

**VILLAGE OF PITTSFORD**  
**PLANNING AND ZONING BOARD OF APPEALS**  
Regular Meeting – September 28, 2015 at 7:00 PM

**PRESENT:**

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

Attorney: Mindy Zoghlin  
Recording Sec: Linda Habeeb

Chairperson Vlietstra called the meeting to order at 7:00 P.M. He stated that there are two issues on the agenda for this meeting: Pittsford Canalside Properties' Appeal of a decision rendered by the Architectural and Preservation Review Board to deny a Certificate of Approval for the Westport Crossing Community located at 75 Monroe Avenue, and an appeal and site plan review for Northfield Common, located at 50 State Street.

**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 and Member Bove disclosed that since they had publicly expressed opinions about the 75 Monroe Avenue project, they will recuse themselves from the discussion for that portion of the meeting, due to the appearance of having a bias regarding the project.

**Pittsford Canalside Properties, LLC, 75 Monroe Avenue**

**Present:** Chris DiMarzo, Donald Riley, Pittsford Canalside Properties, LLC; Roger E. Brown, Barkstrom & Lacroix Architects

**The Secretary read the legal notice that was published in the September 17, 2015 edition of the Brighton Pittsford Post:** *“PLEASE TAKE NOTICE that the Village of Pittsford Zoning Board of Appeals will hold a public hearing on Monday, September 28, 2015 at 7:00 p.m. to rehear Pittsford Canalside Properties LLC’s appeal from the 12/10/2014 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. Persons wishing to appear at such hearing may do so in person or by an attorney or other representative. Written comments will also be entertained. Anyone requiring special accommodations to participate in the hearing should notify the village clerk at least three business days prior to the hearing.”*

The legal notice was also published in the Democrat and Chronicle newspaper, posted on the Village website, posted in the Village Hall, mailed to homeowners of properties located within 300 feet of the subject property, and included in the Village email newsletter.

**Discussion:** Member Lhota stated that she is continuing as Acting Chairperson of the Zoning Board of Appeals for the 75 Monroe Avenue portion of the meeting.

Member Lhota stated that the Village of Pittsford Code of Ethics requires all Zoning Board of Appeals meetings to begin with disclosure of conflicts of interest, potential conflicts of interest, and circumstances where there is a potential appearance of impropriety. She then asked if any members wished to make a disclosure at this time.

Member Lhota stated that at a Special Meeting held on September 15, 2015, the Zoning Board of Appeals passed a motion to reopen the public hearing on PCP's appeal from the APRB determination of December 10, 2014, and set the rehearing of this matter for this meeting. She stated that the Board has previously reviewed ZBA Resolution 2015-1, and asked whether there was any further discussion by the Board regarding this Resolution. Board members stated that there was no further discussion.

**Motion:** Member Lhota made a motion, seconded by Member Shannon, to adopt ZBA Resolution 2015-1.

**Vote: Shannon - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on September 28, 2015.

Member Lhota stated that the Board voted to reopen the public hearing specifically to receive public comments on the two ex parte communications that were disclosed at the September 15<sup>th</sup> Special Meeting.

Ms. Lhota explained that in one of the ex parte communications, the Village Mayor asked that she read a memorandum from the Village Board of Trustees to the ZBA dated July 12, 2015 into the public record. The July 12<sup>th</sup> memo had already been made a matter of public record and was sent to the attorneys for Pittsford Canalside Properties (PCP) on August 12, 2015. By letter dated August 14, 2015, PCP submitted comments to the ZBA responding to the July 12<sup>th</sup> memorandum. In the other ex parte communication, one of PCP's principals, Anthony DiMarzo, approached another Board member and made statements to her about his dissatisfaction over the number of public meetings PCP attended prior to the APRB appeal and accusing the ZBA of being hand-picked by the Mayor specifically to deny the PCP appeal.

Member Lhota stated that the Board has reopened the public hearing to accept public comment on these two ex parte communications. The Board will also reconsider all the comments received in connection with the July 20<sup>th</sup> and August 17<sup>th</sup> meetings, so it will not be necessary to reiterate those comments at this meeting.

**Motion:** Member Lhota made a motion, seconded by Member Shannon, to reopen the public hearing on PCP's appeal from the APRB determination of December 10, 2014 denying PCP's application for a Certificate of Approval.

**Vote: Shannon - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on September 28, 2015.

Member Lhota then asked if PCP representatives wished to comment about the ex parte communications, and the following people spoke:

**Don Riley**, Mark IV Enterprises, stated that a communication to a Board Member from the Village Mayor is not equivalent to a communication from a private citizen. The Mayor is the Chief Executive of this community and has the power to influence, whereas a comment from a citizen, Mr. DiMarzo, has no power or influence behind it. He requested that comments about Mr. DiMarzo's communication be stricken from the record.

Mr. Riley also commented on the findings of fact adopted by the Board in support of their decision. He stated he was in disagreement with the suggestion that the development should mimic Schoen Place, since portions of this area consist of run-down old metal buildings with no historic significance. He stated that the Board also did not include in the findings the large structure that is the Library that is located in the center of the Village. He suggested that the Board included only those structures that supported their decision.

He further stated that PCP worked with the APRB, the Mayor, multiple architects, and consultants to develop the project that was presented to the APRB. He also suggested that when the Board considered volumetrics, they should have also considered the canal and the bridge, which are substantial, significant, historical elements of the Village. He also pointed out that the land was originally part of the Town of Pittsford and was annexed to the Village of Pittsford.

**Chris DiMarzo** stated that **Roger Brown** is an expert in local architecture, as well as an expert in the Village of Pittsford. He was instrumental in the development of the Village's 1991 Comprehensive Plan.

At this point, Member Lhota reminded Mr. Brown that his comments should relate only to the ex parte communications that are the reason for rehearing this matter.

Mr. Brown stated that he has been involved since the beginning of the Westport Crossing development. He explained that the public realm or village streets along the canal in combination with the architecture are what make the village a pleasant walkable entity. He stated that this concept has been maintained throughout the entire process. He also stated that there are many valid points in the Board's findings that can be modified on the current plans. He offered to show the Board three-dimensional versions of the plans that better show the public realm. He stated that he has drawings that address some of the issues brought up by the board. Mr. DiMarzo suggested that the public hearing remain open so that the applicants can meet with the board members and present revised plans that address these issues.

Ms. Zoghlin stated that the acting chairperson asked her to respond for the Board. She explained that the Board does not have the authority to review a new application. The Zoning Board of Appeals can only review the decision made by the APRB in December of 2014 based upon the application that was before the APRB. They do not have original jurisdiction over a new application. Mr. DiMarzo stated that this would not be a new application, it would be a revised version of the current application. MS. Zoghlin asked PCP whether it was able to submit a legal argument as to ZBA jurisdiction together with the revised application they ask the ZBA to consider no later than October 9, 2015. If it is within their jurisdiction, the Board may be able to consider a revised application. Chris DiMarzo stated that he could submit the requested documents by October 9, 2015..

**Motion:** Member Lhota made a motion, seconded by Member Erwin, to keep the public hearing on the rehearing open until the next regularly scheduled meeting on October 19, 2015, and directed PCP to submit the following to the ZBA 10 days prior to the meeting: the proposed revised plans and drawings that they want the ZBA to consider, along with legal argument as to the ZBA's jurisdiction to consider the proposed revised plans and drawings.

**Vote: Shannon - yes; Lhota - yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on September 28, 2015.

- A Village resident, Marti Eggers, commented that the key issues are the mass and volume of the proposed project.

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### **Northfield Common, 50 State Street ~ Appeal of determination**

**Present:** Richard Fox, Property owner, Greg Barkstrom, Director of Real Estate; Donald Young, Boylan Code, Attorneys at Law

**The Secretary read the legal notice that was published in the September 10, 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 September 28, 2015 at 7:00 pm, to consider an application filed by Boylan Code LLP, appealing the May 14, 2015 decision of Village Mayor Robert C. Corby rejecting the Special Permit Application of Mark Chiarenza, dated April, 24, 2015."*

**Discussion:** Chairperson Vlietstra disclosed that he and Member Erwin participated in a walk-through of the site with the Property Manager, the applicant's architect, the Village Engineer, and the Village's Landscape Architect. He further stated that the purpose of this was to view the site. There was not a quorum of board members. Notes from this site visit will be filed in the Office of the Village Clerk.

Chairperson Vlietstra explained that this appeal was filed on July 10, 2015, and involves an application submitted to the Village Clerk for a special permit to operate a restaurant in a building located at 50 State Street. The applicant received correspondence from Mayor Corby, dated May 14, 2015, stating that the Village could not accept the application because the property is in violation, based on the determination of the Building Inspector, made on August 11, 2014, that in creating a new parking and loading facility, the owner of the property is required to comply with Village Code § 210-81. The Mayor's letter states that Village has a policy that additional permits and approvals cannot be issued for properties that are not in compliance with the Code, Rules, and Regulations of the Village.

On September 24, 2015, Village Attorney, Jeff Turner, submitted a letter to the Board regarding this matter. The letter stated that pursuant to NYS Village Law 4-400(1)(b), Village Mayor Robert Corby has the responsibility "to provide for the enforcement of all Local Laws, Rules, and Regulations and to cause all violations thereof to be prosecuted." The letter further stated that the Mayor is not an "administrative official" whose decisions can be appealed to the ZBA pursuant to New York State Village Law § 7-712-a.

Mr. Young stated that the ZBA's jurisdiction is clearly set forth in the Village Code at § 210-133(B)(1), which provides that the ZBA shall hear and decide appeals "from a decision by an

administrative official to decide any question involving the interpretation of any provision of this chapter.” The Mayor, not the Board, nor individual trustees, has the power to supervise the day-to-day activities of the Clerk. The Clerk referred the application to the Mayor, and deferred to his administrative authority. He further stated that the ZBA’s authority to hear this appeal is clear: the Mayor, acting as an administrative official in an area typically administered by the Village Clerk, refused to accept the application and place it on the agenda for a meeting of the Board of Trustees. The Mayor’s membership on the Village Board of Trustees, the legislative body of the Village, does not preclude his ability to act as an administrative official. The New York Attorney General has formally recognized this distinction, providing that while the Mayor is one member of a five-member Village Board of Trustees, the Mayor is also an administrative official, apart from the Board of Trustees.

The Board requested their counsel’s advice regarding this issue. Ms. Zoghlin stated that the Mayor did not address whether the application was legally sufficient, he made a determination that the application could not be considered because of alleged outstanding zoning violations with respect to the property. She further stated that in making that determination, he was not acting in a supervisory capacity, he was acting as the Mayor, and he made a determination as Mayor, not as supervisor of the Village Clerk. If the argument is that he failed to perform a nondiscretionary act, which was failing to refer a sufficient application to the Board of Trustees, then the remedy is in the nature of mandamus. This Board does not have the authority to direct the Mayor to do anything with an application.

Mr. Young stated that they are not asking the Board to direct the Mayor to do anything with the application, but that they are asking the Board to review the determination and make substantive findings that the property is in violation under the Zoning Code, and that there is a policy of the Village not to accept those types of applications. To say that the Mayor does not act in an administrative capacity is incorrect. Village law § 4-400 sets forth numerous examples of how Mayors act in an administrative capacity. The only issue involved in this argument is whether this Board has the authority to hear this appeal. There was a substantive decision made, with findings, that this property was in violation of the Code and that the Village has a policy that prevents the application from being forwarded to the Board.

Ms. Zoghlin stated that her recommendation to the Board is to find that this Board lacks the authority to hear the appeal.

Chairperson Vlietstra stated that the most common appeals that come to the Zoning Board of Appeals are appeals from a decision of the Building Inspector such as a denial of a building permit. In this case, the Board is hearing an appeal of a decision of the Mayor, which is an unusual situation. He stated that the Board’s attorney has advised that the Board does not have jurisdiction to hear this appeal.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to pass Resolution 2015-2 that the Board does not have jurisdiction to hear this appeal, and the appeal is hereby denied. SEQR and County Planning referral do not apply.

**Vote: Shannon - yes; Vlietstra – yes; Lhota – yes; Bove – yes; Erwin - yes. Motion carried.** The decision was filed in the Office of the Village Clerk on September 28, 2015.

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**Northfield Common, 50 State Street ~ Site plan review**

**Present:** Richard Fox, Property owner; Greg Barkstrom, Director of Real Estate; Donald Young, Boylan Code, Attorneys at Law

**Discussion:** Chairperson Vlietstra stated that the Northfield Common site is located at 50 State Street. He explained that there has been a lengthy debate regarding this project. In the spring of 2014, the parking lot was restriped, which created additional parking spaces. This change removed a fire lane, so fire trucks were no longer able to access the site and service buildings at the site. The property owner was advised to go before the Planning Board for site plan review to reconfigure the parking lot in compliance with the Fire Code. In June of 2014, the Planning Board had its initial review of the site plan, and on October 20, 2014, the Planning Board granted preliminary site plan approval on the portion of the modified site plan dated September 19, 2014 regarding parking lot striping in a new configuration that was compliant with Fire Code regulations. On October 20, 2014, the Planning Board also approved the location of the dumpsters. At the time of these approvals, it was made clear to the applicant that there were other outstanding items that needed to be addressed, including drainage, lighting, and landscaping. Chairperson Vlietstra stated that the Board is eager to work with the applicant on these outstanding issues.

He further stated that as was previously mentioned, he and Member Erwin participated in a walk-through of the site with the property manager, architect, and Village consultants, and at the time, the applicant was encouraged to submit updated plans for the Board to review at this meeting. He stated that the Board has received a lighting plan, a landscaping plan, both dated September 21<sup>st</sup> and a contour plan, dated September 9<sup>th</sup>. He stated that, at this point, the application has not been designated as complete. He referred to communications from the former Building Inspector on March 3<sup>rd</sup> of 2015 that informed the applicants of the application requirements that needed to be met.

Chairperson Vlietstra stated that as was indicated by the former Building Inspector's March 3, 2015 letter, the Village requires plans that have been stamped by properly licensed professionals. He explained that it is a felony for the Board to review plans that haven't been stamped by a properly credentialed professional. It appears that the plans submitted in September 2015 are not stamped by properly licensed professionals. The landscape plan needs to be stamped by a landscape architect. The drainage plan needs to be stamped by an engineer or a landscape architect if they are permitted to do so. He stated that the plans were submitted the previous week, and the application has not been designated as complete. The Village Engineer, the Building Inspector, and Board members have not yet had the opportunity to review these plans. He also informed the applicant that the lighting plan will need to be approved by the Village's Architectural and Preservation Review Board. He suggested that they go before the APRB on an informational basis to find out what type of lighting fixtures would be appropriate.

Chairperson Vlietstra reiterated that the Board is eager to move forward with site plan review when the required plans are submitted. He further stated that the Board is willing to hold a special meeting for this application, if needed. He also noted that these plans will have to be referred to the County Planning Board, and since the property is located within the Local Waterfront Overlay District (LWOD), it will need to be reviewed to assure that it is compliant with the Village Waterfront Consistency Law. He also stated that there are significant issues regarding the Fire Department concerns about the striping of the parking lot. Since the Board has already granted permission for the striping pattern, the applicants are encouraged to restripe the lot as soon as possible so it will be compatible with the Fire Department's regulations.

Mr. Fox stated that when he bought the property, he was issued a letter of zoning compliance. He questioned the reason that the original letter indicating compliance was issued if the property is not now deemed to be in compliance. He stated that he would not have purchased the property if he had known that he couldn't rely on the letter of zoning compliance. He stated that he has made a number of improvements on the property. He stated that the recommendations from the Village's landscape architect will significantly alter the parking and loading plan that was approved by the Planning Board.

Chairperson Vlietstra stated that modifications were made to the property after the compliance letter was issued, and the Village Code specifies that changes to parking lot configurations in commercial districts require site plan review. The Building Inspector has already determined that the changes to the parking lot constitute a new parking and loading facility which requires site plan review by the Planning Board. Additionally, changes to landscaping in a commercial district also require site plan review. A large tree was recently removed from the center of the parking lot. He repeated that they need to submit a complete application for site plan review.

Mr. Barkstrom questioned whether the applicants are required to bring the drainage into compliance with Village Code. Mr. Young stated that it is not feasible to re-design the whole site to come into drainage compliance. He stated that the property is a pre-existing non-conforming use. Mr. Young stated that they are not proposing changing the property, they are proposing using the property in the same way it has been used for decades. He said that the type of site plan review that is being discussed is the type of comprehensive site plan review that would be required for a new development. Mr. Fox requested that they be allowed to complete the paving of the property. Mr. Vlietstra stated that he first needs to submit a full complete site plan for review.

- Art Piers, Village resident, stated that most municipalities require submittal of a complete set of plans, especially when there is excavation involved. The Village Planning Board cannot make a proper determination without the plans.
- A Northfield Common business owner expressed his frustration with the lack of communication from Mr. Fox about current paving and striping activities.

Chairperson Vlietstra stated that the Board has made it very clear what is required of the applicants in order to move the process forward. He thanked them for their efforts in submitting the initial drawings, which will be the basis for future review. He said the Board will follow up with more communications.

**Minutes:**

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to approve the 7/20/15 minutes, as revised.

**Vote: Shannon - yes; Vlietstra - yes; Lhota - yes; Bove - abstain; Erwin - yes. Motion carried.**  
The decision was filed in the Office of the Village Clerk on September 28, 2015.  
**Motion carried.**

**Adjournment:** There being no further business, Chairperson Vlietstra adjourned the meeting at 9:30 pm.

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Linda Habeeb, Recording Secretary

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**RESOLUTION 2015-1**  
**Village of Pittsford Zoning Board of Appeals**

At a regular meeting of the Village of Pittsford Zoning Board of Appeals held at the Village hall on the 28<sup>th</sup> day of September 2015 at 7:00 p.m. The meeting was called to order by Justin Vliestra and upon roll being called, the following were present:

**PRESENT:** Justin Vliestra  
Jeffrey Bove  
Heather Erwin  
Susan Lhota  
JoAnne Shannon

**ABSENT:** None.

Members Justin Vliestra and Jeffrey Bove recused themselves on the basis of conflict of interest.

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

**WHEREAS,** Pittsford Canalside Properties, LLC (“PCP”) applied to the village Architectural Preservation and Review Board (“APRB”) for a Certificate of Approval on March 21, 2013, and

**WHEREAS,** The APRB conducted informational meetings regarding PCP’s application on April 1, 2013 and November 3, 2014,

**WHEREAS,** The APRB considered PCP’s application at public meetings conducted on December 1, 2014 and December 10, 2014, and

**WHEREAS,** The APRB denied PCP’s application for a Certificate of Approval on December 10, 2014, and

**WHEREAS,** PCP appealed the APRB decision on December 11, 2014, and

**WHEREAS,** By Order and Judgment dated March 5, 2015, the Monroe County Supreme Court, Honorable John M. Ark presiding:

1. decreed that PCP properly and timely filed the APRB Appeal Determination on December 11, 2014 and that the ZBA has jurisdiction to hear the appeal;
2. directed the ZBA to accept the APRB Appeal application, issue public notice, schedule a hearing and make a determination on the APRB in accordance with NY Village Law section 7-712-a;
3. decreed that the ZBA may not reject or deny the relief requested in the APRB Appeal on the grounds that (i) it is incomplete as

filed on December 11, 2014; or (ii) that ZBA lacks jurisdiction to hear the APRB Appeal as a result on the adoption of Local Law No. 17 of 2014.

*Pittsford Canalside Properties, LLC v. Village of Pittsford Zoning Board of Appeals et al* (Index No. 2015-280) (the “Order and Judgment”), and

WHEREAS, on June 17, 2015 the APRB adopted Findings of Fact in support of its December 10, 2014 decision denying PCP’s application for a Certificate of Approval, and

WHEREAS, the ZBA held a public hearing, duly published and posted on July 20, 2015, and

WHEREAS, at the public hearing all who desired to be heard were heard and their testimony recorded, and

WHEREAS, at the conclusion of the public hearing the ZBA held closed the public hearing and left the public comment period open until August 10, 2015, and

WHEREAS, on August 10<sup>th</sup> the Village Board asked of an extension until the end of the day on Wednesday August 12 to submit comment, and

WHEREAS, THE ZBA granted the Village Board an extension of time to August 12, 2015 to submit comment, and

WHEREAS, the Village Board submitted comments on August 12<sup>th</sup>, and

WHEREAS, PCP submitted response to comments on August 14<sup>th</sup>, and

WHEREAS, the ZBA held a regular meeting, duly published and posted on August 17, 2015, and

WHEREAS, at the regular meeting of August 17, 2015, the ZBA unanimously passed the following motions:

1. to grant the Village Board an extension of time to August 12 to submit public comments in connection with this matter and to grant the applicant an extension of time to August 14 to respond to any public comments.
2. to find that PCP’s application for a Certificate of Approval is complete.
3. to consider that PCP’s application is one “to decide any question involving the interpretation of the Zoning Code” and that the ZBA may interpret whether the APRB had the power to deny PCP’s application for a Certificate of Approval based on mass and scale.
4. to find that the APRB properly considered mass and scale in connection with PCP’s application for a Certificate of Approval.

5. to find that the ZBA may consider mass and scale in connection with PCP's appeal of the APRB decision on its application for a Certificate of Approval.
6. to affirm the APRB decision denying PCP's application for a Certificate of Approval for 75 Monroe Avenue.
7. to deny PCP's application for a certificate of approval.
8. to disapprove the plans for the Westport project as described in the BSE Building elevations dated November 29, 2014; BME final site plans dated July 3, 2015; and the BME final landscape plans dated July 7, 2015.

(the "August 17<sup>th</sup> motions")

WHEREAS, the ZBA held a Special Meeting, duly published and posted on September 15, 2015 (the "Special Meeting"), and

WHEREAS, at the Special Meeting this Board unanimously passed a motion adopting written Findings in support of the August 17<sup>th</sup> Motions concerning PCP's appeal from the APRB determination of December 10, 2014 (the "Findings"), a copy of which is attached hereto and incorporated herein (a "September 15<sup>th</sup> Motion"), and

WHEREAS, at the Special meeting two Board members disclosed *ex parte* communications that occurred at the August 17, 2015 meeting, and

WHEREAS, at the Special Meeting this Board unanimously passed a motion to reopen the public hearing on PCP's appeal from the APRB determination of December 10, 2014 (a "September 15<sup>th</sup> Motion"),

**NOW THEREFORE, IT IS RESOLVED** as follows:

1. Because the APRB was an involved agency and the project was a Type I action requiring coordinated review, the negative declaration is binding on the APRB and on the ZBA in this appeal. No further SEQRA review is required.
2. The issues raised in this appeal involve architectural review and interpretation of zoning ordinance provisions and are therefore exempt from GML 239-m review.
3. The August 17<sup>th</sup> Motions are in all respects adopted, ratified and confirmed.
4. The September 15<sup>th</sup> Motions are in all respects adopted, ratified and confirmed.

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

	Yes	No	Abstain
Justin Vliestra	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jeffrey Bove	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heather Erwin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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"/>

Dated: September 28, 2015  
Pittsford, New York

By order of the Village of Pittsford Zoning Board of Appeals



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Susan Lhota, Acting Chair

**RESOLUTION 2015-2**  
**Village of Pittsford Zoning Board of Appeals**

At a regular meeting of the Village of Pittsford Zoning Board of Appeals held at the Village hall on the 28<sup>th</sup> day of September 2015 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  
Jeffrey Bove  
Heather Erwin  
Susan Lhota  
JoAnne Shannon

**ABSENT:** None.

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

**WHEREAS**, the Village of Pittsford Zoning Board of Appeals received an application from Northfield Commons Holdings LLC appealing a letter from Mayor Robert Corby dated May 14, 2015 stating that the Village cannot accept a special permit application submitted by the applicant's proposed tenant, Mark Chiarenza, and

**WHEREAS**, in connection with this application, the Village of Pittsford Zoning Board of Appeals received a letter from Jeffrey Turner (Village General Counsel) arguing that the Board lacked jurisdiction to hear the appeal based on New York Village Law sections 4-400(1)(b); 7-712-a; *Katz v. Board of Appeals of Village of Kings Point*, 21 AD2d 693 (2d Dept. 1964) and *Iacone v. Building Dept. of Oyster Bay Cove Village*, 32 AD3d 1026 (2d Dept. 2006), and

**WHEREAS**, the applicant's attorney submitted a letter dated September 28, 2015 disputing the Village General Counsel's analysis and arguing that the ZBA had jurisdiction over this appeal by virtue of Village of Pittsford Code sections 210-133(B)(1), New York Village Law section 4-400(1)(b) and NY Opinion of the Attorney General, 2005-1 (January 4, 2005), and

**WHEREAS**, the Village of Pittsford ZBA asked its Special Counsel for a legal opinion as to whether it had jurisdiction to hear an appeal from the Mayor's May 14, 2015 letter, and

**WHEREAS**, the Village of Pittsford ZBA Special Counsel advised the Board that it lacked jurisdiction to hear an appeal from any body or officer related to a special permit application under New York Village Law sections 7-712-a and 7-725-b(6); *Smyles v. Board of Trustees of Inc. Village of Mineola*, 120 AD3d 822 at 824 (2d Dept. 2014), *Katz v. Board of Appeals of Village of Kings Point*, 21 AD2d 693 (2d Dept. 1964) and *Iacone v. Building Dept. of Oyster Bay Cove Village*, 32 Ad3d 1026 (2d Dept. 2006) and that the applicant's sole remedy was in an Article 78 proceeding, and

WHEREAS, the ZBA held a public hearing, duly published on September 28, 2015, and

WHEREAS, the applicant failed to post notice of the public hearing or provide an affidavit of compliance as required by Village Code sections 210-111(B) and (D),

**NOW THEREFORE, IT IS RESOLVED** that:

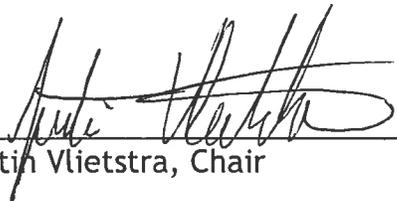
1. The application of Northfield Common Holdings LLC appealing the letter from Mayor Robert Colby dated May 14, 2015 is hereby denied because the ZBA lacks jurisdiction to hear this appeal for the reasons stated by its Special Counsel.
2. SEQRA does not apply because the ZBA does not have the authority to undertake, fund or approve this application.
3. Since the ZBA lacks jurisdiction over this appeal, this is not an action subject to County Planning referral pursuant to General Municipal Law section 239-m.

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

	Yes	No	Abstain
Justin Vlietstra	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeffrey Bove	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heather Erwin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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"/>

Dated: September 28, 2015  
Pittsford, New York

By order of the Village of Pittsford Zoning Board of Appeals

  
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Justin Vlietstra, Chair