

**Village of Pittsford**  
**PLANNING and ZONING BOARD OF APPEALS**  
**Regular Meeting – February 25, 2008 at 7:00 P.M.**

**PRESENT:**

Chairperson:	Remegia Mitchell
Members:	Sally Chamberlin Tom Dannhauser Lili Lanphear Dennis Peters (absent)
Alternate:	William McBride
Attorney:	Jeff Turner
Building Inspector:	Edward Bailey
Recording Secretary:	Linda Habeeb

Chairperson Mitchell called the meeting to order at 7:00 P.M. She noted that Member McBride is present as an alternate Board Member.

**Zoning Board**

**John Salisbury, 59D Monroe Avenue ~ Appeal determination of Building Inspector**

**Discussion:** This is a continuation of an open public hearing for an appeal to the decision of the Building Inspector denying the application for a building permit to operate an audiologist's office in the building located at 59D Monroe Avenue.

Chairperson Mitchell stated that member McBride was present as an alternate for the January 28, 2008 hearing of this application and that he will be voting tonight in Member Peters' absence.

The Board reviewed the Village Code regulations for property located within the B-3 Special Business District:

Within the B-3 District, no building, structure or premises shall be used, and no building or structure shall be erected or altered, except for one or more of the following uses:

A. Principal uses shall be as follows:

(1) Buildings to be used to house the offices for a business, professional, insurance, administrative sales or similar organization having only limited contact with the general public, provided that the activities of which are conducted primarily by mail and that no merchandise is handled for sale or merchandising services are rendered on the premises other than incidental to the principal use.

Chairperson Mitchell asked if there were any further comments from the public regarding this application, and the following people spoke:

- John Higgins questioned the Board as to whether they had determined if the proposed business would be considered as a medical office. Board members pointed out that the

applicant, Mr. Salisbury, had stated that the business was not a medical office. Mr. Higgins also stated that there is a category in the Village Code that refers to “medical support,” which is different from a medical office. After further review of the Code, it was noted that there is no other category of permitted use that would be applicable to Mr. Salisbury’s practice. He further noted that since 1985, there have been a number of approvals granted for medical offices in the building, and he questioned whether all of those offices conducted their business “primarily by mail.”

Chairperson Mitchell stated that the phrase “primarily by mail” should be interpreted to include all business transactions that do not require the public to come to the office, such as electronic communication and telephone calls.

The Board discussed the use of the term “limited” as found in the Village Code phrase, “having only limited contact with the public.” Chairperson Mitchell stated that rather than interpreting this as the number of persons visiting the office each hour, the Board can consider whether a limited percentage of the total people being served require contact with the office.

Member Dannhauser pointed out that the covenant attached to the property states that, “‘Doctor’s office’ shall mean and be limited to physicians, dentists, opticians, therapists, and other health professionals engaged in the treatment of patients on the premises, either by appointment or otherwise.” Mr. Dannhauser stated his opinion that the proposed use of the building as an audiologist’s office is comparable to an optician’s office.

Chairperson Mitchell closed the public hearing at this time.

**Motion:** Chairperson Mitchell made a motion, seconded by Member Lanphear, to uphold the decision of the Building Inspector denying the application for a building permit to operate an audiologist’s office in the building located at 59D Monroe Avenue.

**Vote:** Dannhauser – yes; Chamberlin – yes; Mitchell – yes; Lanphear – yes; McBride – yes.  
**Motion carried.** The decision was filed in the Office of the Village Clerk on February 25, 2008.

***Findings of Fact:***

- The applicant, Mr. Salisbury, stated that his business is not considered a medical practice.
- This business does not have “only limited contact with the public,” as required by Village Code. All clients/patients served must come to the office for evaluation and service. Mr. Salisbury indicated that an average patient makes three (3) initial visits to the office and once per year thereafter.
- The sale of hearing aids is primary to, and not incidental to, the principal use in the business of an audiologist. Mr. Salisbury has two other business locations that treat patients and sell hearing aids.
- The private restrictive covenant does not apply to this hearing or this applicant.

**2. ESL Credit Union, 11 State Street**

**Present: Tim Pryor, General Counsel for ESL  
Tom Greiner**

**The Secretary read the legal notice that was published in the February 13, 2008 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, February 25, 2008 at 7:00 P.M. to consider an application made by ESL Federal Credit Union, 11 State Street, for interpretation of a previously granted variance, pursuant to Chapter 210-113B(1) of the Code of the Village of Pittsford.”*

**SEQR:** Chairperson Mitchell stated that this is a Type II SEQR Action SEQR ???. No further review is necessary

**Discussion:** The attorneys for ESL Federal Credit Union (“ESL”) submitted an application for an interpretation by the Zoning Board of Appeals of whether ESL’s proposed use of the existing parking lot on the premises for curbing and vehicle queuing associated with a remote teller facility is permitted under the March 26, 1957 Use Variance granted by the Zoning Board.

Mr. Greiner reviewed the past history of this project, stating that ESL’s project, with the inclusion of the remote teller, received a negative declaration under the State Environmental Quality Review Act and a two-space parking variance at the Zoning Board’s June 26, 2006 meeting. Also at the June 26<sup>th</sup> meeting, the Zoning Board concluded that the proposed curbing and vehicle queuing associated with the remote teller were uses permitted by the 1957 variance. However, the Zoning Board did not expressly consider and discuss the materials in front of it in reaching its conclusion.

The Zoning Board’s June 26, 2006 decisions were then challenged in an Article 78 proceeding by opponents to ESL’s project. The culmination of that litigation was the Fourth Department Appellate Court’s decisions upholding the two-space variance and the SEQRA negative declaration. However, the Appellate Court found that the Zoning Board’s finding that the portion of the queuing line for the remote teller in the R-2 district portion of the commercial parking lot did not require a use variance was “not supported by substantial evidence.”

He concluded by stating that ESL’s position is that the proposed vehicle queuing is clearly a use permitted by the 1957 variance, and that in accordance with the Appellate Court’s finding, ESL is applying for an interpretation from the Zoning Board to confirm such position.

Sheila Shalifou, of Boylan, Brown, Code, Vigdor & Wilson, attorneys for Canandaigua National Bank, et al, submitted preliminary objections in opposition to ESL Federal Credit Union’s application and continued assertion that curbing and vehicle queuing associated with a proposed remote teller facility in an R-2 zone does not require a use variance. She further stated that the interpretation that ESL seeks would require the Zoning Board of Appeals to either disregard or overrule the decisions of the Supreme Court and Appellate Division that held that “any change to a different commercial use in the residential district requires a new variance.” In 2005, the Building Inspector determined that the existing 1957 use variance would not independently support ESL’s remote teller facility proposed in the R-2 zone. ESL maintained that the remote teller, curbing, lighting, signage, and queuing or stacking lanes were all permitted under the original 1957 variance. ESL’s statement that the ZBA “did not expressly consider and discuss the materials in front of it in reaching its conclusion” is belied by the facts. At the many hearings held on this project, the ZBA considered whether curbing and queuing were permitted in the R-2 zone, the impact on traffic and parking, and even sought the advice of the Village Attorney on this issue.

She concluded by asserting that the ZBA lacks jurisdiction to interpret whether “curbing and vehicle queuing associated with a remote teller facility is permitted” under the 1957 use variance.

Section 210-113(B) of the Village Code entitles an applicant to seek such an interpretation only “upon appeal from a decision by an administrative official.”

Mr. Greiner reiterated ESL’s position that the 1957 Variance permits all B-1 uses in the residential portion of the lot.

Member Lanphear questioned whether the Board, in granting the variance in 1957, could have anticipated the use of the property for a remote teller and the queuing of cars associated with this use. Chairperson Mitchell pointed out that the remote teller use is not unlike the old gas filling stations that were prevalent at the time, in which cars would queue up and stop at the gas pumps for short periods of time.

Chairperson Mitchell opened the public hearing, and the following people spoke:

- Mike Reynolds, Church Street, stated his opinion that the 1957 variance does not permit all B-1 uses in the residential portion of the lot. He further stated that ESL has not complied with the conditions of their approval, in that they have failed to provide the approved number of parking spaces, and they have not enforced the “no left turn” restriction in the parking lot.
- Pauline Riley, Church Street, stated that there is an unapproved dumpster in the parking lot, and that when ESL tows cars, they use the Church Street entrance to the parking lot. She further stated that since the Village did not allow ESL to expand the driveway, large trucks are using the Church Street entrance.
- Janet Reynolds, Church Street, stated that the courts were clear in their decisions in 2006, and she questioned why ESL is requesting that the Board disregard the courts’ decisions.

Mr. Greiner stated that the Board does have jurisdiction to interpret their own variance.

Chairperson Mitchell stated that the public hearing will remain *open*.

### **Planning Board**

**Newcomb Oil Company, 57 North Main Street ~ Minor site plan & Special Use Permit  
Present: Michael Newcomb**

#### **Site Plan**

The applicant presented a revised site plan for the gas station at 57 North Main Street. He stated that the revised plan has 5.8% green space, as required by Village Code. Board members noted that the revised plan had reduced the number of planting choices, and that much of the green space had been added in the rear of the property. Chairperson Mitchell stated that the purpose of the landscaping is to improve the streetscape, and she suggested that he remove the planter box and add landscaping in the southeast corner, as was shown on the original plan. Member Lanphear suggested removing some of the blacktop and adding landscaping and a curb at the northeast entrance. Mr. Newcomb stated that the entrance will need to accommodate very large vehicles, and for that reason, he was reluctant to reduce the size of the entrance.

Chairperson Mitchell stated that the maximum intensity of the lights on the site should not exceed 6 foot-candles, and that Mr. Newcomb's lighting plan had not been revised since the last meeting when this issue was discussed. Mr. Newcomb stated that the outdoor lighting levels proposed are within existing limits, based on an alternative interpretation of the Code that would allow an "average foot-candle reading," and that it was not possible to keep the maximum light level under the canopy to less than 10 foot-candles. He stated that the lighting levels under the canopy, considered to be a task area designed for personal security and performing tasks such as credit card transactions and checking vehicle fluids, need to be higher than a parking lot light level limit. He also stated that the existing perimeter light fixtures have 320-watt lights, and he indicated that he is willing to reduce/replace these to meet the maximum wattage allowed by Village Code.

Chairperson Mitchell provided the name of a lighting specialist who can assist Mr. Newcomb with a lighting plan for this site. She also further noted that new or replacement light fixtures will need to be approved by the APRB.

The applicant discussed installation of two signs on the property, and Board members recommended that he remove the planter box and add a freestanding sign and landscaping.

Chairperson Mitchell informed the applicant that the Board's feedback regarding the site plan was generally positive, and she stated that the public hearing will remain *open*, pending the applicant's addressing the following concerns:

- Lighting
- Landscaping
- Signage – add to site plan

### **Special Use Permit**

The Board next discussed the request for special use permit for the sale of food on the premises. Mr. Newcomb stated that this proposal is for a food service operation that will open at 5:30 am and close at midnight. Board members questioned the applicant as to the times and frequency of delivery trucks, which Mr. Newcomb stated will be infrequent and early in the morning. He also stated that no chairs, tables, or counter are requested. Garbage containment has been addressed by the dumpster in the rear of the property, but the Board noted that consideration should be given to receptacles in public areas for the trash of food wrappers, napkins etc. Mr. Newcomb indicated that there will be only one entrance/exit, and no separate facilities for the food service. Mr. Newcomb proposes to serve some food that would be sub-contracted, such as a "name" franchise vendor that provides coffee and breakfast options. The Board expressed concerns that this can lead to additional signage and other franchise requirements as yet unforeseen. The PZBA strongly recommends that the Trustees limit the permit to require the applicant to return for any additional components, such as a franchise. At that time, more details would be provided and further Board of Trustee review should be required.

A summary of the PZBA comments will be forwarded to the Board of Trustees in a memo from Chairperson Mitchell.

**Adjournment:** Chairperson Mitchell adjourned the meeting at 10:00 pm.