

VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS
Regular Meeting – September 15, 2014 at 7:00 PM

PRESENT:

Chairperson: Remegia Mitchell
Members: Meg Rubiano
George Wallace
Jill Crooker
Joe Maxey

Attorney: Jeff Turner
Building Insp.: John Limbeck
Recording Sec: Linda Habeeb

Chairperson Mitchell called the meeting to order at 7:00 P.M.

Joseph DiProjetto, 50 State Street ~ Appeal of Code Enforcement Officer's Decision

Present: Joseph DiProjetto, Business owner; Benjamin White

SEQR: Chairperson Mitchell stated that this is a Type II SEQR Action.

The Secretary read the legal notice that was published in the September 4, 2014 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 September 15, 2014 at 7:00 pm, to consider an appeal, filed by Joseph DiProjetto, of the Building Inspector/Code Enforcement Officer's determination that a tattoo studio is not a permitted use at 50 State Street, which is located in a B-4 Zoning District."*

Discussion: Chairperson Mitchell stated that the Zoning Board of Appeals is to determine whether the proposed use of the building as a tattoo studio is permitted under the Village Code. Mr. DiProjetto explained that he considered the process of tattooing to be an art form and the business to be an artist's studio. He also pointed out that he works closely with the medical profession performing his services on cancer patients.

Mr. Limbeck stated that Village Code § 210-40-B-4 does not list a tattoo studio as an approved use. He further explained that tattoo artists are licensed by the New York State Department of Health, which also governs their practices. He stated that based on the Department of Health's definition of a tattoo studio, it is his opinion that a tattoo studio is not an artist's studio. He also noted that another factor in his denial was his determination that tattooing could not be similarly compared to a retail business or a business office.

Chairperson Mitchell explained that the Board is not determining whether tattooing is a form of art, but whether it is a permitted use according to the Village Code. Mr. Turner stated that the Board's decision should be supported by a reasonable interpretation of the language of the Code. Member Wallace stated his opinion that there is no difference between the art of tattooing and an artist's craft. Chairperson Mitchell and Member Maxey both expressed that based on the Village Code and the NYS Department of Health, tattooing is clearly not a permitted use for this location.

Motion: Chairperson Mitchell made a motion, seconded by Member Rubiano, to open the public hearing at this time.

Vote: Rubiano – yes; Mitchell – yes; Crooker – yes; Maxey – yes; Wallace - yes. Motion carried.

There was a question from a member of the audience asking if the studio would be used exclusively for medical procedures, or whether non-patients could also use the services.

Mr. DiProjetto stated that the studio would not be exclusively for medical patients.

Chairperson Mitchell noted that a letter from a business owner in the Village in support of the Code Enforcement Officer's denial was forwarded to Board members and entered into the official record.

Motion: Chairperson Mitchell made a motion, seconded by Member Maxey, to close the public hearing at this time.

Vote: Rubiano – yes; Mitchell – yes; Crooker – yes; Maxey – yes; Wallace - yes. Motion carried.

Motion: Member Rubiano made a motion, seconded by Chairperson Mitchell, to uphold the Building Inspector/Code Enforcement Officer's determination that a tattoo studio is not a permitted use at 50 State Street, which is located in a B-4 Zoning District.

Vote: Rubiano – yes; Mitchell – yes; Crooker – yes; Maxey – yes Wallace - no. Motion carried. The decision was filed in the Office of the Village Clerk on September 15, 2014.

Findings of Fact:

1. This is an appeal of the building Inspector's determination that tattoo studios are not a permitted use in the B-4 District. The applicant made no other application for interpretation of the code.

2. Village Code 210-41- A. lists allowable uses for the B-4 District stating that “Within the B-4 District, no building, structure or premises shall be used, and no building or structure shall be erected or structurally altered, except for one or more of the following uses: ...” . This statement is followed by a list of principal uses that are permitted within the B-4 District.
3. Tattoo studios are not specifically listed in the principal uses.
4. The applicant expressed the opinion that tattoo studios are a form of art studio.
5. Tattoo studios are regulated and licensed by the New York State Department of Health. Art studios and art stores, a permitted use in the B-4 district, are neither regulated nor licensed by New York State.
6. Board members found that, while tattooing may be a form of artistic expression, a tattoo studio is not an artist’s studio.

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Chairperson Mitchell stated that the Zoning Board of Appeals will adjourn the public hearing for the appeal of the Code Enforcement Officer’s determination that the final site plan submission for Westport Crossing was complete, until the October 22, 2014 PZBA Special Meeting.

Chairperson Mitchell stated that the Zoning Board of Appeals will adjourn the public hearings for the four area variances for Westport Crossing until the October 22, 2014 PZBA Special Meeting.

Chairperson Mitchell stated that the Planning Board will adjourn the public hearing for the final site plan for Westport Crossing until the October 22, 2014 PZBA Special Meeting.

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**Charlie Fox, 50 State Street ~ Site Plan**

**Present:** Charlie Fox; Greg Barkstrom

**Discussion:** Chairperson Mitchell stated that this is a continuation of an open public hearing for site plan review for 50 State Street. Mr. Barkstrom presented a site plan for 50 State Street, and addressed some of the issues that the Planning Board requested at the June meeting: turning radius for fire equipment; handicap parking; speed humps; signage; and dumpsters.

Board members expressed concerns with pedestrian safety in some parts of the area, since there are no sidewalks and no clear designation of where pedestrians can safely walk. Board members suggested adding striping or crosswalks to clearly indicate pedestrian walkways. Another safety concern discussed was traffic backing up onto State Street.

Chairperson Mitchell questioned whether the number and placement of the dumpsters was adequate for the needs of the proprietors of the businesses in the area. Various alternative locations for placement of the dumpsters were discussed. Mr. Barkstrom stated that the dumpsters will be monitored to determine if more dumpsters or more frequent pickups are required and that responsibility for managing and monitoring this will fall to the complex owners, not the individual businesses.

The Board also discussed the size of the parking spaces, and determined that the applicant will be required to obtain a variance for the size of the parking spaces. Mr. Barkstrom presented a couple of possible locations for the sign, and after some discussion, it was determined that the sign will be installed alongside the Harmony in Wood building.

Chairperson Mitchell stated that the public hearing will remain open for the applicant to modify the site plan to include: clearly marked walking lanes, number of dumpsters, location of handicap parking, and location of signage, and the applicant will submit an application to the Zoning Board for the variance for the size of the parking spaces. It was noted that this is a limited portion of the site plan and that the owners are also responsible for submitting comprehensive lighting and landscaping plans.

*Information only:*

**Seth Clark, 10 Schoen Place**

**Discussion:** Mr. Clark stated that the Lock 32 Brewing Company is proposing expansion of their Special Permit to allow the operation of a micro-brewery taproom in the building located at 10 Schoen Place. He stated that they are proposing installation of a brewing system in the loft of the existing building. He stated that this second-floor area in the building is large enough to accommodate this additional production use. He explained that in order for the business to be able to distribute beer to other establishments and sell their product to stores, they are required to obtain a micro-brewery license. He stated that the "Craft Act" mandates that some beer be produced onsite. He explained that contract brewing on a larger scale will remain offsite.

Board members questioned what quantity of beer is required to be brewed onsite. He stated that 50 barrels a year must be produced onsite, and he explained that this would be a one-barrel system, which is equal to two kegs. Chairperson Mitchell asked if there will be any odors as a result of the brewing. Mr. Clark explained that since this is a small-scale operation, the odors will be mitigated by removing the waste/processed hops from the site. He also stated that the brewing will be done once a week for up to 2 hours, and must be done during off hours. He indicated that there will be no noise associated with this operation, and there will be no extra deliveries.

**Member Items:**

**Motion:** Member Rubiano made a motion, seconded by Chairperson Mitchell, to approve the 8/25/14 minutes, as drafted.

**Vote:** Rubiano – yes; Mitchell – yes; Maxey – yes. *Motion carried.*

**Liaison Report:**

*9/15/14 PZBA meeting*

- Trustee Galli reported that the Village has hired an engineer to investigate the safety of the North Main Street bridge.

**Adjournment:** There being no further business, Chairperson Mitchell adjourned the meeting at 8:45 pm.

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Linda Habeeb, Recording Secretary