommendation to ZBA. Property is in CC Zoning District.***

Building Inspector Per VON§360-4.11E(2)(a) a variance is required for signage, other than for pricing, of 26.68 sf where 20s f per face is permitted. [Shell logo@17sf + Food Mart @ 4.84 sf + Diesel sign @ 4.84 sf]; Per VON§360-4.11E(5) size of pricing signs is code compliant. [22sf permitted-17.2sf proposed]. Per VON§360-4.11G(2) a variance is

required for prohibited LED signage. Applicant is scheduled to appear before ARB October 16, 2013.

Applicant Ira Emanuel appeared for the applicant. The subject property is the Shell station at the corner of Route 59 and Waldon- Applicant wants to change the panels out- and put in new panels. The result is a smaller sign, but there is still a variance issue. Building Inspector-- the issue regarding the light bulbs. They are internal fluorescent lighting. Applicant wants to go to LED since it is more energy efficient. The proposed lighting on the sign is static and not flashing. It simply changes the light--

Board-- Duly Noted Type II Action for SEQRA, therefore, it is not subject to SEQRA review and analysis.

Klose moves to Close Public Hearing (Second by Voletsky) Vote 5-0.

The Planning Board makes a positive recommendation to the ZBA to grant a variance from for signage, other than for pricing, of 26.68 sf where 20 sf per faces is permitted. [Shell logo@17s f + Food Mart @ 4.84 sf + Diesel sign @ 4.84 sf]; from **VON§360-4.11E(5)** size of pricing signs is code compliant. [22sf permitted-17.2sf proposed]; and from **VON§360-4.11G(2)** a variance is required for prohibited LED signage; and as long as the Applicant complies with any reasonable conditions proposed by the ZBA or the ARB. Second by Englander -- Vote 5-0.

5. ***165 Main Street. Cynthia Poulton for 163 Main Street Real Estate. Site plan application for an addition to existing building and garage.***

Building Inspector Property is in DMU Zoning District. Proposal complies with zoning requirements. It appears that parking requirements for the use of this space were approved by Planning Board in June 4, 2007 decision to permit outdoor dining. Design changes were approved by ARB at a special meeting on 9/26/2013.

Applicant This is the Main Street Bakery. Highlights-- applicant is extending the interior space-- filling in the area-- Highlight-- existing panels are all hidden. Screening and HVAC properly screened-- there is sufficient area to the rear to accommodate additional water run off. Board expressed concern that water is going to run to the rear of the building with net zero increase of the additional water runoff from the extension. The rear has limited space and the Board asked questions about whether or not it is sufficient to handle the increased run off. The Board asked about the run off calculations developed for the extension.

Alan Englander suggested a partial green roof to mitigate all of the water from the new addition - no net increase. The applicant's architect has proposed a drywell option in the rear. Applicant does not need to use a green roof but the architect who favors a green roof approach, will

present the option to the owner. There may be issues in the rear of the building, especially with regard to easements in the future since the adjoining land has been subdivided.

Board Duly Noted Type II Action for SEQRA, therefore, it is exempt from SEQRA review and analysis.

Klose moves to Close Public Hearing (Second by Englander) Vote 5-0.

Resolution by Klose to approve the Site Plan drawings A-100 to A-230 dated 8/29/13 and revised 10/1/13 including five pages and conditioned on the Applicant providing stormwater calculations to the Village Engineer, if the drainage calculations for the amended site plan are not sufficient then the applicant will return to the Planning Board and will submit an amended site plan showing the treatment of the storm water subject to any reasonable conditions. The Applicant does not need to return to the Planning Board if the Green Roof is used. Second by Peter Voletsky -- Vote- 5-0.

6. **8 First Avenue. John Gromada & Barbara Cohig. Site plan application to demolish existing garage and replace with a one story kitchen addition.**

Building Inspector Property is in TFR Zoning district. Applicant previously received PB, ARB and ZBA approvals for this project but the approvals expired prior to the commencement of construction. The following existing dimensional and developmental standards are nonconforming: lot area of 8,615 sf where 10,000 sf is required; rear yard of 13 ft where 34 ft is required; maximum building height of 32.67 ft/3 stories where 32 ft/2 stories are permitted. Per Article I VON § 360-1.9E Nonconforming buildings. The alteration, enlargement or horizontal extension of a building that is nonconforming with respect to dimensional and development standards, as specified in Article [IV](#) of this chapter, shall require a variance from the Zoning Board of Appeals. The increase in the height of a wall or roof that is nonconforming is prohibited. An area variance is required from Article I VON§360-1.9E for alterations to a building that is nonconforming to above referenced dimensional standards. Application approved and positive recommendation to ZBA for variances offered by ARB on 9/18/2013.

Applicant

This plan was already approved once, with more detail in drainage. Highlights-- taking out asphalt driveway and replacing it with gravel driveway, reducing the run off, three drainage galleries, keeping the water out, building is on the same footprint as the existing garage. Taking the garage down and have Rear yard on the west side -- pre-existing conditions for the property-- north side of the addition is the side yard -- needs a 10 foot side yard. Run off will be addressed by three galleries and a trench drain to handle water coming from the west. Bulk of the house is not changing and the garage is coming down .Now the kitchen will be expanded to where the driveway is now.

Board Duly Noted Type II Action for SEQRA therefore it is exempt from SEQRA review

Klose moves to Close Public Hearing (Second by Voletsky) Vote 5-0.

Resolution-- The Planning Board makes a positive recommendation to the ZBA to grant an area variance from Article I VON§360-1.9E for alterations to a building that is nonconforming to above referenced dimensional standards on the grounds that with the provision that the house remain a Single Family Residence as that term is defined by the Zoning Code

The Planning Board makes a positive recommendation to the ZBA to grant an area variance from lot area of 8,615 sf where 10,000 sf is required; rear yard of 13 ft where 34 ft is required; maximum building height of 32.6 7 ft/3 stories where 32 ft/2 stories are permitted. Per Article I VON § 360-1.9E as long as the house remains a Two Family Residence as that term is defined by the Zoning Code; and as long as the Applicant complies with any reasonable conditions proposed by the ZBA or the ARB. (Second by Englander-- vote 5-0).

Motion made by Klose for approval of Site Plan dated 9/18/2012 including one sheet and elevations A2 -A2.3 . Elevations as submitted approved for exterior lighting down facing complies with reasonable conditions of the ARB. Second by Voletsky-- Vote 5-0.

7. **132 A Main Street. Robert Silarski for Bourbon Street Restaurant. Property is in DMU zoning district. Site plan application to convert two second floor apartments to place of public assembly with rooftop access at the rear of the building. Recommendation to ZBA required for parking variance of 7 parking spaces.**

Building Inspector-- Comments from Orangetown Police Department included.

Comment I. *Per Article V VON§ 360-5.7B(2) this permit requires Site Plan Approval.*

Comment II. *PARKING: Per Article IV VON§360-4.5B(3) (3) Change of use. When the use of a lot or building changes, additional off-street parking facilities must be provided when the number of parking or loading spaces required for the new use exceeds the number of spaces required for the use that most recently occupied the building, based on the minimum parking standards of this Zoning Chapter. In other words, the owner must provide (or receive a variance for) parking equal to the difference between the parking requirement for the existing use and the parking requirement for the new use, not the difference between the actual existing parking and the parking requirement for the new use, an area variance for 9 parking spaces will be required with the change of use from residential to restaurant. Parking Requirements: 2 Existing Bedrooms @ 1.5 spaces per bedroom = 3 spaces. 1090 sf*

*of public assembly space plus 425 sf of rooftop dining =1515 sf @ 150 sf p r
parking space = 10 required parking spaces. 12 required spaces for new use
– 3 required spaces for existing use = Seven (7) required parking spaces to either be
provided, a variance granted for or a fee-in-lieu of parking assessed. Per Article IV
VON§360-4.5L(1)(a)(b)(c)&(2), the Planning Board is authorized to assess a fee-in-
lieu of parking for a Site Plan application in the DMU zoning district.*

Comment III. *Per Article III VON§ 3.2E(6)(a)(b)[1][2][3][4]&[5] outdoor
dining other than in the form of a sidewalk café shall be permitted as an accessory
use. It appears that if the rooftop space is used for any purpose other than dining it
is not a permitted use.*

(6) Outdoor dining.

(a) Intent. Outdoor dining other than in the form of a sidewalk cafe as defined in this chapter shall be permitted as an accessory use that is incidental to and in conjunction with an established permitted restaurant, bar or delicatessen as permitted in the DMU, CC and WF Districts, provided that the establishment of such an accessory use has no deleterious effect on the public health, safety or welfare, or negative effect on adjoining businesses. Outdoor cabarets and outdoor dining in conjunction with a cabaret are specifically prohibited. [Amended 4-19-2012 by L.L. No. 2-2012]

(b) Standards and requirements.

[1] Areas utilized for outdoor dining shall comply with setback requirements for a principal building for the district in which such use is located.

[2] Areas utilized for outdoor dining shall not be located within 50 feet of the boundary of any SFR, TFR or MFR District.

[3] Areas utilized for outdoor dining shall be included in the calculation of required parking for the principal use.

[4] All outdoor dining areas pursuant to this section shall provide a food menu, but this shall not be interpreted to prohibit the service of beverages only.

[5] Operating restrictions. The Building Inspector or Planning Board may prohibit or limit the hours of operation of any activities that may impact an adjacent or nearby properties, such as the operation or use of musical instruments or sound reproduction devices, or any noise emanating from the outdoor dining area other than the conversational and service sounds.

[a] All windows and doors on the building or establishment holding a permit issued pursuant to this section shall be closed, and any furnishings used in association with the outdoor dining area shall be removed from the outdoor dining area, at or before 11:00 p.m. following an evening of food and beverage service.[Added 4-19-2012 by L.L. No. 2-2012]

Comment IV. *Proposed lighting or rooftop structures have not been indicated. This establishment abuts a TFR zoning district and the area used for outdoor dining is restricted by Article III VON§360-3.2E(6)(2) to be at least 50 ft from the boundary of any TFR district. A site plan clearly indicating the distance from TFR zone should be provided. Information submitted on revised drawings, Page A-101, dated 10/2/2013.*

Applicant Applicant is looking to have event space-- removing the two residences and change to a bar and entertainment area. - Fifty (50) foot requirement from boundary of the TRF district. This could prevent any meaningful area on top of the roof, but additional drawings must be provided.

Applicant contents that the Rooftop deck to be spillover space-- no proposed music out there, few tables-- looking to have 8-10 tables-- if not being used as outdoor dining-- only. Dining must be an accessory use to the restaurant-- separate type of use -- Outside Dining shall provide a menu. There is an issue of distance from the three family zone which will limit potential number of seats. New drawings required.

The current application, if approved, might set a precedent for other bars to open roof top outdoor dining, and that is not a proposed use that the Planning Board is prepared to consider without extensive testing, public opinion, etc.

The removal of the residential apartments is against the goals of the CMP which encourages the development of residential units downtown. The police department is extremely concerned about the roof top dining-- they were very concerned about the potential for additional problems with the rooftop dining. Planning Board would like the considered input of the Village Planner and analysis of the future impact of this type of use on the Main Street Bar scene and residential character of the upper floors in the vicinity.

Chairman Klose is very concerned about the change of character of the building-- concerned about the rooftop dining-- there is nothing here to look at site planning issue-- needs engineering calculations, smoke and noise. Very concerned about the distance from the additional residences- Site plan approval is not ready for review because the plan is not drawn out with sound attenuation mechanisms, etc.

The Village Planner has reviewed the Code in regard to outdoor dining as well as other communities' experiences with rooftop dining. The Village Board did not include any specific standards in the code. Communities which do allow rooftop dining typically incorporate the standards into their codes .The technique of a special permit to provide safeguards and direct these uses into areas.

The applicant argues that this is isolated from nearby residential areas, however, standards usually include distance from adjacent residential buildings, (not zoning districts), structural engineering calculations for strength of rooftops, rooftop dining not allowable on buildings which are at maximum height, screening, soundproofing panels, certain percentage of rooftop that can be used,(many limit development to 25 percent of the roof), operating hours and no outdoor music. Rooftop dining especially in a mixed use downtown area have a number of potential problems, including noise, trash, crowding and nuisance to nearby apartments, smoking and problems with policing, fire safety issues. Most communities that allow rooftop dining do so in more industrial or isolated areas that are not near residential areas. In the current application, the elimination of two apartments does not further the objectives of the Village's Comprehensive Master Plan which encourages the development of affordable residential units downtown. Based on these issues, it would appear that the proposed change in use and loss of residential dwellings here is a problematic use in the DMU area .

Chairman Klose is not inclined to send this application to the ZBA because this application is not fleshed out, there have been no drawings prepared. Applicant will return with additional information and drawings based upon the consideration of the discussions we had. The application is too fluid, undefined and without scope. Given the very real concerns and impact of changing the use from Residential as suggested and recommended by the CMP, and the very real problems the village is experiencing with late night drinking, the Board would like additional information, including police reports, liquor authority complaints, commentary from the Village Planner, the local Police, local citizens, soundproofing engineers, together with a clear statement of purpose, limitations on hours, operation of any facility. The change in the character of the neighborhood.

Public Comment-- Arlene Levinson 130 Main Street and Mike Hirsch-- 130 Main Street-- share common wall with this particular application. Totally foresee that noise is going to be a huge issue. Presently the noise from the first floor is so loud -- amplified music in the living area music plus the street-- if they add a second floor of the particular building-- major club.

Board Duly Noted Type II Action for SEQRA, so exempt from SEQRA review and analysis. Application remains OPEN, with no referral to the ZBA.

OTHER BUSINESS

Motion to adjourn by Member Klose, seconded by member Voletsky. Vote 4-0.
Meeting adjourned at 10:20 PM.