

VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS
Regular Meeting March 19, 2018 at 7:00 PM

PRESENT:

Chairperson: Justin Vlietstra
Members: Jo Anne Shannon
Renee Stetzer
Susan Lhota
Heather Erwin
Building Insp: Kelly Cline

Recording Sec: Linda Habeeb
PZBA Attorney: Mindy L. Zoghlin, Esq.

Motion: Member Lhota made a motion, seconded by Member Erwin, to call the workshop session to order at 6:30 pm.

Vote: Shannon – yes; Vlietstra – absent; Lhota – yes; Erwin – yes; Stetzer - yes. *Motion carried.*

Member Lhota stated that the Planning Board has asked the APRB to explain how they would interpret “community character” as it relates to an LWRP consistency determination for the project at 75 Monroe Avenue. APRB member McBride explained that the issue of mass and scale of the project is currently in litigation, and the issue of the architectural design and style has not been addressed by the APRB.

[Chairperson Vlietstra entered the room at the end of the workshop]

Motion: Chairperson Vlietstra made a motion, seconded by Member Erwin, to call the meeting to order at 7:00 pm.

Vote: Shannon – yes; Vlietstra – yes; Lhota – yes; Erwin – yes; Stetzer - yes. *Motion carried.*

Conflict of interest disclosure: Chairperson Vlietstra disclosed that he has publicly expressed opinions regarding the Westport Crossing project, and therefore, he will recuse himself from the discussion for that portion of the meeting. Member Vlietstra left the meeting room at this time.

Pittsford Canalside Properties, 75 Monroe Avenue

Present: Chris DiMarzo, Bryan Powers, Mark IV Enterprises; Tom Daniels

Discussion: Member Lhota stated that she will be the Acting Chairperson for the 75 Monroe Avenue matter. She stated that she will begin by addressing Condition #3 of the final site plan approval, which deals with the viability of the stormwater drainage pipe at 75 Monroe Avenue. The Board has hired drainage engineer, John Dunkle, of Dunn & Sgromo Engineers, PLLC, and he has agreed to meet on March 28th with PCP’s engineer to review this outstanding issue, which will require an escrow deposit of \$500.

Mr. DiMarzo requested that the Board explain the scope of the engineer’s review. Ms. Lhota explained that the engineer will continue the review to determine whether the stormwater pipe has been restored to prior flows. Ms. Lhota agreed to provide Mr. DiMarzo a written scope of the review.

On November 4, 2017, the APRB passed a resolution which, among other things, directed PCP to complete and provide a Coastal Assessment Form, as required by Village Code Section 121-5(B), so that the Planning

Board could make a Local Waterfront Consistency determination. The APRB also referred the application to the Planning Board to determine whether it conforms to the final approved site plan.

By letter dated December 15, 2017, Ms. Lhota advised Mr. DiMarzo that the materials he submitted to the APRB on October 23, 2017 did not contain sufficient information to determine whether its plans conformed to the approved site plan, and asked Mr. DiMarzo to provide the Board with a copy of the approved site plan with the information contained in the October 23, 2017 application superimposed on it.

The Planning Board put the APRB referral on its agenda for the January 22, 2018 meeting, even though PCP had not yet provided it with a copy of the approved site plan with the information contained in the October 4, 2017 Decision and Order superimposed on it. PCP delivered unsigned, undated drawings to Village Hall on January 22, 2018. At the Planning Board meeting, the Board asked PCP to provide it with a signed, stamped approved final site plan with the information contained in the October 4, 2017 Decision and Order superimposed on it. PCP submitted signed, stamped documents purporting to be the approved final site plan with the latest proposed building overlays to the Planning Board on January 29, 2018 ("PCP's 2018 Site Plan").

The Planning Board met in February 2018 and noted that the final approved site plan was revised several times after the October 2014 final approval: February 13, 2015; March 30, 2015; May 27, 2015; July 6, 2015; and January 24, 2018. The Board asked the applicant to describe each of the post-approved revisions so that they could determine whether there were things that required a modification of the approved site plan. PCP submitted this information on March 8, 2018.

On March 12th there was a court appearance regarding PCP's motion to compel the APRB to comply with Judge Ark's October 2017 Order. At the court appearance, Mr. DiMarzo stated to Judge Ark that the plans he submitted to the Planning Board on January 29th with the October 2017 proposal outlined in red did not include the location of decks, porches, or stairwells. Ms. Lhota sent PCP an email on March 14th asking the applicants to update the site plan map that was submitted on January 29th to include the location of decks, porches, and stairwells in green. PCP emailed those documents to the Village on March 16th.

Ms. Lhota requested that PCP engineer, Bryan Powers, review the submitted plans with the Board. Mr. Powers explained that the red outlines on the plans do not include the stairs going up to the stoops. He stated that the single green line is the actual porch or deck that is vertically continuous up and down the building. The darker green line on the plans, which is usually adjacent to a deck or a patio, indicates areas for mechanical equipment for the building, which needs to be enclosed. He stated that for Building 6000, there are green lines in the front and in a corner of the building, which is the patio area for the building; there are no decks on Building 6000. Ms. Lhota asked about the location for the sidewalk, and Mr. Powers explained that the proposal is to move the sidewalk north, closer to Monroe Avenue, but since the APRB is currently reviewing the plans, they will wait until their review is complete before modifying the plans. Mr. DiMarzo explained that the sidewalks surrounding all the buildings will have to be modified, depending on the final buildings that are approved. The street sidewalks will not be changing. Mr. Powers stated that the setback for the north side of Building 6000 to the property line is 15 feet.

Ms. Lhota asked the applicants about a dark green area on the eastern side of Building 2000 in the area of the garage entrance and exit. Mr. Powers explained that the area is a small decorative roof over the garage door. Ms. Zoghlin asked the applicants whether, other than Building 2000, there was another area where the darkened green area is not a deck or a porch. The applicants stated that there are no other areas.

Mr. Powers stated that they have provided the nominal width and length dimensions of the buildings, as requested by the Planning Board. They also provided a stamped landscaping plan, as requested by the Board.

Ms. Lhota pointed out that the number of parking spaces on the front page of the current plan is 340, but the plan also indicates that in 2012, not more than 337 parking spaces were approved. Mr. DiMarzo stated that they will modify the plan to provide the number of parking spaces that were approved.

Member Lhota stated that this project has been going on for a long time and has been the subject of many public hearings, decisions, and appeals. The Board will be considering two very limited issues, and they are: (1) whether the October 2017 submission to the APRB conforms to the 2014 final approved site plan, and (2) whether the Westport Crossing project is consistent with the policies set forth in the Village's Local Waterfront Revitalization Program (LWRP). She further stated that public comments at this meeting will be limited to those issues. The purpose of the public comment period is for the Planning Board to receive comments, and not answer questions.

Site Plan

Member Lhota stated that she was informed that at the March 12th court appearance, Justice Ark stated that he would appoint an architect as a Special Master to determine whether PCP's October 2017 application conforms to the April 2017 settlement overture made by the APRB.

Judge Ark is expected to:

1. Hire an architect to serve as a Special Master by April 3rd;
2. Direct the Special Master to determine whether there is an agreement between PCP and the APRB;
3. Determine whether PCP's October 2017 application conforms to the agreement; and
4. Recommend whether there is any way to resolve the differences between the parties.

The Special Master is expected to issue a written report by April 24th and the parties will have an opportunity to comment on that report by April 31st. It is premature for the Planning Board to determine whether the October 2017 application conforms to the approved site plan until the Special Master has rendered a written report to the court and parties have reviewed it.

Motion: Member Lhota made a motion, seconded by Member Erwin, to add the site plan issue to the agenda for the May Planning Board meeting.

Vote: Shannon – yes; Vlietstra – abstain; Lhota – yes; Erwin – yes; Stetzer - yes. *Motion carried.*

LWRP Review:

Member Lhota stated that on January 22, 2018, PCP delivered a Coastal Assessment Form to the Planning Board. Village Code Chapter 121 sets forth the factors the Board is required to consider in evaluating the consistency of a proposed action with the LWRP. The Village's LWRP gives content to what each of the factors means.

- Village Code 121-5(G)(1) says that the proposed action must:

Foster a pattern of development in the LWRP area that incorporates the design guidelines contained in Section V of the LWRP and which enhances community character, preserves open

space, makes efficient use of infrastructure, makes beneficial use of the waterfront location, minimizes adverse effects of development (LWRP Policy 1), and takes advantage of the community's location on the canal to provide amenities for residents and visitors and guides future development so that it complements, not competes with or detracts from, the historic village.

- Village Code 121-5(G)(2) says that the proposed action must:

Protect water-dependent uses, promote siting of new water-dependent uses in suitable location, and support efficient harbor operation (LWRP Policy 10).

- Village Code §121-5(G)(3) states that the proposed action must:

Protect existing agricultural lands within the LWRP area (LWRP Policy 12).

- Village Code §121-5(G)(4) states that the proposed action must:

Promote sustainable uses of living marine resources in coastal waters (LWRP Policy 11).

- Village Code §121-5(G)(5) states that the proposed action must:

Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands, and rare ecological communities (LWRP Policy 6).

- Village Code §121-5(G)(6) states that the proposed action must:

Protect and improve water resources (LWRP Policy 5).

- Village Code §121-5(G)(7) states that the proposed action must:

Minimize loss of life, structures, and natural resources from flooding and erosion (LWRP Policy 4).

- Village Code §121-5(G)(8) states that the proposed action must:

Protect and improve air quality in the LWRP area (LWRP Policy 7).

- Village Code §121-5 (G)(9) states that the proposed action must:

Minimize environmental degradation in the LWRP area from solid waste and hazardous substances (LWRP Policy 8).

- Village Code §121-5(G)(10) states that the proposed action must:

Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the LWRP area (LWRP Policy 9).

- Village Code §121-5(G)(11) states that the proposed action must:

Enhance visual quality and protect outstanding scenic resources (LWRP Policy 3).

- Village Code §121-5(G)(12) states that the proposed action must:

Preserve historic resources of the LWRP area (LWRP Policy 2).

- Village Code §121-5(G)(13) states that the proposed action must:

Conform to the State Environmental Quality Review Act (SEQRA) regulations (6 NYCRR Part 617).

The Village Board determined that the Westport Crossing proposal is a Type I action subject to SEQRA and issued a Negative Declaration. Therefore, no further SEQRA review is necessary.

- Village Code §121-5(G)(14) states that the proposed action must:

All actions must adhere to Village protective measures for environmental resource preservation (Pittsford Environmental Guidebook and the Greenprint for Pittsford's Future).

Board members determined that the property is not within the Greenprint.

- Village Code §121-5(G)(15) states that the proposed action must:

Perform dredging and disposal of dredge spoil materials in a manner which is protective of natural resources. (LWRP Policy 2).

At last month's meeting, the applicant stated that it does not intend to perform any dredging of the Westport Crossing development.

At the February Planning Board meeting, the Board tentatively identified which of the factors are relevant to the Westport Crossing Project, and held the tentative list of factors open until the public comment period closes, so that the public and applicant may provide further written comment on the factors they are required to consider in making a consistency determination. However, the January 2018 site plan with red overlay did not include decks and porches. The March 16th site plan includes those things outlined in green; therefore the plan has changed.

Motion: Member Lhota made a motion, seconded by Member Erwin, to reopen the public hearing to take both oral and written comment on the March 2018 submission.

Vote: Shannon – yes; Vlietstra – abstain; Lhota – yes; Erwin – yes; Stetzer - yes. *Motion carried.*

Member Lhota stated that the applicant will have 15 minutes to explain why this Board should find that the Westport Crossing project is consistent with the Village's Local Waterfront Revitalization Program (the "LWRP"). The applicant is reminded that the Board will consider public comments but will not answer questions.

Also, the Board invited members of the APRB to attend the meeting and provide input as to several issues:

1. Whether PCP's October 2017 submission:

Fosters a pattern of development in the LWRP area that incorporates the design guidelines contained in Section V of the LWRP and which enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of the waterfront location, minimizes adverse effects of development (LWRP Policy 1), and takes advantage of the community's location on the canal to provide

amenities for residents and visitors and guides future development so that it complements, not competes with or detracts from, the historic village.

2. Whether PCP's October 2017 submission:

Enhances visual quality and protects outstanding scenic resources. Village Code 121-5(G)(11).

3. Whether PCP's October 2017 submission:

Preserves historic resources of the LWRP area. Village Code 121-5(G)(12).

Member Lhota stated that it would be helpful to the Planning Board if the APRB members would explain the reasoning behind their opinions and, if the APRB believes that the project is not consistent with these program objectives, provide some guidance as to what they believe the project would need to look like in order to comply with them.

At this time, Ms. Lhota opened the meeting for public comment. She stated that each speaker will be limited to 3 minutes. The recording secretary will let the Board know when the 2-minute mark is reached and when the speaker's time has ended. The speaker should address the comments to the Board and not to the applicant. Speakers will be asked not to repeat public comments made by others. The Board's role is to hear public comments and not to answer questions. If the Board deems it appropriate, they may ask the applicant to respond to a comment.

Member Lhota asked the applicants if they wished to speak in support of their request that the Planning Board determine that the Westport Crossing development is consistent with the LWRP.

Mr. Daniels stated that the applicants were surprised by the format of this meeting, and expressed that it would have been helpful if they had been informed about the process prior to the meeting. He further stated that the footprint and layout of the plans were not changed. He explained that the green overlay merely provided further clarification of what was currently on the plans, and stated that there is no relevance to the LWRP review.

Mr. Powers stated that at the last meeting, the applicants provided responses to the list of the 15 criteria for LWRP consistency review. He stated that their responses to the 15 items remain the same, regardless of the changes to the plan. They also provided meeting minutes from the Planning Board meeting in 2014 when the final site plan was approved, and where the LWRP was addressed. He requested that this be entered into the record. Ms. Zoghlin noted that the documents that were submitted by PCP to the Planning Board did not include the exhibits, so it took some extra time for the records clerk to provide these exhibits.

Mr. DiMarzo stated that the LWRP Consistency Review was completed by the Planning Board a number of years ago, and was included in the final site plan approval findings. The LWRP was designed to protect the waterfront area, which in Pittsford is the canal. He further commented that for years, the area consisted of an asphalt plant and oil tanks. The area has been cleaned up by New York State and PCP. There is no longer contamination going into the canal, and they will be adding residential property to an industrial site. The plan will provide public access to the area, where currently there is none.

APRB: Bill McBride, Scott Latshaw, Attorney Jeff Turner

Mr. McBride stated the APRB members in attendance will not be speaking for the entire board, but will be providing information about the status of the project regarding their Board. Mr. Turner stated that if the

Planning Board would like comments from the APRB as a Board, they can send questions and the Board will respond.

In April 2017, the APRB took the position on mass and scale that the measuring stick that the board used to review mass and scale was the visual appearance of mass from the public way. There has been three years of negotiations with PCP, and it is still not resolved. They have determined that the core of each building could be no wider than 68 feet. If PCP agrees to reduce the elevations from three stories to two stories, the ends of each building could be as wide as 75 feet. At the March 12th court appearance, Justice Ark stated that he will appoint an architect to determine whether PCP's October 2017 application conforms to the April 2017 settlement overture made by the APRB. He stated that the APRB will not review the architectural style of the buildings until the issue of mass and scale has been decided.

Member Lhota asked whether the Board has made modifications to the height of the buildings. Mr. McBride explained that the four-story buildings on the original plans have been reduced to three-story buildings, with one exception, and the ends of those buildings have been reduced to two stories.

Ms. Zoghlin asked if the APRB is able to help the Planning Board understand their perspective on whether the project would foster a pattern of development in the LWRP area that enhances community character, takes advantage of the community's location on the canal to provide amenities for residents and visitors, and guides future development so that it complements, not competes with or detracts from, the historic village.

Mr. McBride stated that the APRB has worked to make this development, which is a gateway to the Village, more compatible with the character of the historic Village. When the project was first proposed, it was twice the size of the largest building in the Village. He stated that the APRB considers the project, with their proposed changes, to be more compatible, but it is premature to give a definitive answer until there are final proposed plans to review.

Ms. Zoghlin asked how the project, as described most recently, with the red and green overlays on the 2014 site plan, could be modified to satisfy the objectives of the LWRP. Mr. McBride stated that the issue with the green overlay is that it is accentuated by the rooflines. If the roofline didn't extend over the green area, it would be visually less intrusive.

Ms. Zoghlin requested that the APRB members give the Planning Board members insight into some of the things that the APRB considered in attempting to resolve this matter with the applicant. Mr. McBride stated that the APRB proposed hiring an independent architect, but Justice Ark stated that he would appoint an architect as a Special Master to determine whether PCP's October 2017 application conforms to the April 2017 settlement overture made by the APRB.

Ms. Lhota asked if anyone else wished to speak regarding this application.

- Alyssa Plummer, 66 South Main Street, stated that she was unaware that there was going to be a public hearing at this meeting. She requested that the Board keep the public hearing open to be continued at the next meeting.
- Mike Reynolds, 35 Church Street, submitted written comments for the record. He also refuted PCP's assertions and stated that this project will disrupt the Village's historic viewshed. He also stated that PCP has caused flooding along the railroad tracks.

- Ken Morrow, 48 Sutherland Street, stated that “Canal Commercial” buildings vary in size, like the buildings on Schoen Place, but the PCP buildings are all very large and similar in size.
- Lili Lanphear, 14 Jackson Park, asked if closing the public hearing will start a timeline during which the Board will need to make a decision.

Ms. Zoghlin stated that the timeframes that govern the Board’s decision are triggered by the Board’s receipt of a complete application, and not whether the public hearing has been closed. She further stated that under local waterfront consistency law, it sets forth the procedures that the Board has to follow in order to evaluate the Coastal Assessment Form. Section 121-5(D) states that the Planning Board shall require the applicant to submit all completed applications, CAFs, and any other information deemed necessary to its consistency review and determination. Section 121-5(F) states that the Planning Board shall issue its determination within 60 days following receipt of the complete application and CAF or submission by the applicant of any additional required information. Ms. Zoghlin explained that she interprets these requirements to mean that the 60-day period to complete the Waterfront Consistency Review begins when the Board has a complete application for review. The January 29th submission did not include the final approved site plan showing the location of proposed decks and porches. The 60-day period to make an LWRP determination began, at the earliest, on March 16, when the Board received the site plan that included the decks and porches.

Motion: Member Lhota made a motion, seconded by Member Erwin, to propose a Special Meeting to be held on March 28, 2018 at 7 pm, and the written public comment period will be held open until 9 am on March 28th.

Vote: Shannon – yes; Vlietstra – absent; Lhota-yes; Erwin – yes; Stetzer - yes. *Motion carried.*

Motion: Member Lhota made a motion, seconded by Member Shannon, to close the public hearing but leave the record open for written comments until the start of the next meeting.

Vote: Shannon – yes; Vlietstra – absent; Lhota-yes Erwin – yes; Stetzer - yes. *Motion carried.*

Motion: Member Lhota made a motion, seconded by Member Erwin, that the Planning Board meeting in consideration of 75 Monroe Ave be closed.

Vote: Shannon – yes; Vlietstra – absent; Lhota-yes; Erwin – yes; Stetzer - yes. *Motion carried.*

[Member Vlietstra entered the room at this time]

Member Items:

➤ **Liaison Report:**

Trustee Lanphear reported that:

- John Steinmetz, of Steinmetz Planning Group, has been hired as a consultant to assist the Comprehensive Plan Committee and the Trustees with the revision of the Village Code. He will tentatively begin working with the Comprehensive Plan Committee on April 1st.

Member Vlietstra stated that the PZBA wants to have a significant role in reviewing proposed Code changes. He has a list of code issues that he will submit to the Trustees. Trustee Lanphear stated that the Trustees and Planning Board will be the Zoning Committee, and they will welcome input.

- The Village Budget process is underway to be completed by April 30th.
- The Trustees met with the APRB regarding questions they were having about process.
- The Board is working on outstanding violations at 50 State Street, specifically, the ticket booth.

Member Vlietstra explained that the Village Building Inspector has recently resigned, and Kelly Cline, from the Town of Pittsford, is temporarily filling in as Building Inspector. He asked what resources are available to work with. Trustee Lanphear stated that they are working on a contract with TYLIN to help with reviewing large projects and site plans. Ms. Cline stated that she will still be working with the Village Boards. As to 44 Sutherland Street, she stated that she has asked for a demolition plan for the house, and TYLIN will be assisting with this project. The Town and TYLIN will be assisting with inspections.

- The Town has been granted approval from the Board of Trustees to rip up a portion of the parking lot in front of the Spiegel Center for testing of the water.
- The applicant for the restaurant at 14 South Main Street came before the Board of Trustees for an extension to an existing special permit. There will be no major changes to the exterior.
- Ms. Cline stated that the Del Monte Lodge will be on the APRB April agenda for construction of a Porte Cochere. They will be coming before the Planning Board with a lighting plan.
- Member Vlietstra noted that Chase Bank has an outstanding violation for changing light fixtures at the site.
- Member Vlietstra reported that a lighting consultant, Mike Quagliata, is available to review lighting plans for the Village.
- Member Vlietstra stated that the Board has access to webinar training sessions from NYCOM.

Motion: Member Vlietstra made a motion, seconded by Member Stetzer, to approve the 2/26/18 minutes, as drafted.

Vote: Shannon – yes; Vlietstra – yes; Lhota – abstain; Erwin – yes; Stetzer - yes. *Motion carried.*

Motion: Member Vlietstra made a motion, seconded by Member Lhota, to refund the unused portion of the escrow account for 44 Sutherland Street, as determined by the Treasurer.

Vote: Shannon – yes; Vlietstra – yes; Lhota – yes; Erwin – yes; Stetzer - yes. *Motion carried.*

Motion: Chairperson Vlietstra made a motion, seconded by Member Shannon, to adjourn the meeting at 8:30 pm.

Vote: Shannon - yes; Vlietstra – yes; Lhota-yes; Erwin – yes; Stetzer – yes. *Motion carried.*

Linda Habeeb, Recording Secretary