

VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS
Regular Meeting April 15, 2019 at 7:00 PM

PRESENT:

Chairperson: Justin Vlietstra
Members: Jo Anne Shannon
Susan Lhota
Eli Bannister

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Shannon, to open the workshop meeting at 6:30 pm.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to close the workshop meeting and call the regular meeting to order at 7:00 pm.

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

Conflict of interest disclosure:

- None of the Board Members had a conflict of interest to disclose.

Charles Clottin, 10 North Main Street ~ Temporary Zoning Permit

Present: Charles Clottin, Harladay Hots, Inc.

The legal notice was published in the March 21, 2019 edition of the Brighton Pittsford Post:

“Please take notice that a public hearing will be held before the Village of Pittsford Zoning Board of Appeals at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday April 15, 2019 at 7:00 pm, to consider an application made by Charles Clottin, of Harladay Hots Inc., for a temporary zoning permit to allow the seasonal operation of a vending cart at 10 North Main Street, pursuant to Chapter 210-109, Temporary permits, of the Code of the Village of Pittsford.

Discussion: Chairperson Vlietstra stated that this is a public hearing for a temporary zoning permit to allow the operation of a hot dog vending cart in the lot located at 10 North Main Street. Mr. Clottin stated that the business is the same as has been approved in previous years, and that there are no changes to the proposal this year. Mr. Clottin agreed to abide by the same conditions of approval as were stated last year. Chairperson Vlietstra asked the secretary if any complaints or comments have been received. Ms. Habeeb stated no complaints or comments have been received.

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

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

Motion: Member Vlietstra made a motion, seconded by Member Shannon, to close the public hearing at this time.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Shannon, to adopt Resolution 2019-4, granting a temporary zoning permit for the seasonal operation of a vending cart at 10 North Main Street.

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

**VILLAGE OF PITTSFORD
ZONING BOARD OF APPEALS**

RESOLUTION 2019-4 DECISION ON TEMPORARY ZONING PERMIT

Project: Harladay Hots

Date: 4-15-2019

Applicant Name: Charles Clottin

Address: PO Box 413

Pittsford, NY

Action: Seasonal operation of a hot dog cart at 10N. Main St (aka. Old Tillis Lot)

At a meeting of the Zoning Board of Appeals of the Village of Pittsford (the "Board") duly convened on April 15, 2019, at 7PM at Village Hall, 21 N. Main St, Pittsford, NY 14534, The following resolution was offered by Board Member Justin Vlietstra, who moved its adoption, and seconded by Board Member Shannon, to wit:

WHEREAS, the Village of Pittsford Zoning Board of Appeals received an application from Charles Clottin of Harladay Hots Inc. for a temporary zoning permit to allow the seasonal operation of a vending cart at 10 North Main Street pursuant to Chapter 210-109, Temporary permits, of the Code of the Village of Pittsford, and

WHEREAS, The Board has held a public hearing, and received comments thereat; and

WHEREAS, in connection with such application, the Zoning Board of Appeals has received and reviewed an application, Letter of Intent, Memorandum on a Vending Permit from the Town of Pittsford, Certificate of Liability Insurance, Certificate of Workers' Compensation Insurance Coverage, Monroe County Department of Health Permit, ZBA minutes from the applicant's 2018 application for a temporary zoning permit, and

WHEREAS, The Board makes the following findings regarding review requirements for this action:

1. State Environmental Quality Review (SEQR):

The proposed action is a minor temporary use of land having negligible or no permanent impact on the environment, and therefore is a Type II action that is not subject to SEQRA Review pursuant to 6NYCRR 617.5(c)(15).

2. Monroe County Planning Review:

The proposed action is a temporary activity that is exempt from Monroe County Planning review pursuant to General Municipal Law section 239-m and an Agreement between Monroe County and the Village of Pittsford dated January 11, 1994.

3. Waterfront Consistency Review:

The proposed action is in a waterfront area of the Village of Pittsford but is a Type II action under SEQRA so it is not subject to a local waterfront consistency review.

4. Upon issuance of this temporary zoning permit, the proposed use will comply with all regulations, requirements and applicable ordinances of the Village of Pittsford as applicable to the subject property.

WHEREAS, after review, the Zoning Board of Appeals has weighed the effects of the requested temporary zoning permit on the health, safety and welfare of the neighborhood and community, and made the following findings:

- 1.** The proposed use is in the R-4 residential district which permits single family homes and professional offices. All adjacent properties and the properties across the street are used as professional or municipal offices. It is believed that every property currently in the R-4 district is used as an office.
- 2.** The proposed use is not in harmony with the general purpose and intent of the Zoning Code for the R-4 district, but the chosen times, nature, intensity, and location of the use adequately limit adverse impacts on the surrounding neighborhood.
- 3.** The proposed use will not tend to depreciate the value of adjacent property, taking into account the temporary nature of the use and possibility of screening or other protective measures.
- 4.** The proposed use will not create a hazard to health, safety or general welfare.
- 5.** The proposed use will not be detrimental to the flow of traffic in the vicinity.
- 6.** The proposed use will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.

NOW THEREFORE, IT IS RESOLVED that the application of Charles Clottin of Harladay Hots Inc. for a temporary zoning permit to allow the seasonal operation of a vending cart at 10 North Main Street pursuant to Chapter 210-109, Temporary permits, of the Code of the Village of Pittsford is hereby granted for the reasons stated above, subject to the following conditions:

1. The vending cart may be operated from May 1, 2019 to October 31, 2019, Monday through Sunday between the hours of 10 am and 3 pm.
2. The vending cart may be operated during "special events" approved by the Village Building Inspector, which will include 30 minutes prior to the event and 30 minutes after the event for setup and cleanup of the area. The Village Building Inspector shall be notified at least 1 week prior to operation at any special event.
3. The ZBA reserves the right to revoke the temporary zoning permit if operation of the business creates traffic hazards or unsafe conditions for pedestrians, or if there are health, safety or welfare concerns that are communicated to the applicant and not resolved. If there is an emergency condition, the ZBA may revoke the permit and provide the applicant with a post-revocation hearing. If there is a non-emergency condition, the ZBA shall provide the applicant with notice and an opportunity to be heard on the revocation. The ZBA shall have sole discretion to determine whether a condition constitutes an emergency.
4. The Fire Marshall shall determine that the food vending cart meets Fire Code regulations.
5. The applicant receives permission from the Town of Pittsford to operate the vending cart in the proposed location.
6. The Applicant shall maintain a liability insurance policy of at least \$1,000,000 naming the Village of Pittsford as certificate holders. A copy of the insurance policy shall be provided to the Village prior to operation.

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

Justin Vlietstra: Yes

Susan Lhota: Yes

Jo Anne Shannon: Yes

Eli Bannister: Yes

Dated: April 15, 2019

By order of the Planning Board of the Village of Pittsford

Impact Earth, 50 State Street ~ Temporary Zoning Permit

Present: Elizabeth Carey, Impact Earth

The legal notice was published in the March 21, 2019 edition of the Brighton Pittsford Post: *“Please take notice that a public hearing will be held before the Village of Pittsford Zoning Board of Appeals at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday April 15, 2019 at 7:00 pm, to consider an application made by Robert Putney, of Impact Earth, Inc., for a temporary zoning permit to allow the seasonal operation of a Farmer’s Market at 35 Lincoln Avenue on Saturday mornings, between June and October, pursuant to Chapter 210-109, Temporary permits, of the Code of the Village of Pittsford.”*

Discussion: The applicant is requesting a temporary zoning permit to allow the seasonal operation of a farmer’s market at 35 Lincoln Avenue on Saturdays mornings between the hours of 9am and 1pm, plus reasonable setup and take-down time. The board reviewed the proposed layout of the site. Ms. Carey stated that the main tents will be in the parking area, as requested by the Town of Pittsford. She said there will be 20 booths, and each booth will be the width of two parking spaces. The music tent will be underneath the tree. Day vendors and kid activities will be on the grass. There will also be a hot dog vendor. Board members expressed some concerns about the close proximity of the market activities to the neighboring houses on the side of the lot. Members suggested that the activity be relocated farther from the residential areas. In particular, tents at the back of the parking lot are close to 10 Stonegate Ln, and tents near the dumpster location are close to 36 Sutherland. Board members agreed that locating activities more centrally in the site is preferred.

The applicants will revise the proposed layout, based on the board’s comments and in collaboration with the Town, and will return to the Zoning Board at the May 1st special meeting.

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

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

Motion: Member Vlietstra made a motion, seconded by Member Lhota to hold the public hearing open to be continued at the Special meeting on May 1, 2019 at 6pm.

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

41 North Main Street, Del Monte Lodge, Site Plan Review

Present: John Stiltes, Del Monte

The legal notice was published in the March 21, 2019 edition of the Brighton Pittsford Post: *“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 April 15, 2019 at 7:00 pm, to consider an application made by Andrew Van Roo, of PLAN Architectural Studio, P.C., as agent for the Del Monte Lodge, located at 41 North Main Street, for site plan review pursuant to Village Code § 210-83(B)(12).”*

Discussion: The applicants are proposing construction of an approximately 1106 square foot commercial addition for a fitness center at the Del Monte Renaissance Hotel. The proposed addition is minimally visible

and not visible from the street or the canal path. Member Vlietstra explained that the Village Engineer reviewed the plans and requested that if the project is adding potential expansion of water to the Village stormwater system, it needs to be justified. Current design recommendations of the Village engineer and DEC are that the storm water should remain on the site. The applicant explained that they modified their plans to use storm water to water the landscaping and will not impact other properties. The applicants also stated that the generator will be relocated and will be screened from view by Arborvitae or other evergreen shrubs.

The Board discussed landscaping plans. The applicant stated the site is already landscaped, and there are no changes planned to the landscaping other than general maintenance. They do plan to have their landscape architect plan maintenance as some of their shrubs are overgrown and need to be replaced. Member Vlietstra questioned the applicant regarding trees along the canal and in other areas on the site that were removed in the last few years. Mr. Stiltes explained that some trees were dying, overgrown, or fell over in storms but they can plant new trees in these locations. They can replant the trees along the canal if they know what species is desired by the Village. The Building Inspector stated he talked to public works superintendent about the trees and the 3 trees removed are two sycamore trees and one oak tree. The applicants stated they will look into adding plantings to the islands that lack trees. Member Vlietstra stated that the island at the N. Main Street entrance where a spruce tree was lost would be a great location for a large deciduous tree. Ms. Zoghlin reminded the Board that they can't require the applicant to plant on property that they don't own. Members Lhota and Shannon expressed their general approval of the landscaping at the site. They thought open views of the canal are beneficial and a unique feature as there are few hotels and restaurants along the Canal.

The applicants stated that there will be no changes to the lighting, other than required entrance lighting over doors. The Building Inspector will review compliance of these light fixtures with Building Code. Member Vlietstra requested that there be a uniform color of lighting, with soft white bulbs. The applicant stated they share the same preference for standard light color and can easily comply with this request.

There was some discussion as to whether this proposal introduces any code violations. Code specifies a two story minimum building height. The Building Inspector reviewed B-2 zoning code and determined that this minimum building height applies to the main building and does not apply in this circumstance because this is an addition, not a new main building. He stated that he does not believe any new zoning violations will be created by this proposed addition.

Member Vlietstra asked the Building Inspector if he believed the application was adequate for the board to make a determination. The Building Inspector stated he believed the supplied information was sufficient and recommended the Board waive the balance of application requirements.

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

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

- Dan Keating questioned the location of the proposed addition. He was shown the plans indicating where the addition will be located on the site.

Motion: Member Vlietstra made a motion, seconded by Member Shannon to close the public hearing at this time.

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

Motion: Member Vlietstra made a motion, seconded by Member Lhota, to grant Preliminary Site Plan Approval and Final Site Plan Approval of the site plan dated March 26, 2019, with the following conditions:

1. The Architectural and Preservation Review Board shall grant a certificate of approval for the Action and all approved plans shall conform to the Final Site Plans.
2. Final Site Plan approval shall expire if the applicant does not obtain a building permit for the action within 1 year of the adoption date of this resolution.
3. New exterior light fixtures shall be code compliant and shall have a color of 2700K – 3000K (warm white).

Vote: Shannon – yes; Vlietstra – yes; Lhota – yes; Bannister - yes. Motion carried.

VILLAGE OF PITTSFORD PLANNING BOARD

RESOLUTION 2019-5 DECISION ON SITE PLAN

Project: Del Monte Fitness Center Addition Date: 4-15-19

Applicant Name: PLAN Architectural Studio, P.C.
Address: 250 South Avenue, Suite 100
Rochester, NY 14625

Action: Construction of a ~1106 sq.ft. commercial addition to the
Del Monte Renaissance Hotel for a fitness center

At a meeting of the Planning Board of the Village of Pittsford (the “Board”) duly convened on April 15, 2019 at 7 PM at Village Hall, 21 N. Main St, Pittsford, NY 14534,

The following resolution was offered by Board Member, Justin Vlietstra, who moved its adoption, and seconded by Board Member Lhota, to wit:

WHEREAS, The Village of Pittsford Planning Board (the “Board”) received and reviewed an application from the above-mentioned applicant for the above-mentioned action; and

WHEREAS, The Board has held a public hearing, and received comments thereat; and

WHEREAS, The Board makes the following findings regarding review requirements for this action:

1. State Environmental Quality Review (SEQR):
 - a. The proposed action is a Type II action pursuant to 6 NYCRR 617.5(c).9. No

further review is required.

2. Monroe County Planning Review:

- a. The application **was** referred to Monroe County Planning for review pursuant to General Municipal Law section 239-m and Monroe County Planning responded to the 239-m referral with no recommendations.

3. Waterfront Consistency Review:

- a. The proposed action is within the Village's waterfront area but is a Type II action under SEQR so it is not subject to a Waterfront Consistency Review.

4. The proposed action **does not** require approvals from state or county agencies. Separate review of Preliminary and Final Site Plans **is not** required.

WHEREAS, after review, the Planning Board has weighed the effects of the requested action on health, safety, and welfare of the neighborhood and community, and made the following findings:

1. The Village Building Inspector explained the application and the submitted information to the Board and recommended waiving application requirements because the provided site plan and architectural drawings provide adequate information for the board to make a determination on this application.
2. The Building Inspector has determined that the action does not create any Zoning Violations.
3. Drainage **is** reasonably addressed by the applicant because storm water will be used to water landscaping and will not impact other properties.
4. New light fixtures will not introduce light trespass onto adjacent properties, and the applicant has demonstrated that lighting is adequate to address safety concerns because the Building Inspector will review compliance with Building Code.
5. The site **is** suitably landscaped because the site is already landscaped, maintenance on the landscaping will be done, and no substantial landscaping changes are proposed.
6. Adequate screening of parking areas, utilities, and structures **is** provided because the generator that is being moved will be screened by Arborvitae or other evergreen shrubs. Parking lot screening is unchanged; trees will be planted in empty islands in the parking lot.
7. The plans **will not** adversely impact adjacent properties because the new construction is minimally visible and not visible from the street or the canal path.
8. Parking **is** adequate and will not be changed.
9. Access to the site **is** adequate and will not be changed.
10. The Fire Marshal reviewed the Site Plans and made the following observations: No concerns.
11. The commercial addition is filling in an interior courtyard and is not visible from the street or canal. It is only visible from the parking lot.

NOW, THEREFORE, BE IT RESOLVED, the Board does herein waive the balance of application requirements required under the Village of Pittsford Zoning Code section 210-84.A because it finds the Site Plan application contains adequate information and the missing application factors are not necessary to evaluate the action’s impacts on public health, safety, or general welfare.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby **grant Preliminary Site Plan Approval** and **Final Site Plan Approval** of the site plan dated March 26, 2019, with the following conditions:

1. The Architectural and Preservation Review Board shall grant a certificate of approval for the Action and all approved plans shall conform to the Final Site Plans.
2. Final Site Plan approval shall expire if the applicant does not obtain a building permit for the action within 1 year of the adoption date of this resolution.
3. New exterior light fixtures shall be code compliant and shall have a color of 2700K – 3000K (warm white).

Chairperson Vlietstra then asked the applicant if they understood the resolution and agreed to the conditions set forth. The applicant responded “yes.”

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

	Yes	No	Abstain
Justin Vlietstra	X	<input type="checkbox"/>	<input type="checkbox"/>
Susan Lhota	X	<input type="checkbox"/>	<input type="checkbox"/>
Eli Bannister	X	<input type="checkbox"/>	<input type="checkbox"/>
JoAnne Shannon	X	<input type="checkbox"/>	<input type="checkbox"/>

Dated: April 15, 2019

By order of the Planning Board of the Village of Pittsford

Justin Vlietstra, Chairperson, Planning Board

Member Vlietstra left the meeting room at this time.

Motion: Member Lhota made a motion, seconded by Member Shannon, to adopt the findings statement from the LWRP consistency review, dated 4/14/19.

Vote: Shannon – yes; Lhota – yes; Bannister - yes. *Motion carried.*

RESOLUTION 2019-6
Village of Pittsford Planning Board

At a regular meeting of the Village of Pittsford Planning Board held at the Village Hall on the 15th day of April 2019 at 7:00 p.m. The meeting was called to order by Justin Vlietstra and upon roll being called, the following were present:

PRESENT: Justin Vlietstra
Susan Lhota
JoAnne Shannon
Eli Bannister

Mindy L. Zoghlin, Esq., PZBA Attorney

ABSENT:None.

Justin Vlietstra recused himself and left the room.

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

WHEREAS, by Resolution made March 18, 2019 and entered into the Office of the Pittsford Village Clerk on March 27, 2019, the Village of Pittsford Planning Board (the “Planning Board”) determined that the Westport Crossing Project was inconsistent with the waterfront consistency standards set forth in the Village of Pittsford Local Waterfront Revitalization Program for (hereinafter referred to as the “Planning Board Determination”); and

WHEREAS, the Planning Board has since prepared a Findings Statement in connection with the Planning Board Determination;

NOW THEREFORE, IT IS RESOLVED that the Planning Board adopts the Findings Statement dated April 15, 2019.

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

	Yes	No	Abstain
Justin Vlietstra	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Susan Lhota	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JoAnne Shannon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eli Bannister	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Dated: April 15, 2019

Pittsford, New York

By order of the Village of Pittsford Planning Board

Susan Lhota, Acting Chair

FINDINGS
VILLAGE OF PITTSFORD PLANNING BOARD
APPLICATION OF PITTSFORD CANAL PROPERTIES LLC
FOR A DETERMINATION OF LOCAL WATERFRONT CONSISTENCY

Applicant: Pittsford Canalside Properties, LLC
Address: 75 Monroe Avenue, Village of Pittsford
Tax Account #: 151.18-1-15.1
Zoning District: R-5

Relief Sought: Pittsford Canalside Properties, LLC's application for a determination as to whether the proposed Westport Crossing development is consistent with the LWRP policy standards and conditions.

Applicable Laws: Pittsford Village Code Article 121.

Public Hearing

Date: March 18, 2019

This is an application for determination as to whether proposed Westport Crossing development is consistent with the LWRP policy standards and conditions.

Background

PCP applied to the APRB for a Certificate of Approval on March 21, 2013.

The APRB considered PCP's application at public meetings conducted on December 1, 2014 and December 10, 2014. The APRB denied PCP's application for a Certificate of Approval on December 10, 2014. PCP appealed the APRB decision on December 11, 2014. By Order and Judgment dated March 5, 2015, the Monroe County Supreme Court, Honorable John M. Ark presiding, directed the Village of Pittsford Zoning Board of Appeals ("ZBA") to hear PCP's appeal from the APRB determination. *Pittsford Canalside Properties, LLC v. Village of Pittsford Zoning Board of Appeals et al* (Index No. 2015-280).

The ZBA rendered its final determination on October 19, 2015. PCP commenced an Article proceeding to challenge a prior, nonfinal determination. The ZBA moved to dismiss the Article 78 proceeding in December 2015. The Court has not ruled on that motion.

In the meantime, the APRB and PCP apparently entered into settlement discussions regarding the Westport Crossing project. PCP moved to compel the APRB to approve the Project under the terms of the purported settlement.

On October 4, 2017, Judge Ark remanded PCP's application for a Certificate of Approval to the APRB for reconsideration pursuant to the parameters set forth in a letter dated April 4, 2017. The Decision and Order directed the APRB to commence reconsideration no later than November 4, 2017 and specifically stated that "other provisions of the Code of the Village of Pittsford no inconsistent with this decision shall apply." In this regard, the Planning Board notes that the Court's 10/25/2015 decision in *FOPV v. Village of Pittsford et al* (Index No. 2012/13778), page 12, explicitly found that:

1. There is no coastal assessment form in the Record.
2. The Village Board never prepared a coastal assessment form.
3. The Planning Board never prepared a coastal assessment form.
4. The Developer never submitted a coastal assessment form to the Village Board.
5. The Village Board did not make a proper determination of consistency with the LWRP.
6. The Planning Board did not make a proper determination of consistency with the LWRP.

PCP submitted an Application for a Certificate of Approval to the APRB on October 23, 2017 (the "Application"). The Application consisted of a 2-page letter and 9 attachments. The attachments are:

- PCP's application to the APRB for a Certificate of Approval dated October 23, 2017;
- Village Board of Trustees Resolution 20 of 2012;
- SEQRA Neg Dec for Westport Crossing dated 8/9/12;
- Something titled "Findings of the Village of Pittsford Planning Board regarding application of Pittsford Canalside Properties LLC dated September 4, 2013";

- An undated site plan;
- 16 pages of Architectural drawings and elevations. The first 6 pages are not signed or dated and appear to describe elevations for the Clubhouse, garage, Building 6000 (3 pages) and the pump house and gazebo. The next ten pages have the handwritten dated 10/23/17 on them and appear to be signed by Richard L. Rosen on 10/26/17. They appear to be building elevations for Building 1000 (2 pages), building 2000 (2 pages), building 3000 (2 pages), building 4000 (2 pages), building 5000 (2 pages).
- Document dated 5/31/17 is 3-pages and appears to be a list of exterior materials and specifications for Westport Crossing buildings 1000, 2000, 3000, 4000, 5000, 6000, clubhouse and garages/ accessory structures.
- Letter from Jeff Turner dated April 4, 2017 with Exhibits A-H.
- Judge Ark's decision and order in PCP v. Village of Pittsford ZBA and APRB dated October 4, 2017.

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 approved site plan.

By letter dated December 15, 2017, the Planning Board advised PCP that the materials it 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 PCP 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 a Coastal Assessment Form and 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 latest proposed building overlay to the Planning Board on January 29, 2018 (“PCP’s 2018 Site Plan”).

The Planning Board met in February 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.

On February 26, 2018 the Planning Board opened the public hearing and asked PCP to describe each of the post-approval revisions so that it could determine whether they were things that required a modification of the approved site plan. PCP responded on March 8, 2018.

On March 12, 2018, 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, PCP’s principal stated to Judge Ark that the plans he submitted to the Planning Board on January 29, 2018 with the October 2017 proposal outlined in red did not include the location of decks, porches or stairwells.

The Planning Board then sent PCP an email on March 14, 2018 asking it to update the site plan map he sent on January 29, 2018 to include the location of decks, porches and stairwells in green. PCP emailed those documents to the Planning Board on March 16, 2018.

The Planning Board continued the public hearing on PCP’s application on March 19, 2018.

On April 12, 2018 PCP submitted revised site plans for Westport Crossing that eliminated three parking spaces, as required by the Village Board of Trustees’ Resolution #20 of 2012.

On April 16, 2018 The Planning Board closed the public hearing and deliberated the LWRP application. It found that PCP’s Westport Crossing application of October 23, 2017, as amended through April 16, 2018 to be inconsistent with waterfront consistency standards.

By letter dated January 21, 2019 PCP asked the Planning Board for permission to address specific concerns raised during the LWRP review.

On January 28, 2019, the Planning Board unanimously passed a resolution to rehear PCP’s application for a waterfront consistency determination for the Westport Crossing Project; and

PCP asked the Planning Board to set the rehearing down for the March 2019 meeting.

The Planning Board held a regular meeting, duly published and posted on March 18, 2019 to rehear the PCP application for a waterfront consistency determination.

The Planning Board reopened the public hearing on the Westport Crossing waterfront consistency determination at the March 18, 2019 meeting.

By Resolution made March 18, 2019 and entered into the Office of the Pittsford Village Clerk on March 27, 2019, the Planning Board determined that the Westport Crossing Project was inconsistent with the waterfront consistency standards set forth in the Village of Pittsford Local Waterfront Revitalization Program for (hereinafter referred to as the “Planning Board Determination”).

SEQRA

On October 12, 2010, the Village Board declared itself as lead agency for SEQRA review of the project. The project was classified as a Type I action requiring coordinated review. On August 9, 2012, the Village Board issued a Negative Declaration. PCP challenged this decision in an Article 78 proceeding. On October 14, 2014 Justice Ark annulled the decision rescinding the neg dec for this Project. The Fourth Department affirmed this on March 18, 2016. Pittsford Canalside Properties LLC v. Village of Pittsford, 137 AD3d 1566 (4th Dept. 2016).

No further SEQRA review is required.

GML 239-m Referral

The Planning Board referred the LWRP Application to Monroe County Planning. By letter dated March 23, 2018, Monroe County Planning assigned referral PV18002Z to the LWRP application and determined that its prior Referral response and Project Review Report for PZ12-1Z was relevant to the LWRP referral.

The LWRP Determination

After review, the Planning Board makes the following findings regarding the waterfront impacts as required by §121-5.G:

(1) 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 and minimizes adverse effects of development (LWRP Policy 1), 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.

Guidelines regarding preserving community character can be found in the LWRP §III, Policy 1.1. They include:

- No action may be undertaken which detracts from the Historic character of the community. LWRP §III, P. 2.
- New construction or alterations will be done in accordance with the existing Historical patterns of the area. LWRP §III, P. 2.

The siting of new construction should reflect and reinforce the existing building line and be compatible with existing mass and height. New buildings should not compete with or destroy the existing street line and skyline but should enhance its overall character. LWRP §III, P. 2.

The siting of new development should be respectful of existing view sheds and natural features. LWRP §III, P.4.

The LWRP policies explain that:

Attractive older buildings and public spaces within the town and village, and along the canal should serve as models for new construction and the design of public spaces. This local vernacular, as expressed through site and architectural details such as roof shape, building scale, window size, fenestration, and appropriate landscape elements, should be incorporated within the design of new buildings and public spaces. Overall, the design of new construction, as well as infill construction, or alterations, should enhance the character of the community and canal and contribute to, not detract from, a unified and memorable Pittsford identity. LWRP §III, P. 3.

The LWRP Guidelines further state that:

The siting of major new development should address the physical location and logical organization of buildings on a site in relation to both the surrounding man-made environment and the encompassing natural environment. The siting of new development should be respectful of existing view sheds and natural features. Where feasible, new developments should retain the integrity of the site's character as expressed through its land form and landscape. Open space, courtyards, and landscaped pathways within any new development should be encouraged to provide transitional areas between public and private spaces. LWRP §III, P. 4.

Larger structures should be broken up into smaller more pedestrian scaled structures which relate better to the existing streetscape. LWRP §III, P. 4.

Finding: the action is **inconsistent** with this policy for the following reasons:

- A. The Planning Board finds that the proposed Westport Crossing Project stands in striking contrast to the long established character of the Village of Pittsford. The proposed Project competes with and detracts from the Historic Village.

The entire Village of Pittsford is designated as a historic district. Further, the Erie Canal, along whose banks the proposed Westport Crossing Project would be sited, is itself designated a National Historic Landmark, whose visibility is a defining element of the Village. Pittsford Village derives its architectural character from its agrarian origins and resulting commercial activity associated with the Canal.

The historic character of the Village is easily noted and observed. The residential neighborhoods, including and especially the Monroe Avenue and Sutherland Street neighborhoods adjacent to the proposed development, consist of well-preserved family homes of 1 or 2 storeys, of varying design. The vast majority of houses are wooden constructions, painted in an array of colors. Balconies are practically unknown. Landscaping around each house is individualized and the houses address tree-lined streets. Sidewalks delineate neighborhoods throughout the village, connecting residential and commercial sections of the Village and promote lively and safe pedestrian activity. Most of the housing, along with stores, churches, and accessory structures were built between 1789 and 1930. The historic center of the Village comprises one of the earliest and best-preserved collections of nineteenth-century architecture in the region.

Moreover, the Village remains a working example of a traditional Erie Canal village. Schoen Place, the commercial section of the Village along the banks of the Erie Canal, is an outstanding example of historic preservation in action. The stylistic variation in preserved wooden buildings indicate original canal commercial functions such as food and lodging structures, weigh stations, and warehouses and have been adapted for contemporary commercial use. The collection of buildings along Schoen Place constitute a neighborhood defined by past life along the Canal, the buildings are complementary - no single structure dominates the canalside view.

The unique history of the Village and its architecture define the character of the Village. Residences and businesses in the Village identify themselves with color, alternating shapes, and variations in architectural style and features in keeping with their individual history and the Village as a whole.

Commercial buildings along Main Street adjoin sidewalks and face the tree-lined street. The mostly two storey buildings are of varying style, shape and color and together comprise human-scaled, pedestrian friendly blocks. One single building of the proposed development would dwarf an entire Village block along South Main Street.

The commercial buildings along Main Street, Schoen Place, and the adjacent neighborhood visible from Monroe Avenue feature a wide range of colors, styles, and sizes complementing their architectural designs, features and design details, and specific functions.

In consideration of the commercial buildings on Main Street and Schoen Place and the adjacent neighborhood visible from Monroe Avenue against the Project, the Planning Board determined whether the proposed Project's design is compatible or incompatible with the character of the Village. Architectural and historic design principles evaluated by the Planning Board include mass, scale, density, building height, width, orientation, setback, spacing, neighborhood rhythm or pattern of development, proportion, overall design, individual features and design details, materials and color. Analyzing the proposed Project using these principles, the Planning Board finds that the Project competes with and detracts from the Historic Village for the reasons set forth below.

- 1) The Proposed Westport Crossing Project Competes With and Detracts from the Character of the Historic Village Because Its Mass and Scale Are Disproportionately Large.*

The Planning Board finds that the proposed Westport Crossing Project competes with and detracts from the Historic Village because its mass and scale are inconsistent and out of proportion with the surrounding Village.

The New York State Office of Parks, Recreation and Historic Preservation's Guidelines for New Construction recommend that new construction be within 10% of the scale of historic equivalents. The proposed Westport Crossing Project greatly exceeds 10% of the scale of historic equivalents in the Village.

With respect to mass and scale, residential neighborhoods in the Village are characterized by modestly-sized historic residences averaging two storeys in height. Lots in the Village feature varying setbacks and regular spacing. Together with tree lined sidewalks and variations in landscaping schemes a moderate density environment has grown over the years which has established appropriate mass and scale benchmarks for the Historic Village.

Large blocks of similarly sized and designed buildings are unknown. The commercial section of historic South Main Street consists of modestly sized, two to three storey, storefront-style retail and commercial buildings, interspersed with parking areas, residences converted into businesses, and municipal buildings. The modest size and moderate density environment created by the layout of Main Street establishes the appropriate mass and scale for the Historic Village.

Additionally, Canal-commercial Schoen Place contains a variety of generously spaced wooden structures with unique architectural design details reflecting their original uses as canal and railroad warehouses. Further, the adjacent neighborhood visible from Monroe Avenue displays a mix of modestly sized, regularly-spaced pedestrian-scale retail businesses, office buildings, single-family homes, and municipal buildings featuring varying setbacks as well as the Pittsford Sutherland High School.

The only structures more than two stories tall that are visible along the canal or the adjacent neighborhood are the High School and re-purposed Flour Mill. As such, the layout of Schoen Place and the adjacent neighborhood visible from Monroe Avenue is characterized by modest structures sited on appropriately sized lots, indicative of moderate density. These areas exemplify the mass and scale appropriate to the Historic Village.

However, when the proposed Project is considered in relation to the commercially zoned buildings on Main Street and Schoen Place, and the adjacent neighborhood visible from Monroe Avenue for massing, scale, and density, its singular design and oversized size is grossly out of proportion with the physical aspects of the Historic Village. The Project features 167 dwelling units within five buildings, a restaurant seating 125 persons, a pool, and a club house on a 7.39

acre parcel. The Project's proposed elevations illustrate this extreme contrast as they feature closely-spaced, enormous, block-shaped buildings standing approximately four storeys tall. The mass and scale of these buildings will be amplified by the Project's minimal use of color and repetitious design details.

The visual impact created by these buildings is jolting. The Project's proposed buildings are massive in comparison to Village structures, and they will overwhelm and fill the narrow strip of land on which they are sited. Notably, the density of the proposed Project is three times the density of Schoen Place, and the visual impact of the Project reflects this fact. Unlike the rest of the village, every building of the proposed Project is uniform in its use of building materials, brick and other masonry materials, and therefore exterior color. The project buildings compose a collection of buildings unlike any other structures in the village and along the canal.

Consequently, the proposed Project is glaringly out of context with the character of the Main Street, Schoen Place, the adjacent neighborhood, and the Village as a whole. In fact, superimposing the Project renderings onto Schoen Place and Main Street demonstrates that the mass and scale of the proposed Project is inconsistent with, and glaringly disproportionate to, the surrounding Village. The Project will essentially create a "Great Wall" of buildings visible from one of four entrances into the Village. The Project will visually overwhelm the surrounding the neighborhood due to its mass and scale if built according to its proposed design.

Therefore, the proposed Project competes with and detracts from the Historic Village because it is incompatible with mass, scale, materials and design of buildings along the canal frontage, the adjacent neighborhood visible from Monroe Avenue, and the Village as a whole. The proposed development would create a visual anomaly, compared with every other neighborhood within the Village and along the historic canal.

2) The Proposed Westport Crossing Project Competes With and Detracts from the Character of the Historic Village Because It Has Regular Shapes, Spacing, Setbacks, and Patterns. The Historic Village, in contrast, Has Irregular Shapes, Spacing, Setbacks, and Patterns.

The Planning Board finds that the proposed Westport Crossing Project competes with and detracts from the Historic Village because its uniform, monotonous design and construction materials fail to complement the unique, asymmetrical pattern of development found throughout the Village.

The buildings in the Historic Village, single family residences and commercial structures, display a pattern of moderately varying shapes, spacing, setbacks, and architectural styles. Additionally, very few buildings in the Village are taller than two storeys. In fact, the unique pattern of buildings in the Village is “harmonious” because it is characterized by a repeated array of varying building sizes, shapes, heights, and spacing.

For example, the commercial section of historic Main Street consists of regularly spaced, two to three storey, storefront-style retail and commercial buildings, interspersed with parking areas, residences converted into businesses, pedestrian-scale modern office buildings, and municipal buildings. The modest size, regular spacing, and appropriate set-backs of these buildings contribute to a human-scaled environment in keeping with the character of the Historic Village.

Additionally, groups of buildings along the Erie Canal, including Schoen Place, contain a mixture of building elevations and shapes which reflect an asymmetrical pattern of development. Schoen Place is comprised of a group of historic buildings, including silos, mills, barns, and sheds, featuring different elevations, shapes, and sizes. Many of these buildings were constructed between 1850 and 1930. These buildings continue to be used for a wide range of commercial uses. Some of these buildings even function as restaurants. The buildings in Schoen Place demonstrate harmony in their proportions because they were built to support the functions of the canal and its workers and evolved over time to meet the needs of the existing businesses in the canalside area

Further, the adjacent neighborhood visible from Monroe Avenue displays a mix of modestly sized, regularly-spaced pedestrian-scale retail businesses, office buildings, single-family homes, and municipal buildings featuring varying setbacks as well as the Pittsford Sutherland High School. With the exception of the High School and repurposed Flour Mill, no structure that is visible along the canal or the adjacent neighborhood is more than two storeys tall. As such, the layout of Schoen Place and the adjacent neighborhood visible from Monroe Avenue is characterized by modestly sized structures, regular spacing, and appropriate set-backs in keeping with the character of the Historic Village.

When compared to the commercially zoned buildings on Main Street and Schoen Place, and the adjacent residential neighborhood visible from Monroe Avenue for variety in shapes, spacing, setbacks, and patterns, the proposed Project is grossly out of character with the physical aspects of the Historic Village. The proposed Project is composed of enormous block-shaped buildings of comparable heights which are approximately four stories tall and are spaced at symmetrical, regular intervals. The proposed buildings are massive in comparison to other Village structures and they will dominate and fill the narrow strip of land on

which they are sited. They ignore the pedestrian scale of the rest of the Village. Significantly, the Project's five residential buildings completely lack variety in size, shape, height, spacing, and function, all of which characterize both the Village's residential buildings and commercial structures. Every building in the proposed Project would be constructed with similar brick and/or masonry facades and roof lines. Furthermore, they all share a distinctive design detail, namely the repetition of limited-use balconies, an architectural feature virtually unknown in the Village.

For the reasons set forth above, the proposed Project competes with and detracts from the Historic Village because its uniform shapes, spacing, setbacks, heights, and patterns contrast with the Historic Village's asymmetrical yet harmonious pattern of development.

3) The Proposed Westport Crossing Project Competes With and Detracts from the Historic Village Because the Project's Design Features are not compatible with the buildings in the Historic Village.

The Planning Board finds that the proposed Westport Crossing Project competes with and detracts from the Historic Village because its design features do not complement the existing buildings in the Village.

The New York State Office of Parks, Recreation and Historic Preservation's Guide to New Construction recommends that new construction be comprised of individual features which are comparable, but not identical, to those of similar historic properties. For example, in a historic district characterized by dwellings having front porches, paired windows and dormers, new buildings should include these same features. The proposed Project does not have individual features that are comparable to similar historic properties in the Village.

Buildings in the Village consist primarily of 2-storey, free standing homes and structures that are individually-conceived and lack a central focal point. Moreover, the existing architectural styles in the Village reflect different property uses and buildings of different sizes and elevations. The architectural flavor of the Village spans centuries, as the Village was settled in 1796. No two adjacent buildings in the Village have exactly the same architectural features or design.

The buildings along the Erie Canal, particularly Schoen Place, exhibit different architectural styles indicative of their original commercial function, as the area evolved over time in response to the canalside's ever-changing commercial needs. Historic buildings include silos, mills, barns, and sheds, displaying different elevations, shapes, and sizes. The unique historic buildings

of Schoen Place have been preserved through thoughtful new contemporary commercial use.

Further, the adjacent neighborhood visible from Monroe Avenue features a mix of architectural styles driven by function. This area features pedestrian-scale retail businesses, office buildings, single-family homes, municipal buildings as well as the Pittsford Sutherland High School.

In contrast, every building in the proposed Project demonstrates a consistent, uniform style and function typical of modern, large-scale, luxury residential complexes. The proposed Project does not incorporate a variety of styles or architectural details. In fact, proposed elevations illustrate closely-spaced, enormous, block-shaped buildings standing approximately four storeys tall. The visual impact of these buildings will be amplified by the Project's minimal use of color and repetitious design details.

Notably, the Project features architectural design details which clash with the historic character of the Village. For example, the proposed dwellings buildings feature a multitude of balconies. However, the sheer number of balconies is out of character and inconsistent with the buildings found in the Village, which rarely feature balconies.

Moreover, the proposed Project does not break up large structures into smaller, pedestrian-scaled buildings in keeping with overall layout and design of the Village. A few chimneys are incorporated into the design of the Project, but they do little to break up the monotony of the Project's design. The overall visual impact of the Project is stark – the Project will create a “Great Wall” of residential units visible from one of the major arteries into the Village.

For the reasons stated above, the proposed Project competes with and detracts from the Historic Village because its design features are not compatible with the character of the Village.

4) The Materials and Colors of the Proposed Westport Crossing Project are Inconsistent With the Overall Character of the Historic Village.

The Planning Board finds that the proposed Westport Crossing Project competes with and detracts from the Historic Village because its materials and colors are not appropriate or in keeping with the design of the Village's buildings and structures.

LWRP § III, Policy 1.1 states that the agency must consider the use of materials consistent with the overall character of the area. The New York State

Office of Parks, Recreation and Historic Preservation in its Guide to New Construction recommends that the materials used in new construction should be compatible with those of corresponding historic properties.

Further, LWRP §III, Policy 1.1 also explains that new development should use colors compatible with similar features of existing historic resources.

Notably, the buildings in the proposed Project are not consistent with and do not conform with the exterior materials of the buildings in the Village. The exterior materials and specifications are described in Tab 7 of PCP's October 2017 application. The Village consists primarily of painted wood structures reflecting the age and architectural styles its residences and businesses. However, the exterior of the five proposed residential buildings consists primarily of masonry, especially stonework. The amount of stone in the proposed Project is not appropriate, authentic or consistent with the architecture of the rest of the Village.

Importantly, the individual residences and businesses in the Village identify themselves with color which highlights variations in architectural style. The commercial buildings along Main Street, Schoen Place, and the adjacent neighborhood visible from Monroe Avenue feature a wide range of colors complementing their unique architectural features and specific functions.

In contrast, the Project lacks variety in color and diversity in design which is a hallmark of the Historic Village. The proposed Project's minimal use of color attempts to create the appearance of multiple buildings within a single structure, which is not effective. Conversely, the Village's buildings feature a wide range of colors from neutrals to traditional yellows, greens, reds, and blues. Unfortunately, the Project's monotone colors combined with the repetitive shape, size, and siting of the buildings essentially renders individual buildings within the Project indistinguishable.

For the reasons set forth above, the materials and colors of the proposed Project are not compatible with properties in the Historic Village.

5) The Proposed Westport Crossing Project Competes With and Detracts from the Historic Village Because It Destroys the Existing Canalside Viewshed.

The Planning Board finds that the proposed Westport Crossing Project competes with and detracts from the Historic Village because it fails to maintain visual unity with its historic neighbor Schoen Place, the contiguous neighborhood, and the Village as a whole. The entire length of the Canal within the Village offers scenic vistas of either historic canal commercial structures, or

open space viewsheds. Not only would the proposed Project destroy a horizon defined by a mature tree line, but the Project is also situated at one of four character-defining entrances into the Village, and would introduce building design and size previously unknown in the Village and along the Canal.

Notably, the proposed Project stands in sharp contrast to the appearance of other groups of buildings in the Village which are much smaller in scale. The proposed Project would create the largest massing of buildings in the Village, failing to maintain visual unity with Schoen Place, the contiguous neighborhood, and the Village as a whole.

If built according to current plans, the Project would overpower the villagescape due to sheer size and its location at the entrance of the Village. In fact, superimposing the Project's renderings onto Schoen Place and Main Street demonstrates that the mass and scale of the proposed project dwarfs the surrounding Village. Because of its sheer size, the Project will become a visual focal point that will overshadow the Village itself.

Because the scale of Project will dwarf the surrounding Village, it will interrupt the existing horizon. The Project will destroy the viewshed from Sutherland Street to the canal. The size and scale of the buildings in the proposed Project will create a "Great Wall" of buildings where an open skyline previously existed.

Not surprisingly, the proposed Project will damage the quality of the Village's horizon due to its location on Monroe Avenue, at one of the busiest entrances to the Village. The Project's impact on close views will be disruptive, particularly when Monroe Avenue traffic is stopped.

Likewise, from the canalside, views of the Monroe Avenue entrance to the Village will be blocked. Additionally, along the canal, views of sloping backyards and small one or two storey buildings will be effectively eliminated by the Project's "Great Wall" of buildings.

For the reasons set forth above, the proposed Project competes with and detracts from the Historic Village because it destroys the existing canalside viewshed.

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

Finding: the action is **consistent** with this policy. The proposed development includes a canalside sidewalk, future opportunities to connect to other parts of the Village, attractive access to the Erie Canal and public access.

The developer has remediated environmental contamination at the proposed project site.

(3) Protect existing agricultural lands within the LWRP area.

Finding: the action is **not applicable** with this policy.

(4) Promote sustainable uses of living marine resources in coastal waters.

Finding: the action is **consistent** with this policy. The proposed Westport Crossing Development includes a dock.

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

Finding: the action is **not applicable** with this policy.

(6) Protect and improve water resources.

Finding: the action is **consistent** with this policy. The proposed Westport Crossing development takes advantage of the canal as an amenity.

(7) Minimize loss of life, structures and natural resources from flooding and erosion.

Finding: the action is **not applicable** with this policy.

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

Finding: the action is **consistent** with this policy because potential air quality concerns were addressed in the environmental remediation process.

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

Finding: the action is **consistent** with this policy because the applicant remediated environmental contamination at the project site.

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

Finding: the action is **consistent** with this policy because the proposed Westport Crossing development includes a dock, sidewalk, and access to the Erie Canal. However, the canal access is in the back of the development and does not improve connections between the canal and other important open space assets.

(11) Enhance visual quality and protect outstanding scenic resources.

Finding: the action is **inconsistent** with this policy for the following reasons:

A. The Planning Board finds that the proposed Westport Crossing Project will not enhance visual quality and protect outstanding scenic resources for the reasons set forth above and below.

- 1) *The proposed Project is strikingly different from other buildings along the canal and would create a “visual interruption” in the scenic quality of the Village.*

The Planning Board finds that the proposed Westport Crossing Project will not enhance the Village’s visual quality and protect outstanding scenic resources because the physical characteristics of the Project break with and fail to complement the physical characteristics of the Village. In short, the Project would present a visual anomaly, an isolated group of out-sized buildings jarringly dissimilar to the highly valued and well protected historic Village character.

First, the proposed Project creates a sharp break or high contrast area when compared against nearby Village structures. Notably, the alternating stylistic characteristics, widespread use of wood and exterior paint and consistent scale of the buildings in Schoen Place and the Village invite a sense of historic period and distinctive building function and purpose. Walking through the Village past modestly-sized structures exhibiting a variety of building styles, pedestrians experience distinctive individual streetscapes, yet overall human scale coherence.

The monotonous design of the Project however, creates a disconnect, rather than a continuation of the Village’s architectural variety in style, shape and size. The uniform architectural style and color palette of the proposed Project is static. The proposed Project’s scale, stone façade, monotone color palette, and uniform design stand in stark contrast to colorful and varied designs of the modestly-sized structures in the Village.

Further, the proposed Project is conceived as an isolated community embodying a modern, uniform, large-scale, residential complex aesthetic rather than a continuation of the Village’s historical, varied, pedestrian-scaled buildings. To be seen as a continuation of the Historic Village and Schoen Place, the large structures in the proposed Project would need to demonstrate more alternation or variety in size, materials, color, and form.

In fact, the proposed Project should seek to enhance or recognize the historic scale and character of the Village and strive to repeat the existing pattern. The lack of variety in building materials, the singular absence of wood, and proliferation of balconies does not blend with surrounding properties and glaringly contrasts with the surrounding neighborhood at the Village's entrance.

Crucially, the bulk and massing of the buildings in the proposed Project are grossly out of proportion with the buildings in Village. As such, the proposed Project will become a focal point overshadowing the rest of the Village. Other large buildings in the Village such as the High School or Library do not present the same concerns regarding mass or bulk. These buildings are single, stand-alone structures which are spaced appropriately. The proposed project, in contrast, is a very dense, monolithic residential complex sited on a narrow strip of land located at a high volume entrance to the Village.

For the reasons set forth above, the proposed Project competes with and detracts from the Historic Village because it interrupts the visual quality of the Village.

(12) Preserve Historic resources of the LWRP area.

Finding: the action is **inconsistent** with this policy for the reasons set forth above.

"It certainly strikes the visitor with astonishment, to perceive what vast difficulties can be overcome..." an English visitor to the Erie canal in 1831, as quoted in Peter Bernstein's Wedding of the Waters.

"By bringing the interior to the seas and the seas into the interior, the Erie Canal would shape a great nation, knit the sinews of the Industrial Revolution, propel globalization - extending America's networks outside our own borders- and revolutionize the production and supply of food for the entire world. That was by no means all." Wedding of the Waters, by Peter Bernstein

The specific waterfront area adjacent to the proposed project is the Erie Canal, recognized by the federal government as a National Historic Landmark. The historic resources along the canal in the village of Pittsford, denote the residential and commercial history of the canal. Wooden structures, both residential and canal commercial, are of varying shape and design and, with the exception of the Flour Mill, consist of one or two storeys. The Village of Pittsford has worked over decades to preserve original structures, even if re-purposed for contemporary uses. The proposed Project, however, with its isolated campus of 5 three and four storey brick buildings, of similar design and each larger than almost every other structure in the village, ignores the Pittsford Village's exceptional historic character.

(13) All actions must conform to the State Environmental Quality Review Act (SEQRA) regulations (6 NYCRR Part 617).

Finding: the action is consistent with this policy.

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

Finding: the action is not applicable with this policy.

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

Finding: the action is not applicable with this policy.

Comment Regarding the 2014 Findings Statement: PCP claims that statements contained in Planning Board's 2014 Findings Statement granting site plan approval require it to find that the Westport Crossing project is consistent with §121-5.G(1). This Board disagrees for several reasons. First, Resolution #20 addressed a proposed site plan and application that were substantially different from PCP's October 2015 application. Second, the statements were based on an error of law, which was that mere compliance with the R-5 zoning requirements satisfied the LWRP consistency requirements. Finally, the statements were largely conclusory.

Dated: April 15, 2019

Motion: Member Lhota made a motion, seconded by Member Shannon, to authorize Ms. Zoghlin to execute the tolling agreement.

Vote: Shannon – yes; Lhota – yes; Bannister - yes. *Motion carried.*

TOLLING AGREEMENT: PITTSFORD CANALSIDE PROPERTIES LLC AND THE VILLAGE OF PITTSFORD PLANNING BOARD

This **TOLLING AGREEMENT** is entered into between Pittsford Canalside Properties, LLC (“PCP”) and the Village of Pittsford Planning Board (“Planning Board”) (hereinafter referred to as “this Tolling Agreement”), effective as of April 15, 2019 (the “Effective Date”). Pittsford

Canalside and the Planning Board shall be referred to collectively as the “Parties,” and each individually may be referred to as “Party.”

WHEREAS, On January 22, 2018 PCP delivered a Coastal Assessment Form to the Village of Pittsford Planning Board (the “Planning Board”) for the proposed Westport Crossing Development at 75 Monroe Avenue (the “Westport Crossing Project”) pursuant to chapter 121, Local Waterfront Consistency, of the Code of the Village of Pittsford; and

WHEREAS, the Planning Board held a public hearing, and received comments thereat; and

WHEREAS, after review, on April 16, 2018 the Planning Board determined that the Westport Crossing Project was not consistent with the LWRP; and

WHEREAS, by letter dated January 21, 2019 PCP asked the Planning Board for permission to address specific concerns raised during the LWRP review; and

WHEREAS, on January 28, 2019, the Planning Board unanimously passed a resolution to rehear PCP’s application for a waterfront consistency determination for the Westport Crossing Project; and

WHEREAS, PCP asked the Planning Board to set the rehearing down for the March 2019 meeting; and

WHEREAS, the Planning Board held a regular meeting, duly published and posted on March 18, 2019 to rehear the PCP application for a waterfront consistency determination; and

WHEREAS, the Planning Board reopened the public hearing on waterfront consistency determination at the March 18, 2019 meeting; and

WHEREAS, by Resolution made March 18, 2019 and entered into the Office of the Pittsford Village Clerk on March 27, 2019, the Planning Board determined that the Westport Crossing Project was inconsistent with the waterfront consistency standards set forth in the Village of Pittsford Local Waterfront Revitalization Program for (hereinafter referred to as the “Planning Board Determination”); and

WHEREAS, the Planning Board has not yet issued a Findings Statement regarding the Planning Board Determination; and

WHEREAS, PCP on the one hand, and the Planning Board on the other, wish to defer litigation over any possible claims that PCP may have against the Planning Board arising from the Planning Board Determination;

WHEREAS, PCP is willing to defer commencing any litigation arising out the Planning Board Determination provided the Planning Board agrees to toll any applicable statute of limitations defense which may exist as of the Effective Date of the Tolling Agreement;

NOW, THEREFORE, in consideration of the above, PCP and the Planning Board agree as follows:

Subject to the following paragraphs, the time following the Effective Date until the termination of this Agreement (“the Tolling Time Period”) will not be included in computing the time available for PCP to commence a civil action or proceeding pursuant to any applicable statute of limitations, and any such statute of limitations shall be tolled during the Tolling Time Period. In particular, the Parties agree that the time elapsed between the Effective Date and the termination of this Tolling Agreement shall be excluded from any computation of time for purposes of any time-based defense on the basis of statute of limitations laches, estoppel, or statutes of repose or other timeliness defenses (hereinafter referred to as “the Applicable Limitations Period”).

The Planning Board will not assert the statute of limitations as a defense to or otherwise defend or oppose any civil action or proceeding that may be commenced by PCP to challenge the Planning Board Determination on the basis of the Applicable Limitations Period, but only to the extent such defense or argument relates to the Tolling Time Period.

Notwithstanding the foregoing, to the extent that any claims that PCP may attempt to assert against Planning Board were barred by any applicable statute of limitations prior to the Effective Date, this Agreement shall not revive such claims, nor shall it be construed as a waiver of the right of the Planning Board to assert the statute of limitations as a defense to such claims.

During the Tolling Time Period, PCP shall, at any time, be free to commence a civil action or proceeding as it, in its unfettered discretion, may decide. In the event that PCP shall decide to commence a civil action or proceeding it shall deliver to the Planning Board prior written notice of such intention, which notice shall be delivered to counsel for the Planning Board at least two business days before commencing such civil action or proceeding.

This Agreement does not constitute an admission or agreement on the part of the Planning Board that it is liable in any way with respect to any claim PCP may subsequently choose to assert against the Planning Board.

This Tolling Agreement shall remain in effect from the Effective Date until and through April 1, 2020 unless earlier terminated by PCP or the Planning Board at any time upon not less than thirty (30) days prior written notice.

By mutual written consent to be set forth in writing, the Parties may agree to extend this Tolling Agreement beyond the Tolling Time Period.

This Tolling Agreement constitutes the entire agreement between the Parties as to the timeliness of commencement of any civil action or proceeding referenced herein and the effect of this Tolling Agreement's terms and provisions on any timeliness defenses as referenced herein in Section 1, and may not be changed except in a written document signed on behalf of each the Parties that have executed this Tolling Agreement.

This Tolling Agreement shall be governed by the internal laws of the State of New York without taking into account its conflict of law principles.

This Tolling Agreement is intended for the exclusive benefit of the Parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

This Tolling Agreement shall be interpreted and construed according to its fair meaning and neither for nor against any Party hereto without regard to which did Party cause the same to be drafted. PCP the Planning Board each acknowledge and agree that they have had a full opportunity to have this Agreement reviewed by independent legal counsel.

Written notices shall be deemed delivered when the notice has been mailed to counsel for the other Party in a stamped envelope deposited in the United States mail at the address set forth at the end of this Agreement.

Signature on this Agreement on the lines provided below shall constitute acceptance of the terms and conditions of this Agreement. The undersigned representatives of PCP and the Planning Board each certify that he or she is fully authorized to enter into and execute this Tolling Agreement. This Tolling Agreement may be signed in counterparts. Any counterpart or other signature hereupon delivered by facsimile or by e-mail shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such Party.

Dated: April 15, 2019 which shall be the effective date

PITTSFORD CANALSIDE PROPERTIES, LLC

By: _

THE VILLAGE OF PITTSFORD PLANNING BOARD

Member Items:

- Trustee Keating reported on the status of the extension of the Village's moratorium. If the moratorium is extended, it is for procedural reasons. The extension will coordinate with the Comprehensive Plan. He also reported that the results of the Village survey will be available in the near future.
- Ms. Zoghlin will draft a letter in response to the Army Corps of Engineers memo to the Planning Board.

Minutes:

Motion: Member Vlietstra made a motion, seconded by Member Shannon, to approve the minutes from the 02.25.19 PZBA meeting.

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

Motion: Member Vlietstra made a motion, seconded by Member Lhota, to adjourn the meeting at 9:00pm.

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