

VILLAGE OF PITTSFORD
PLANNING AND ZONING BOARD OF APPEALS
Special Meeting – May 22, 2017 at 6:00 PM

PRESENT:

Chairperson:	Justin Vlietstra
Members:	Jo Anne Shannon Jeffrey Bove Susan Lhota Heather Erwin (absent)
Building Insp:	Paul Alguire
Fire Marshal:	Kelly Cline
Recording Sec:	Linda Habeeb
PZBA Attorney:	Mindy L. Zoghlin, Esq.

Motion: Chairperson Vlietstra made a motion, seconded by Member Bove, to call the meeting to order at 6:23 pm.

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

Conflict of Interest Disclosure:

Member Shannon disclosed that she is a member of the Board of Directors of Historic Pittsford, but stated that this would not affect decisions regarding any of the applications before the Board.

David and Tina Mattia, 44 Sutherland Street, Site Plan Review

Present: David & Tina Mattia, homeowners; Dan O'Brien, Woods, Oviatt, & Gilman

Discussion: Chairperson Vlietstra stated that this is a continuation of an open public hearing for an application for site plan review for demolition of an existing house and construction of a new house at 44 Sutherland Street. At the last meeting, held on May 8, 2017, board members discussed areas of the Part 2 Impact Assessment portion of the SEQR form that required further review to determine the environmental impacts of the project. He stated that at this meeting, the applicants will be given an opportunity to address with the board any outstanding issues before the Board votes on SEQR.

The applicants' attorney, Dan O'Brien, stated that the applicants disagree with the Type I SEQR designation, stating that the new construction is a replacement-in-kind. He stated that the PZBA has taken an unusual and contrary position to the APRB in respect to SEQRA. The APRB classified the action as a Type II action pursuant to SEQRA, consistent with applicable case law. The PZBA, which has only general site plan approval authority for the new house, is now using the SEQRA process to exceed its authority and control of the SEQRA and approval process.

Mr. O'Brien stated that the proposed house is of similar mass and scale as the existing house, with the same footprint as the existing house. He further stated that the original structure was altered in the 1970s with an inappropriate garage addition. The proposed new house meets setback requirements, and the applicants' contention is that the proposed house is more consistent with the surrounding neighborhood than the existing house. He also expressed that the proposal complies with the Village Design Standards, which state that the new construction should not be a replica of the existing house.

Mr. O'Brien further stated that it is not appropriate for the Planning Board to consider the demolition of the house when evaluating the environmental impacts, because the APRB has already granted a certificate of demolition for the house. He further stated that the Planning Board has addressed site plan issues associated with the new construction. Member Vlietstra commented that the Action before the Planning Board includes landscaping, grading, and drainage on the property and not just construction of a home. Mr. O'Brien concurred but those are ancillary activities associated with construction of a single family home.

Mr. O'Brien then submitted, for the record, a letter from the applicants' architect, Jon Schick, dated May 19, 2017. Mr. Vlietstra explained that this is first time that the Board has seen this letter, and therefore they have had no opportunity to review it. He further explained that generally, the Board requires new documents to be submitted a week in advance of the meeting to give time for Board members to review it.

Mr. O'Brien referenced a portion of the letter, which is a quote from the National Trust for Historic Preservation, *Reviewing New Construction Projects in Historic Districts*:

"Design guidelines for an historic area should not dictate certain styles for new buildings ... Most districts exhibit an evolution of architectural styles and cultural trends, including the 20th Century. Therefore, guidelines that emphasize context and design elements, rather than styles, allow the broadest and most flexible interpretation for new construction."

Mr. Schick states in his letter that the PZBA has neither the jurisdiction, nor the credentials, to dictate the design of the proposed house, which, according to the APRB, meets all of the Village Design Guidelines. He further expressed that all of the comments and concerns about impacts relating to the contrast in color of the existing house compared to the new house are not relevant, since the Village has no jurisdiction over color, because paint is a temporary material.

Mr. Vlietstra stated that the APRB denied the application because it did not comply with all of their criteria.

Mr. O'Brien said they rejected it because of the style of the front dormers and porch railing but the rest of the design was acceptable to the APRB.

Mr. O'Brien also submitted, for the record, a letter from Mr. Schick, dated May 21, 2017. The letter addresses the four areas of the Type I SEQR Impact Assessment that the Board considered as possible areas that could have a significant environmental impact: Impact on Aesthetic Resources; Impact on Historic and Archaeological Resources; Consistency with Community Plans; and Consistency with Community Character.

Mr. O'Brien questioned the Planning Board's commentary about the architecture of the house, asserting that it is the APRB's jurisdiction to review the exterior features of the house. Ms. Zoghlin stated that the Planning Board has a separate statutory obligation to review the environmental impact of the project under SEQR. The APRB's jurisdiction does not interfere with the Planning Board's independent jurisdiction over this matter. Ms. Zoghlin asked Mr. O'Brien to explain how the Planning Board's responsibility to satisfy requirements of the State Environmental Quality Review Act (SEQRA) as an independent board is changed by the APRB? She asked if he is aware of any court decision that states that the planning Board's responsibilities under SEQR are altered by the existence of an Architectural and Preservation and Review Board. Mr. O'Brien stated he is not aware of any court decision but by creating an architectural review board the Village Trustees delegated architectural review authority to them. Ms. Zoghlin asked Mr. O'Brien how the Trustees local law establishing an architectural review board changes the Planning Board's review authority established by State law under SEQRA to consider compatibility with the community, impacts on

aesthetic resources, impacts on historic resources and other environmental issues that must be considered in an environmental review? Mr. Obrien stated the Trustees delegated architectural review authority to the APRB in code section 210-60:

“It shall be the duty of the APRB to review, approve or disapprove all plans and building permit applications for the construction, reconstruction, removal, restoration, alteration or demolition of any exterior architectural feature within the District. The APRB shall have the power to pass upon such activity before a certificate of approval is granted, provided that the APRB shall pass only on the exterior features of a building or structure as are visible from the public street, public walkway, park or other public property, private property open to the general public or waterway and shall not consider interior arrangements.”

Mr. Obrien stated that the Planning Board lost jurisdiction to review the demolition when the APRB voted to approve demolition in December, 2016. The only action before the Board is the new construction.

Ms. Zoghlin stated that segmentation of the project is not permissible under SEQRA, the Planning Board must consider the entire action which consists of demolition and new construction. She asked Mr. O'Brien if he can cite any court cases to support his belief that the Planning Board's review authority under SEQRA was restricted by the APRB vote. Mr. O'Brien said he does not have any court cases to cite.

Mr. O'Brien submitted a letter from Betsy Brugg, of Woods, Oviatt, Gilman, LLP, dated May 22, 2017, for the record. The letter is submitted on behalf of the applicants. The letter addresses comments regarding Question 17, Consistency with Community Plans. She states in the letter that the applicants disagree with the Board's assessment that the proposed demolition and construction of a replacement house are inconsistent with the adopted plans of the Village. The letter states that the proposal is consistent with the adopted community plans of the Village of Pittsford. She further asserts that the proposal is consistent with, and permitted by, the Village Zoning Code, the 2002 Comprehensive Plan, Architectural Design District Building Design Standards, and sections of the Historic Design Principles for New Construction and Demolition.

Mr. O'Brien submitted an article written by Eleanor Eссор Gorski, AIA, entitled *Regulating New Construction in Historic Districts*. In the article, Ms. Gorski states that there is more flexibility in the design of a new building in an historic district than for the replacement of an element of an existing historic structure. The article also states that a contemporary design and a traditional design may both be built in the same district, since both meet the same basic guidelines.

Mr. O'Brien also submitted minutes from the 10/17/17 Planning Board meeting where an addition for 36 Sutherland Street was approved. He stated that the house is larger than the house that is being demolished, and the Board issued a SEQR negative declaration for that project. Board members pointed out that the addition that was approved was mainly in the rear of the structure and the original front façade was unchanged by the addition; the home still exhibits the characteristics of the era it was originally built.

Chairperson Vlietstra stated that the Department of the Interior's design standards for historic districts established four criteria. He does not have the standards in front of him, but the Board previously looked at this and relevant standards discussed included:

1. Preservation;
2. Rehabilitation; or
3. Reconstruction

The Department of the Interior's definition of Reconstruction states that it applies when the original structure no longer exists. That is not the case here, the historic structure exists. Most applications the

Board see utilize Rehabilitation standards. 36 Sutherland is an example that applied rehabilitation standards by leaving intact the character and original materials visible from the street and building a new addition with compatible materials in the back of the house.

Mr. Vlietstra read from paragraph 2 of the document submitted by Mr. O'Brien, *Regulating New Construction in Historic Districts* by Eleanor Essor Gorski:

“New construction, as considered in this booklet, can refer to a new home on a vacant lot in a historic streetcar suburb, infill construction in an urban rowhouse district, or a new chain store in a 19th-century commercial district”

He further stated that the document applies to new construction on vacant lots and where a historic structure does not exist. It does not justify demolishing a historic structure and replacing with a completely different structure.

He stated the Board previously looked at compatibility with community plans and the preservation of historic structures. He referred to the Village's Comprehensive Plan and quoted a paragraph from section 1.2 that states:

Principles for the Future: Maintain the Village's residential and historic character.

The Village is fortunate to have retained a wealth of early nineteenth-century, late nineteenth-century, and early twentieth-century architecture. The Village's historic character is an outstanding resource, attracting both new residents and visitors, and must be maintained.

He stated that the goal is to maintain the Village's historic character and identity. Demolishing this structure and rebuilding the proposed structure is in contrast with the Village's Comprehensive Plan.

He also cited the Preservation Ordinance in the Village Code, **Village Code 210-57:**

Pursuant to the provisions of § 96-a and Article 5-K of the New York General Municipal Law, it is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of buildings, structures, places and sights of historic, architectural, cultural or aesthetic value is a public necessity and purpose in the Village of Pittsford.

He explained that the existing house is an expression of a particular era that captures the history of the Village. It is a contributing structure in an historic district, which has value and is worth preserving. He pointed out that one of the reasons that this house is unique is that there are very few brick houses in the Village. He disagrees with the applicant's premise that the original materials in a structure have no value and can readily be replaced with a new structure with contemporary materials. Brick is an example of a material whose characteristics changes over time. Contemporary brick differs from old brick; member Lhota commented at the last meeting that she cannot find contemporary brick to match the existing brick in her 1920's house. There is value to preserving the original materials because it captures the characteristics of construction in place during that particular a period of time. There is value to capturing the history of development. Historic preservation does not apply to only the high-style houses, there is value to preserving the modest houses as well to capture the development trends in the historic district. Others have already reviewed the historic value of the existing house and deemed to be a contributing structure to the Historic District; it is included in the National Register of Historic Places.

Member Lhota further stated that it is a recognizable style of house, and, in her opinion, demolition of this style of building is impactful to the whole block.

Member Vlietstra stated he wanted to briefly address the discussion regarding SEQRA and segmentation. SEQRA does not allow for the segmentation of the project and they must consider the whole action. If the applicant applied to the Planning Board first before the APRB, it seems clear that the Planning Board could do a full environmental review of the action and look at compatibility with the community and architectural elements. It does not make any sense that the order in which the two independent Boards vote changes the review authority of any Board. The application for Pittsford Dairy demolition in 2008/2009 went to the Planning Board first then to the APRB. He is aware that APRB attorney Jeff Turner emailed the applicant's attorney in November, 2015 stating that review by both the APRB and Planning Board was required. The Planning Board did not receive an application until January 2017.

Member Vlietstra said he wanted to address the applicant's comments regarding color. He said prior comments from the Board noted that the change in color from dark to light will create a focal point that further emphasizes the architectural elements out of character with adjacent homes.

Mr. Vlietstra asked if anyone in the audience wanted to comment on this application.

- Mike Reynolds, 35 Church Street, questioned the applicants' assertion that the house is not remediable, since there are many other houses that were more damaged than this one that have been remediated.

Chairperson Vlietstra stated he has some questions for the Board's attorney and would like a brief session to consult with her.

Motion: Chairperson Vlietstra made a motion, seconded by Member Lhota, to enter into attorney-client session.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Bove, to re-enter the meeting at 7:55 pm.

Chairperson Vlietstra stated that since these new documents have been submitted, board members will need time to review them.

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

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Bove, to continue the discussion of this matter at the June 19, 2017 PZBA meeting.

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

Motion: Chairperson Vlietstra made a motion, seconded by Member Bove, to adjourn the meeting at 8:00 pm.

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

