

VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS
Regular Meeting – July 20, 2015 at 7:00 PM

PRESENT:

Chairperson: Justin Vlietstra
Members: Jo Ann Shannon
Jeffrey Bove (absent)
Susan Lhota
Heather Erwin

Attorney: Jeff Turner
Mindy Zoghlin

Building Insp.: Kelly Cline
Recording Sec: Linda Habeeb

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

Conflict of Interest Disclosure

The Village Board of Trustees has passed Local Law 15, which law requires disclosure of conflicts of interest or potential conflicts of interest prior to each meeting of boards with discretionary approval authority.

- Chairperson Vlietstra disclosed that since he has publicly expressed his views about the 75 Monroe Avenue project, he will recuse himself from the discussion for that portion of the meeting due to the appearance of having a bias regarding the project.
- Member Erwin disclosed that she attended two past meetings where the 75 Monroe Avenue Project was discussed. She explained that she attended the 1/28/13 PZBA meeting where the preliminary site plan was discussed. She asked about the width of the entry and exit lanes and about the process for posting special meetings. She further stated that she also attended a Village Board meeting on 7/2/13, where she noted that there were deviations from the regulating plan and expressed concern that the meeting was scheduled at a time not conducive to full public participation. She stated that these comments do not involve the APRB Certificate of Approval, and she is confident that she will be able to decide this appeal in an unbiased manner.
- Member Shannon stated that sometime in the past, her husband had placed a small sign related to the 75 Monroe Avenue Project in her front yard, but she does not recall what the sign said or when it was placed in her yard. She stated that she is able to review the appeal in an unbiased manner.

Motion: Member Lhota made a motion, seconded by Member Erwin, confirming that she continues to function as Acting Chairperson for the Zoning Board of Appeals in regard to the application for 75 Monroe Avenue.

Vote: Shannon - yes; Lhota – yes; Erwin - yes. Motion carried. The decision was filed in the Office of the Village Clerk on July 20, 2015.

Motion: Member Lhota made a motion, seconded by Member Erwin, confirming that Peter Weishaar continues to represent the Planning Board in connection with the *Friends of Pittsford Village v Planning Board* Index # 2014-13628.

Vote: Shannon - yes; Lhota – yes; Erwin - yes. Motion carried. The decision was filed in the Office of the Village Clerk on July 20, 2015.

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**Pittsford Canalside Properties, 75 Monroe Avenue**

**Present:** Chris DiMarzo; Mark IV; Peter Vars, BME; Frank Pavia, Harris Beach

**The Secretary read the legal notice that was published in the July 9, 2015 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 July 20, 2015 at 7:00 pm, to consider an application filed by Pittsford Canalside Properties, LLC, appealing the 12/10/14 decision of the Architectural Preservation and Review Board denying the Certificate of Approval for the Westport Crossing Community located at 75 Monroe Avenue in the Village of Pittsford, pursuant to Section 7-712-a of the New York State Village Law and Section 210-113 of the Code of the Village of Pittsford.”*

**Discussion:** Ms. Lhota introduced herself and stated that she will be the Acting Chairperson of the Zoning Board of Appeals for the 75 Monroe Avenue portion of the meeting. She explained that she and Members Erwin and Shannon are all new members of the Board, and they have spent time educating themselves about the application before them and their obligations with respect to it.

She stated that the case before them involves an appeal from a decision rendered by the Architectural and Preservation Review Board. She noted that the process has continued over a period of years and has been the subject of many public hearings, decisions, and appeals. She explained that the purpose of this hearing is to consider a very limited issue: whether a Certificate of Approval should be issued for the Westport Crossing Community at 75 Monroe Avenue.

Ms. Lhota further explained that the Village of Pittsford Zoning Code prohibits the construction of any architectural feature in the Village or the issuance of any building permit in the Village without a Certificate of Approval issued by the APRB. The APRB is guided by specific standards in determining whether to issue a Certificate of Approval for new construction. Those standards are set forth in state and Village law. In this appeal, Pittsford Canalside Properties requests review of the APRB’s decision denying their application for a Certificate of Approval.

Ms. Lhota stated that the Board asks that public comments be limited to the Certificate of Approval issue. The applicant will have 15 minutes to explain why a Certificate of Approval should be granted. The APRB will also have 15 minutes to explain why it denied the applicant’s request for a Certificate of Approval. Then, the meeting will be open for public comment. Each speaker will be limited to three minutes. The applicant will have an opportunity to respond to the public comments. The Board’s role is to hear public comments and not to answer questions.

PCP

Mr. Vars presented a summary of the history of the development and review process for Westport Crossing and the current status of the project. Mr. DiMarzo stated that he is confident that their proposal meets all Village criteria. He further explained that the APRB is charged with reviewing new construction to determine whether it is consistent with the architectural styles of historic value in the applicable district. He stated that there is nothing of historical significance in the area surrounding the 75 Monroe Avenue site. He presented examples of the Canal Commercial concept and stated that multiple iterations were developed to attempt to create this concept. He concluded by stating that the key question is whether the proposed project meets the Canal Commercial concept.

Mr. Pavia thanked the Board for their time and consideration of this issue. He stated that the authority to approve the mass and scale of the project was legislatively delegated to the Board of Trustees when it adopted Article 5A of the Zoning Ordinance. Through the Special Permit resolution, the Board of Trustees has already determined that the mass and scale of the project are consistent and compatible with the Village of Pittsford.

### APRB

Mr. Turner stated that he is General Counsel to the Village of Pittsford and is representing the APRB in this matter. He also stated that he has not had any discussions regarding this issue with the Zoning Board of Appeals. He further explained that Village Code § 210-60 states that when reviewing plans for any type of construction, the APRB shall give consideration to any factors it may deem pertinent, including § 210-60(f), the compatibility of the building height, scale, mass, and bulk to adjacent and nearby buildings and the surrounding neighborhood. He stated that in 2011, the Board of Trustees solicited from the Planning Board proposed findings in support of a request for a special permit for this property. In connection with the request, the Planning Board referred the issue of mass and scale to the APRB. The APRB retained a consultant, Ted Bartlett, to assist with review of the mass and scale issue. After many meetings, plans were developed. This plan was not exactly what is before you tonight, it was a predecessor plan that formed the basis for the regulating plan for the Special Permit from the Trustees. In April 2011, the consultant determined that the mass and scale was acceptable. The APRB engaged in extensive discussions with the applicant based on difficulties some of its members were having with the mass and scale issue.

In January of 2012, the APRB voted that the project was incompatible with the mass and scale of the Village of Pittsford. Findings were sent to the Board of Trustees, who concluded the State Environmental Quality Review (SEQR) process. In their SEQR findings, the Board of Trustees stated:

“The Board of Trustees, as lead agency, believes outstanding issues relating to scale and mass can be addressed by the APRB as they review the project application for a Certificate of approval. The Lead Agency has considered those concerns, other expert input, as well as the ability of the APRB to address those issues and apply conditions as they may deem appropriate.”

Mr. Turner said his interpretation of the above statement is the Trustees were relying on the APRB to address the mass and scale of the project during their review of an application for a Certificate of Approval. Eventually the Special Permit was drafted. The then chair of the APRB and Mr. Turner, as counsel to the APRB, were given courtesy copies of the draft. The then chair of

the APRB and Mr. Turner, as counsel to the APRB pointed out to the Applicant and the Board of Trustees through their respective counsel that the membership of the APRB had not changed and had voted against the mass and scale. The APRB requested that the Special Permit could address that issue and remove it from the APRB's jurisdiction if that was the intent of the Trustees. The Trustees did not change the Special Use Permit, it was approved as drafted in that respect.

Mr. Turner referenced the 19th "whereas" paragraph of the Special Permit, and stated that it is clear that the APRB jurisdiction is unrestricted and unlimited. They are free to look at mass and scale as required by § 210-60(f). The applicant has said that both R-5 code and the Special Permit require the present mass and scale of the development. That is not true. They permit the mass and scale. All of the values in the R-5 code and special Permit are listed as maximums. The Applicant has further argued that this is a one of a kind use and it is unfair to compare disparate uses: Main Street, Business, Schoen Place, School, State Buildings. The APRB can't and will not consider the use of the building. It is the Mass and Scale compatibility of one building or group of buildings with another building or group of buildings in the surrounding neighborhood. No matter how you evaluate the mass and scale of this proposed project, it is at least twice the mass and scale of any buildings or group of buildings in the Village.

In concluding, Mr. Turner pointed out that the APRB Code allows for relief on the ground of hardship, if the developers need this project to be this large in order to earn a reasonable return on their investment.

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

**Vote: Shannon - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on July 20, 2015.

The following people spoke:

**Michael Trojian, 31 West Jefferson Road**, stated that he is in support of the project, and stated his opinion that it is compatible with the mass and scale of other large buildings in the Village.

**June Reeves, Heatherhearst Drive** ~ stated that she supports the APRB's decision to deny the Certificate of Approval for the project. She agreed that it did not fit with the character of the Village. She expressed concern about what the Village would look like if developers were allowed to come in and put up projects based on how much income they can generate for themselves.

**Marty Martina, Locust Street** ~ stated that he had appeared before the APRB 7 times during renovations on his house for a 140sqft addition. His application was denied for size and consistency; it was determined to be out of scope with surrounding areas of the Village. He stated he complied and modified his plans to meet the scale and size required by the APRB. He explained that everyone in the Village should be held to the same standard and should comply with Village law. The developer isn't subject to any different review standards than he. He stated that he rides his bicycle along the Canal 50 miles in either direction and there is nothing that looks like the development proposed for 75 Monroe Avenue.

**Wally Morse, 12 Sutherland Street**, stated that he is pleased that the developer invested in the property for a residential use. He pointed out that it will create access to the other side of the canal and will be a positive addition to the Village.

**John Limbeck, 62 State Street**, stated that several Boards had jurisdiction of this project. The Board of Trustees issued a Special Permit and issued a SEQR Negative Declaration for the project.

**George Wallace, 7 Village Grove**, stated that in 2012, the Board of Trustees approved the R-5 zoning and the developers submitted plans that met those requirements. He suggested that the Board render a fair and reasonable decision.

**Lili Lanphear, 14 Jackson Park** ~ Stated that she would like some clarification as to the Zoning Board of Appeals' role in this process.

**Mike Reynolds, Church Street**, stated that the letter from APRB consultant Ted Bartlett dated 12/2/13 indicated that his opinion was that the plan is inappropriate for the site. He submitted documents for the record to further his opposition to the project.

**Frank Pavia** stated that the 12/2/13 consultant's letter was not formally made a part of the record.

**Motion:** Member Lhota made a motion, seconded by Member Erwin, to close the public hearing at this time, and for the public record to remain open until August 10<sup>th</sup> for public comment and this matter will be adjourned to the next regular meeting to be held on August 17<sup>th</sup>.

**Vote: Shannon - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on July 20, 2015.

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### **Buffalo Bills, Inc., Sutherland High School, Temporary Zoning Permit**

**The Secretary read the legal notice that was published in the July 9, 2015 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, on Monday July 20, 2015 at 7:00 pm at the Village Hall, 21 North Main Street, Pittsford, NY, to consider an application made by the Buffalo Bills, Inc., for a temporary zoning permit to use the Sutherland High School parking lot for vehicle parking for attendees of the Buffalo Bills training camp during the 2015 season."*

**SEQR:** This is a Type II SEQR Action under SEQR § 617.5(c)(15).

**Discussion:** The documentation submitted by the applicant indicates that the Buffalo Bills are proposing to utilize the Sutherland High School parking lot in the same manner that was approved by the Zoning Board in 2014. The Buffalo Bills will provide shuttle buses to transport patrons to and from the satellite parking lots and training camp. The Bills anticipate that the Sutherland High School parking lot will be serviced by eight to twelve shuttle buses this year. The buses will run at staggered times, about fifteen minutes apart. The application includes the route the shuttle buses will take to and from the Sutherland High School parking lot and Training Camp. There will be at least one parking attendant at the Sutherland High School parking lot during each day of the lot's use. In addition, during each night practice, there will be an additional parking attendant working to help with the expected increase in attendance. The parking attendants will help direct traffic and ensure that the parking process goes smoothly. The Bills also provide public toilets at the Sutherland High School parking lot, which are emptied and cleaned on a daily basis by a company hired by the Bills.

The Building Inspector reported that there were no problems or issues with this proposal in past years. She also indicated that the Town of Pittsford has approved this use contingent upon the Village's granting of a Temporary Permit.

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

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

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to close the public hearing, as there was no one wishing to speak for or against this application.

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

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to approve the application for a temporary permit, with the following conditions:

1. The return route of the buses will follow Main Street to Jefferson Road to Sutherland Street.
2. The public toilets will be located on the westernmost portion of the parking lot, farthest from the street.
3. The applicant will continue to direct traffic away from the residential area of Sutherland Street in their printed promotional materials and on their website.
4. The applicant will provide signage to direct traffic to exit onto Jefferson Road.
5. The applicant will instruct the parking attendants to direct patrons to exit on Jefferson Road.

**Vote: Shannon - yes; Vlietstra - yes; Lhota - yes; Erwin - yes. Motion carried. The decision was filed in the Office of the Village Clerk on July 20, 2015.**

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**Lisa Hughes, 11 E. Jefferson Circle ~ Area variance**

Present: Lisa Hughes

**The Secretary read the legal notice that was published in the July 2, 2015 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 July 20, 2015 at 7:00 pm to consider an application made by Lisa Hughes, owner of property located at 11 E. Jefferson Circle, for an area variance for relief from Village Code § 210-13.*

**SEQR:** This is a Type II SEQR Action under SEQR § 617.5(c)(13)

**Discussion:** The applicant is proposing expanding a portion of their driveway to a width of 20 feet. The driveway is currently 9'3" wide. Extra width will allow for a car to be pulled off so that they have the ability to get a car out of the garage. This will require a variance because the driveway for this single-car garage will be wider than the maximum driveway width of 10 feet permitted by the Village Code for a single-car garage. The Village Engineer has reviewed the proposal and visited the site and determined that there are no drainage issues involved. They

applicant stated that they are also proposing installing a stone retaining wall to accommodate the side slope of their front yard.

The property is narrow and has no room to expand the garage to a 2-car garage and cannot support a new paved parking area adjacent to the garage. The front yard is a hill that slopes down to both the driveway and the road.

Several other properties on E. Jefferson Circle have driveways similar to what is proposed by the applicant but they appear to be less than 20ft wide. Chairperson Vlietstra stated that he has found precedent for authorizing an area variance for an 18ft wide driveway but not 20ft and asked the applicant if they can reduce the width to 16ft or 18ft.

The applicant stated that they carefully measured the dimensions needed to park an additional car and also looked at other driveways on the street when making their proposal. The primary reason why a narrower driveway will not work is because of the slope of their front yard. They have to build a short retaining wall adjacent to the driveway because of the side slope. This wall would prevent them from opening the passenger car door if the driveway was narrower. The width is also needed to accommodate snow removal in the winter.

Chairperson Vlietstra stated he agreed with the concern about the hill. The other properties on the street that had apparently narrower driveways did not have the issue of a side slope and retaining wall that is on this property.

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

**Vote: Shannon - yes; Vlietstra - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on July 20, 2015.

The following person spoke:

**Susan Judson, 15 East Jefferson Circle,** stated that she is a neighbor of the applicant and she is of the opinion that this proposal is consistent with other driveways on the street and will not be detrimental to the neighborhood.

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

**Vote: Shannon - yes; Vlietstra - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on July 20, 2015.

**Motion:** Member Lhota made a motion, seconded by Member Vlietstra, to approve the application for an area variance for expansion of the driveway located at 11 East Jefferson Circle, as submitted.

**Vote: Shannon - yes; Vlietstra - yes; Lhota - yes; Erwin - yes. Motion carried. The decision was filed in the Office of the Village Clerk on July 20, 2015.**

**Findings of Fact:**

1. The applicants are proposing to expand their driveway to park additional cars.
2. The property has a side slope and a steep slope in the front yard.
3. The side slope prevents them from opening car doors.
4. The width of the property prevents them from adding on to the other side of the driveway.
5. The Village Engineer determined that there are no drainage problems with this proposal.
6. 20ft driveway width is permitted for two car garages.
7. Other properties on the street have similar driveways.
8. There is no reasonable alternative to create additional off-street parking.
9. The nature of the hill on the property makes a driveway narrower than 20ft impractical.

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Roger and Elizabeth Powers – Appeal of Building Inspector’s decision

Present: Roger and Elizabeth Powers; John Mancuso, Harris Beach

Discussion: In April of 2014, Mr. Powers requested a building permit to construct a fence on the portion of Powers Farm that is located in the Village. Mr. Powers described the fence as an agricultural fence. In May of 2014, Mr. Limbeck, then Building Inspector/Code Enforcement Officer for the Village, made a determination that the fence that Mr. Powers was planning on installing was not an agricultural fence, and therefore would need approval from the Zoning Board of Appeals and the APRB. A letter from Mr. Limbeck stated a primary reason for this determination is the proposed fence was on one border of the property and did not contain a pasture and barn for the livestock. Mr. Powers moved forward with the installation of the fence. Mr. Limbeck issued a Stop Work Order for the fence because it was not an agricultural fence and did not get the necessary approvals from the Zoning Board of Appeals and APRB.

Attorney Jeff Turner explained that the time to appeal the Building Inspector’s decision that this was not an agricultural fence was 60 days after the determination was made. The issue that is before the Zoning Board of Appeals whether or not Mr. Limbeck acted appropriately and reasonably in issuing the Stop Work Order.

Mr. Mancuso stated that Mr. Powers’ contention is that the proposed fence is exempt from approval and permit requirements by the Village Code, and therefore, the Stop Work Order should be rescinded by the Zoning Board of Appeals. He cited Village Code § 98-1(G), “agricultural fences are exempt from all approval and permit requirements.” He stated that Powers Farms is located in a recognized agricultural district and is engaged in an active farming operation for the production of crops and livestock.

Mr. Powers stated that installation of the fence is essential to his business for security and safety reasons. He explained that the fence will protect his livestock and crops and will create a buffer from the general public. He further stated that there is a serious liability issue if the area is not enclosed. Trespassers are a problem on a daily basis. They have fertilizers and other chemicals that are a target for theft. Vandalism has been a real problem and they have to constantly keep an eye on their farm equipment and take care to store it in a visible location. Problems with trespassers are increasing, they have even watched families with children climb over fences and go to their barn. They have found two dead bodies on their property in recent years. A fence is essential for their farm operation to continue. The fence needs to be a substantial barrier against trespassers, Mr. Powers stated he can still jump a 4ft wire fence. The proposed 6ft chain-link fence without a top rail is essential to contain livestock and keep out trespassers.

Board members discussed whether the fence was a complete enclosure or a boundary line fence. They also discussed other types of fences more commonly used for farming operations that are substantially cheaper than the proposed chain-link fence. Mr. Powers stated that the fence will eventually enclose the property. This is just one phase of fence construction. The fence is very expensive and will eventually surround the property but they cannot afford to construct it all at once. He did not feel other fence types were adequate for their needs.

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

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

The following people spoke:

Kelly Cline, Building Inspector, stated that she wanted to declare that Mr. & Mrs. Powers are personal friends of hers, but that she is capable of reviewing the fence proposal in an unbiased manner. She stated that her interpretation of the Code is that the fence is an agricultural fence for which no approvals are required. She also noted that the majority of the Powers Farm is located in the Town of Pittsford, and the town has no restrictions on agricultural fences.

John Limbeck, Former Village Building Inspector/Code Enforcement Officer, stated that when he walked the property with Mr. Powers, he had the distinct impression that the fence was being installed to prevent neighbors from trespassing on his property. The existing livestock were already contained by a fence. He further noted that at the time of his meeting with Mr. Powers, they did not discuss containing two dozen steers. Mr. Limbeck said that if he had known at the time that the fence installation was intended to be part of a sequential operation to enclose the property, he would not have issued the Stop Work Order.

Jeffrey Mason, State Street, stated that he supports installing the fence to secure the area.

Bob Farnum stated that he supports building the fence.

Bonnie Salem pointed out that there should be some assurance that the full plan to contain the property with a fence will occur in a reasonable amount of time.

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

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

The Board discussed the fact that there was new information regarding the fence in that it was intended by the applicant that the proposed fence was to become a part of a fence, which together with natural features of the Powers farm, would form a barrier to keep animals on the farm and keep trespassers out of the farm. The Board referred this new information to the Building Inspector for review and opinion. The Building Inspector indicated that, based upon this new information, and further, based upon the increased need for security faced by farming operations to secure chemicals and fertilizers that could be used to create explosive and incendiary devices, the proposed fence is an agricultural fence, and therefore, the stop work order would be lifted.

Minutes:

Motion: Chairperson Vlietstra made a motion, seconded by Member Shannon, to approve the 6/15/15 minutes, as drafted.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Shannon, to approve the 6/23/15 minutes, as drafted.

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

Motion: Member Lhota made a motion, seconded by Member Shannon, to approve the 6/29/15 minutes, as drafted.

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

Adjournment: There being no further business, Chairperson Vlietstra adjourned the meeting at 10:00 pm.

Linda Habeeb, Recording Secretary

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