

**VILLAGE OF PITTSFORD**  
**PLANNING AND ZONING BOARD OF APPEALS**  
**Special Meeting:** December 9, 2019 at 5:00 PM

**PRESENT:**

Chairperson: Justin Vlietstra  
Members: Jo Anne Shannon  
Susan Lhota  
Eli Bannister (absent)  
Justin Leitgeb  
David Marshall (alternate)

Mayor: Mayor Corby

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

**Motion:** Member Lhota made a motion, seconded by Member Shannon, to open the workshop meeting at 5:00 pm.  
**Vote: Shannon** – yes; **Lhota** – yes; **Leitgeb** – yes; **Marshall** – yes. **Motion carried.**

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to close the workshop meeting and call the regular meeting to order at 7:00 pm.  
**Vote: Shannon** – yes; **Lhota** – yes; **Vlietstra** – yes; **Leitgeb** – yes; **Marshall** – yes. **Motion carried.**

**Conflict of Interest Disclosure:** Board members had no conflicts of interest to declare.

- Member Vlietstra stated that he will recuse himself from the discussion for the 75 Monroe Avenue application because he has made statements on the record in the past regarding this application.

Member Vlietstra left the meeting room at this time.

**Pittsford Canalside Properties, LLC, 75 Monroe Ave.** ~ Extension of time to complete conditions of final site plan approval

**Present:** Chris DiMarzo; Bryan Powers

**The legal notice was published in the Brighton-Pittsford Post on November 28, 2019:** *“Please take notice that a public hearing will be held before the Village of Pittsford Planning Board at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday December 9, 2019 at 7:00 pm to consider an application made by Pittsford Canalside Properties, LLC, for an extension of time to complete Condition 20 of Final Site Plan approval.”*

**Discussion:** Mr. Powers stated that they are before the Board to request a one-year extension of time to complete Condition 20 of Final Site Plan approval. Ms. Lhota noted that this is the fifth year that the extension has been granted, and there are no substantial changes in circumstances that would require the Board to deny an extension.

**Motion:** Chairperson Lhota made a motion, seconded by Member Shannon, to open the public hearing at this time.  
**Vote: Shannon** – yes; **Lhota** – yes; **Vlietstra** - abstain; **Leitgeb** – yes; **Marshall** – yes. **Motion carried.**

- Mike Bouley, Line Street, asked about the status of the project. Ms. Zoghlin explained that when the Planning Board granted site plan approval in 2014, the approval said that it would expire unless a building permit was issued by December 31, 2015. Since the building permit has not been issued, the applicants need to request an extension, or site plan approval will expire.

**Motion:** Chairperson Lhota made a motion, seconded by Member Leitgeb, to close the public hearing at this time.  
**Vote:** Shannon – yes; Lhota – yes; Vlietstra – abstain; Leitgeb – yes; Marshall – yes. *Motion carried.*

**Motion:** Chairperson Lhota made a motion, seconded by Member Shannon, to adopt Resolution 2019-17  
**Vote:** Shannon – yes; Lhota – yes; Vlietstra – abstain; Leitgeb – yes; Marshall – yes. *Motion carried.*

**RESOLUTION 2019-17**  
**Village of Pittsford Zoning Board of Appeals**

At a regular meeting of the Village of Pittsford Zoning Board of Appeals held at the Village Hall on the 9th day of December 2019 at 7:00 p.m. The meeting was called to order by Susan Lhota and upon roll being called, the following were present:

**PRESENT:** Susan Lhota  
JoAnne Shannon  
Justin Leitgeb  
David Marshall (alternate)  
Mindy L. Zoghlin, Esq., PZBA Attorney

The following resolution was offered by Acting Chair Susan Lhota, who moved its adoption, and seconded by Board Member Shannon, to wit:

**WHEREAS**, on December 14, 2015, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2015 until December 31, 2016,

**WHEREAS**, on December 12, 2016, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2016 until December 31, 2017,

**WHEREAS**, on December 11, 2017, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2017 until December 31, 2018,

**WHEREAS**, on December 10, 2018, this Board granted PCP's request to extend the time to comply with conditions #3 and #20 of the November 11, 2014 final site plan approval for Westport Crossing from December 31, 2018 until December 31, 2019, and

**WHEREAS**, on January 3, 2019, this Board found that PCP complied with Condition #3 of the Final Site Plan Approval,

**NOW THEREFORE, IT IS RESOLVED** that PCP's request for a one-year extension of the time to comply with condition # 20 of the November 11, 2014 final site plan approval for Westport Crossing is granted because there are no substantial changes in circumstances that would require this Board to deny an extension.

The question of the foregoing resolution was duly put to vote as follows:

Justin Leitgeb – yes  
Susan Lhota – yes  
Jo Anne Shannon – yes  
Eli Bannister – absent  
David Marshall - yes

Dated: December 9, 2019  
Pittsford, NY

By order of the Village of Pittsford Zoning Board of Appeals

- Member Vlietstra re-entered the meeting at this time.

#### **Town of Pittsford, Erie Canal Park and Preserve ~ Site Plan Review**

**Present:** Paul Schenkel, Commissioner of Public Works; Sue Steele, Landscape Architecture

**Discussion:** Member Vlietstra stated that this is a continuation of a public hearing for site plan review of the Town of Pittsford's proposal for a shared-use trail on 20 acres of undeveloped land located on the Erie Canal. Member Vlietstra stated that the Town owns the land, except for one parcel, but the project is located within the Village.

In addition to previous submitted documents, Ms. Steele submitted the following:

1. A Geotechnical Report.
2. Additional information about the barn relative to building code, lighting, and safety, as well as programmed use and maintenance. The barn is under review with the Village Safety Inspector and Town Fire Marshall; no comments have been received.
3. A letter authorizing Town Project improvements on Private Lands.
4. Information regarding construction access and emergency access on the trail: Construction access will be from Monroe Avenue. Emergency access will be consistent with protocol for the existing Erie Canalway Trail and Auburn Trail.

Mr. Schenkel also commented that they will provide correspondence from the Fire Department regarding this project. The Building Inspector has made a determination that according to Village Zoning Code for this district, the barn meets the definition of a municipal building and is therefore a permitted use.

Member Vlietstra commented that the barn is a historic building, with no intended use, but that it may be utilized in the future. The Building Inspector informed the Board that he determined the Barn is a 'Municipal Building' in the current zoning code which is a permitted use. The definition of 'Municipal Building' is any building owned by a municipality. He stated this clears up whether the use of the building is permitted by the zoning code. Mayor Corby pointed out that the building is a barn, which will be unoccupied during the first Phase of the project. Until Phase II of the project is enacted, the building will remain unoccupied, which may address some of the issues that the Board is concerned about. Ms. Zoghlin commented that it could be a condition of site plan approval that the building remain locked.

Member Vlietstra stated the other change is the receipt of a letter from the owner of the private property a portion of the trail ran through. That owner authorized the Town to pursue approvals from appropriate agencies while an easement, land swap, or land subdivision is negotiated with the Town. Ms. Zoghlin commented that the letter is adequate for the Board to conduct its review and a condition of approval would require the Town obtain permanent access to the land in question. The mechanism of obtaining this access: land swap vs easement, is a matter between the Town and property owner and is not relevant to the application before the Planning Board.

Member Vlietstra stated that the Board received a letter from the Town requesting to be lead agency for SEQR review. He questioned the reason that the letter came from Mr. Schenkel and not from the Town Board. Mr. Schenkel stated that the Town Board is aware of the process. The Board may send comments to the Town regarding the project and he anticipates the Town will discuss it at their Dec 17 meeting so all comments should be received by then. The Planning Board will continue discussion at the next special meeting, which is scheduled for Monday December 16 at 5 pm.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Marshall, to open the public hearing at this time.

**Vote:** Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.*

- Mike Bouley, Line Street, asked for information on the project. Member Vlietstra explained that the Town of Pittsford is developing a shared-use trail on 20 acres of undeveloped land located on the Erie Canal, along with the re-assembly of a salvaged historic barn. The Town owns most of the land, but it's located in the Village. Mr. Bouley expressed support for the project.
- Mayor Corby stated that this is an extraordinary project and he heartily endorses the project.

Member Marshall asked about the timing of site plan review in relation to the granting of the easement. Ms. Zoghlin stated that the easement would be a condition of site plan approval. Such condition must be satisfied before commencing construction or obtaining a building permit. Until the condition is satisfied the site plan approval is not final.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to keep the public hearing open and continue discussion of this application at a special meeting to be held on December 16, 2019 at 5pm.

**Vote:** Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.*

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to authorize the Town of Pittsford to be lead agency for SEQR review of this project. The Planning Board will send comments regarding this application.

**Vote:** Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.*

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Marshall, to take a short break before resuming the meeting.

**Vote: Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.***

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to resume the meeting.

**Vote: Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.***

Member Vlietstra asked Ms. Zoghlin to update the Board on the status of the LWRP review of the Village Code. Ms. Zoghlin explained that at the November 18<sup>th</sup> PZBA meeting, the Planning Board determined that they could not do the LWRP review for the draft Zoning Code because the application was incomplete and could not be acted on. The reason was that the Board had not received a copy of the draft Code reflecting expected substantive changes to the draft Code in time to review it. After the November 18<sup>th</sup> PZBA meeting, the Board of Trustees met and made an LWRP determination under section 121-5(h)(1), and therefore the LWRP review is completed and there is nothing left for the PZBA to do with respect to it.

Member Leitgeb presented a draft memorandum to the Board of Trustees from the Planning Board expressing concerns with the manner that Special Permits, Site Plan Review, and Planned Development Districts are dealt with in the revised Zoning Code. The Board agreed to send him any comments on the memo by noon the next day and this otherwise looked reasonable to send.

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

**Vote: Shannon – yes; Lhota – yes; Vlietstra – yes; Leitgeb – yes; Marshall – yes. *Motion carried.***

To: Village of Pittsford Board of Trustees  
From: Village of Pittsford Planning Board  
Date: 12/9/2019  
Re: Concerns Village Code Adopted on 11/21/2019

We appreciate your efforts and collaboration during the process to update the Code and Comprehensive Plan leading to the adoption of these documents on November 21, 2019. While we feel that the Zoning Code will be an asset for our community in several ways, we also continue to be concerned that some aspects of the Code could lead to increased litigation, have a negative impact on the Village economy, or lead to development that is not aligned with our shared vision for the future of our Village as expressed in the Comprehensive Plan. These concerns are related to Special Permits, Site Plan review, and Planned Development Districts (PDDs). We will outline our concerns briefly in this letter, and we look forward to future discussions in order to make changes to the code that benefit our residents, boards and businesses operating in our Village.

Almost 40% of permitted uses in the Village are allowed by Special Permit instead of by right<sup>1</sup>. Given that so many permitted uses in our code require a special permit, we feel it is important to ensure that the review process aligns with community plans, is reasonably efficient for applications from businesses that wish to operate in the Village, and reduces the likelihood of litigation. We feel that the implementation of special permits falls short of these goals, and we recommend the following:

- Reduce the overall number of items required by special permit. This may be done by adding stronger criteria to some areas of the code so that the use is allowed by right, or creating an overlay district in cases like restaurants which contain boundaries meeting the criteria for compatibility with nearby uses.
- Ensure that criteria for consideration under site plan review and special permit review are distinct. Many permitted uses require site plan review as well as special permit, and 90% of the criteria for consideration for both types of review are redundant<sup>2</sup>. In the event that boards disagree when reviewing the same material facts under the same criteria for consideration, it may harm the reputation of the Village and encourage the applicant to appeal the decision using an Article 78 proceeding. Many of the Special Permit criteria for consideration in the currently adopted code consider not only the use, but the physical layout of the site. Criteria in the latter category should only be considered as part of Site Plan review.
- Delegate authority for special permits to the Planning Board. Regardless of the board reviewing special permits, this activity is done in an administrative, rather than legislative capacity. Planning Board members receive mandatory training and have experience reviewing plans in an administrative capacity due to common activities such as site plan

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<sup>1</sup> [Site Plan v. Special Use Permit Comparison](#)

<sup>2</sup> [Site Plan and Special Use Permit Consideration Overlap](#)

review. When special permit review is delegated to an administrative board, review must be constrained to the criteria for consideration that are specified in the enabling legislation. Delegating review of Special Permits to the Planning Board should indicate to businesses looking to locate in the Village that the review is less likely to be overly discretionary. Finally, if there is any redundancy between criteria for consideration between special permit review and site plan review this would not present an issue as the same members would be reviewing both matters.

We have significant concerns about Planned Development Districts (PDDs) in the recently adopted code §210-28. In general, PDDs (often referred to as Planned Unit Developments - PUDs in other literature) are used to allow increased flexibility compared to what is allowed by conventional zoning. They allow for this flexibility by creating a “floating” district or zone in which a new zone can be considered, with fixed boundaries and distinct rules and regulations, through a *separate* legislative act. Within this new district a particular project may *then* be considered, generally through the administrative procedures described elsewhere in the zoning code (including such mechanisms as site plan review, special permit review and certificate of appropriateness review). In our code, the way that we are combining administrative review with the legislation to enable the new district, along with weak criteria for granting project approval, substantially increases the room for discretion for impactful projects. We feel that this should be addressed as an urgent priority or this section should be removed until it can be re-added in an improved form.

Finally, we are concerned with §210-24.11 (C) (1), which specifies that, “[p]ersonal service shops and spas shall be prohibited on the first floor of any building in the TDD District.” Considering recent retail trends towards online shopping, personal service shops and spas are a remaining viable use of space in the Village and should be encouraged rather than relegated to the second floor. These establishments help to bring foot traffic to other stores in the Village. We do not believe that this ordinance is related to any goal that that can be found in the Comprehensive Plan. Furthermore, we do not believe that there is any basis for this ordinance in terms of promoting the public health, safety or general welfare. Therefore we believe that §210-24.11 (C) (1) should be withdrawn so that new personal service shops and spas continue to be allowed on the ground floor of buildings in TDD.

Again, we appreciate your continued collaboration with us as we seek to make improvements to our zoning code to help it meet the needs of our municipality, its residents and businesses seeking to operate in our community.

Sincerely,

Justin Leitgeb  
Village of Pittsford Planning Board