PROCEEDINGS OFA JOINT CODE REVIEW MEETING
OF THE VILLAGE BOARD OF TRUSTEES AND THE PZBA
March 12, 2019, 5:30 PM

Present	
Mayor:	Bob Corby
Trustees	Margaret Caraberis
	Frank Galusha
	Dan Keating
	Lili Lanphear
PZBA	Justin Vlietstra, Chair
	Eli Bannister
	Susan Lhota
	Jo Anne Shannon
	Renee Stetzer
Consultants	Molly Gaudioso
	John Steinmetz
Counsel:	Mindy Zoghlin
Recording Secretary:	Jo Anne Shannon

Motion by Mayor Corby, seconded by Trustee Keating, to call the meeting to order at 5:38 PM. Vote: Caraberis – yes, Galusha – yes, Keating – yes, Lanphear – yes. Motion carried.

Mayor Corby welcomed the PZBA to this code review meeting stating it is important to hear from the Planning Board to ensure the issues that they feel are problematic with the current code are addressed.

He then introduced Molly Gaudioso and John Steinmetz of B&L Consultants. Molly Gaudioso gave an overview of the draft code update in Chapter 210, Part 1-5. They wanted to create a framework for applicant, review boards, and residents to clearly understand and use with ease. Volume 1 is Administration and Enforcement Provisions, Volume 2 is Zoning District Framework, Volume 3 is Development Standards as they relate to the zoning districts, Volume 4 is Application and Review Procedures in which site plan is included, and Volume 5 is Terminology. They are also introducing a universal application process, trying to eliminate conflicting statements, and create a singular predictable application process. This is the first Article in Volume 4. This includes standard regulations as it applies to referrals if they may be required, approval expiration, when it can be revoked, how it can be enforced, making sure applications that come before the Boards are in a form that can be reviewed. This section utilizes the Code Enforcement Officer to be the gate keeper in deciding if the application is acceptable, never using the word "complete." Molly stated there are also areas of the code where there is outdated language, for example Special Use and Special Exception, Special Permit, all three meaning the same thing; making the term Special Use Permit. Each section as it relates to site plan, special use permits, variances, amendments, and appeals, those all would follow the application submittal process. Then the individual application requirements in the standards is included in each specific section. For Special Use Permit added clear criteria. Site plan review process is separated into minor and major approach.

Ms. Zoghlin had a question about Section 210.5 and what happens when there is a conflict between the code and a private agreement, when the private agreement poses a greater restriction, and whether the ZBA would be called upon to interpret whether they had a valid agreement and how it would fit into the zoning code; felt the ZBA shouldn't be put into a position where they had to interpret a private agreement and made a determination on whether it is an enforceable agreement. She felt the ZBA should only be interpreting the zoning code.

Member Vlietstra stated he would like to focus on site plan review. He summarized a chart he had done of all the reviews done by the Planning Board over the last 10 years; six site plans a year. One new house at 44 Sutherland. No new commercial buildings. Other than 75 Monroe, other substantial reviews all occurred with a major change in use; e.g. An auto repair place replaced by the Village Bakery; a shoe store to Lock 32 involved parking, trash; remodeling Saha to Blades, (pizza place to a sit-down restaurant). Trustee Lanphear stated it triggered as new special use permit – at that time it was thought the Special Use Permit went with the business and have since found that the Special Use Permit actually goes with the property, as long as the terms are unchanged. Ms. Zoghliln and John Steinmetz both think the Special Use Permit should go with the property. Ms. Zoghlin stated the goal of the Special Use Permit is to regulate the operations of a use that may be problematic so it will go into operational issues in other types of zoning approval such as hours of operation, seating. Mayor Corby stated he thought it should go with the most legally defensible interpretation. He said the real issue is being able to modify the permit if something is going to be intensified or if there may be environmental effects. Member Vlietstra continued with his summary - there was a gas station that went to retail on Schoen Place, Masonic Lodge to residential. Larger reviews are infrequent. Everything else the PZBA sees is small -e.g. light fixture, parking spot addition, generator, small addition on a house, and most always approved. We have had some Use variances that were not successful, some minor subdivision applications and questions- St. Louis Church, Stetzer property. Mayor Corby stated if 35 Schoen Place comes back there is the potential for subdivision. Also, there is a property on W. Jefferson Rd. that has a potential of subdivision for an additional lot, and at 63 N. Main St. the double house there is a deep enough lot and abuts Grove St. Ext. and they could make 2 lots there.

Member Vlietstra then described a check list of 8-10 criteria the PZBA looks at when they review an application including drainage, lighting, etc. Molly Gaudioso asked if that criteria were different or missing from what is in the draft code. Member Vlietstra questioned dividing this section into residential and non-residential. Ms. Zoghlin stated it was more important to separate projects into small and large, and explained how a large project could be something such as a school transforming to residential. She felt the project should be separated by size rather than use. Member Vlietstra explained that typically there are lower standards for residential and don't look at landscaping for residential for example. Mayor Corby stated landscaping plays an important part in commercial projects because it is used to buffer and protect neighborhoods. In residential you don't have that requirement. Member Vlietstra questioned if there is something in the review standards that we don't want to impose on a project, how do we go about that? Trustee Lanphear stated that lighting and landscaping were only in the commercial districts. Mayor Corby commented with LED lighting now, some of which is blinding, there should be some control of lighting in the residential districts also. Molly Gaudioso clarified that there should be a lesser threshold for minor projects for the things that might not be as significant. But at the same time keep it in the Board's purview to say not applicable. Member Vlietstra

asked if there was anything in code that says we do or do not regulate landscaping for residents. Molly Gaudioso stated what the trustees haven't seen yet is how the development standards, (off street parking, landscaping, non-residential building design, site design, etc.) are applicable to commercial properties. That's where all the landscaping requirements would apply by district so we wouldn't be establishing landscaping requirements for homes. Ms. Zoghlin asked how does that fit in with site plan review, how does the design requirements fit into the criteria evaluation. Ms. Gaudioso stated all those requirements would be in Volume 3. Ms. Zoghlin stated it would be helpful for the PZBA to have some place in the regulations for site plan review that incorporates specifical design criteria into their review. She wanted to make sure to satisfy Justin's concern about landscaping for minor residential site plan because if the development regulations specifically say landscaping regs don't apply to residential properties, then it's not criteria they need to look at. Likewise citing parking and lighting code.

Ms. Zoghlin stated the section on site plan review specifically talks about the certificate of appropriateness that will be issued by the Historic Preservation Board, but it doesn't talk about how the Coastal Assessment Form and LWRP review is going to be in connection with site plan review. In the present code anytime there's going to be development in waterfront area that involves a Type 1 action that triggers LWRP review. Historically, up until the last year the LWRP review has not been done. If we want to give a nod to the Certificate of Appropriateness it's also important to find a way to integrate the Coastal Assessment review that's required by the LWRP and that's done before site plan review. Trustee Lanphear stated there will be an overlay on the zoning map.

Ms. Gaudioso spoke about the interim adoption of these procedures before getting to the other sections. Ultimately, you will only have Volume 1 and Volume 4 as part of this. We can include the language that would be conformance with landscaping and screening requirements as provided for in the code in general. In the interim adoption this will only replace the admin pieces. Discussion followed how to accomplish a final draft in terms of the moratorium. Mayor Corby stated walkability requirements are missing from our current site plan. Ms. Gaudioso is in the process of going through the existing code and pulling out language where it has been addressed in the draft and in the interim it will be clunky. In the end it will be a cleaner, more predictable process with an additional level of review criteria. The existing code will be boiled down to what is left to be addressed in part of the districts and development standards. Ms. Zoghlin suggested breaking out the review criteria from the major and minor site plan review during the interim period. Member Vlietstra stated his goal is to streamline the review process for routine applications that aren't bothering anybody. Ms. Gaudioso suggest making Article 44 Minor Site Plan review and Article 45 Major Site Plan Review. Member Vlietstra stated where there is a change in utilities that should go under major site plan; also felt that small additions could be a minor consideration. Mayor Corby stated in regard to small additions, under certain conditions the PZBA may need to have the tools to address a situation where if there is a very small lot you might be causing a drainage issue as some of the Village houses are close together. Discussion followed regarding generators. Member Vlietstra stated that differentiating between accessory structure and accessory building is important. Mayor Corby stated mechanical equipment is special and should have a term for it with home generators and whole house air conditioners becoming more common, and could become a nuisance for neighbors.

Trustee Keating asked Member Vlietstra if there were any other review criteria that he would like to see differently. Member Vlietstra stated that his impression is that too much falls under the Major category and the code is not specific enough (section 210-44.2). Section 210-42.C-3 Residential dwellings or units; should be added to B. under minor site plan actions as single-family dwelling and under C. as multiple residential dwelling. He stated there has been no problem determining what triggers site plan review with the building inspector. The PZBA has debated what to with decks. Mayor Corby stated that drainage and the impact it has on neighbors are considerations. The same thing with driveways; if they go in unregulated there is potential for an adverse impact on the neighbors.

Discussion followed regarding existing code requirements for site plan review and incorporating them into minor and major site plan review. Member Vlietstra stated as it is now the PZBA is reviewing anything that happens to a residential property. Additions under 400 sq. feet never came to the Board. Mayor Corby stated the small additions really don't create drainage issues. Member Vlietstra stated with the small additions, lighting is often the main issue to address. How des the PZBA look at drainage and what do we add to that process? Right now, we depend on the building inspector to advise on the drainage and if he says it's okay then what are we adding to the review? Mayor Corby suggested leaving the drainage issue in the review so that it can be waived, or have the ability to regulate for certain situations where intervention is needed to avoid flooding. Member Lhota stated the Episcopal Church drains right into the Masonic Lodge lot; how it that remedied? Ms. Zoghlin stated it would be a nuisance claim, there is nothing the building inspector has jurisdiction over. Mayor Corby stated an area we might want to extend regulation it's having the ability to regulate drainage. Ms. Zoghlin cited the example of 50 State St. where the owner made substantial changes to the parking lot and that triggered site plan approval enabling the PZBA to evaluate the drainage issue. If it's not preexisting then it's an enforcement issue. It's not something the PZBA can fix unless the code enforcement officer starts an enforcement action that requires remedial action through the site plan approval process. Member Vlietstra stated the PBZA has no way to know if there is a preexisting condition. If something comes before the Board is there a way to have a list of all the variances and prior approvals attached to the property? Mayor Corby stated that Terry has such organized records that should be no problem to provide those applications when necessary.
Member Lhota questioned if fees were written into the code. Mayor Corby stated that Steve Lauth has suggested we use an hourly rate based on review of the site plan rather than a fixed fee. Member Lhota stated it would be good to give the enforcement officer some teeth and increase the violation fines. Mayor Corby suggested a fine per day of violation. Ms. Zoghlin questioned whether the PZBA has the authority to hire consultants directly. It would be better if the PZBA makes a referral to the Trustees to hire the consultant. Mayor Corby stated the language in the code should reflect that the choice of the consultant remains with the PZBA and the contract remain with the Trustees. Member Galusha stated there is a procurement policy now where the Chairperson of the Board write a recommendation to the Trustees seeking the retention of a consultant and outline the parameters and if there is an escrow account need they ask for that to be established. Member Vlietstra would like to choose the consultant, obtain a contract from them, and forward that to the Trustees. He would like to streamline the process of getting money for consultant. Ms. Zoghlin suggested having the code enforcement officer ascertain what consultants may be needed for the specific site plan and begin the process there. Mayor Corby stated the procedure should be spelled out in the code. Trustee Galusha stated there is a procedure that determines who pays the consultant and that should be in the code also. And if they are being paid

for by Village funds there must be a bidding process. Member Vlietstra had a concern about making good decisions about lighting and drainage. Mayor Corby stated the PZBA should be able to choose on an annual basis a professional consultant for lighting, drainage and landscaping, that can be used on an as needed basis. There should be written documentation that supports the decisions of hiring consultants.

Ms. Zoghlin had some other concerns: in Section 210-12.3-C.1 regarding powers and duties of the code enforcement office needs some clarification between code enforcement officer and building inspector. Ms. Gaudioso explained the building inspector can receive, review and approve building permits. The code enforcement officer can accept applications as outlined in Article 4. She asked who makes the determination as to whether the application is suitable to go before a Board. Mayor Corby stated the Village Clerk can delegate that responsibility to the building inspector. Ms. Zoghlin stated it says the code enforcement office can issue written notices in violation to the chapter but not stop work orders, where in 210-42.4 it says that if the building inspector as well as the code enforcement officer has reasonable grounds to believe that work is in violation of the code than either one of them can issue a stop work order, but that is not listed in the powers and duties section.

Section 210-13.3-A - should say "the Trustees shall comply with the NYS Open Meetings Law".

Section 210-13.5-C – says the Trustees shall have the final decision on Special Permits, but that 210-43.1 said the Planning Board did that. Ms. Gaudioso stated that the Planning Board reviews Special Permits but the final action is made by the Village Board. Mayor Corby wants to further discuss the Special Permits. Ms. Zoghlin stated that issues related to Special Permits are more operational than structural. Some municipalities don't want to use up Trustee's time looking at zoning decisions. It's not one of those things that are reserved for the PZBA like site plan and use variance applications are required by NYS Village Law to go to those Boards. Special Permits are different – they could go either way. Mayor Corby stated that in the current code some Special Permits are with the Trustees and others the PZBA, and that's confusing. Ms. Zoghlin stated they could be divided between the Boards as long as they are specific about who makes the decision about what. Legally it could go either way. Mayor Corby stated it would streamline the process if there was a site plan review to have it go to the PZBA.

Section 210-15.7-E has the same language about compliance with the OML.

Some concerns about the non-conforming uses and structures section – the issue is when someone has vested rights in preexisting non-conforming use. Those rights cannot be interfered with and we don't want to extinguish grandfathered uses.

Section on accessory dwelling units – consider having people reapply regularly. How do you know if they are not owner occupied? Mayor Corby suggested have the COE monitor C of A process for rentals. Ms. Zoghlin suggested having the applicant do the mailings and the sign postings and providing the Village with an affidavit stating that it had been done rather than burden the Village administrative staff.

Section 210-40.5-B – Ms. Zoghlin suggested remove the word "immediately".

Section 210-40.7 – SEQRA – should have your own Village Type 1 actions, that anything in or adjacent to the historical district should be a Type 1 action.

Member Vlietstra stated that stamped dated drawings by a professional engineer are problematic. Ms. Gaudioso stated it will say that in the code. He also questioned what would trigger a stamped landscaping plan by a licensed landscape architect? Also, in regard to non-conforming properties; when someone comes in for site plan review how much should we broaden that review? Mayor Corby stated there should be a mechanism in place to give the Planning Board an opportunity to look at the property. He suggested adding "the Planning Board shall have the discretion to consider all non-conforming or

inadequate elements during this process". If there's a violation and they been cited they could provide a remedy in the application. It's difficult to codify everything and the best Planning Boards rely on using their discretion and judgement and experts to make sound reasonable decisions that balance the interest of the applicant with the environmental effects and nuisance things that are the interest of the Village. Ms. Zoghlin said it's important to document the Board's decision.

Motion by Mayor Corby, seconded by Trustee Keating, to adjourn the code review meet5intg to order at 7:25 PM. Vote: Caraberis – yes, Galusha – yes, Keating – yes, Lanphear – yes. Motion carried.

Respectfully submitted,
Jo Anne Shannon, Recording Secretary