

**PROCEEDINGS OF A DRC MEETING OF THE VILLAGE BOARD OF TRUSTEES,
PLANNING AND ZONING BOARD OF APPEALS AND ARCHITECTURAL AND
PRESERVATION REVIEW BOARD**

November 15, 2011 – 4:00 PM

Present

Mayor: Robert C. Corby
Trustees: Lorie Boehlert
Paula Sherwood
Trip Pierson
PZBA Members: Sally Chamberlin
Meg Rubiano
George Wallace
Lili Lanphear
APRB Members: Paul Zachman
Bill McBride
Maria Huot
Attorneys: Karl Essler
Jeff Turner
Recording Secretary: Anne Hartsig

CALL TO ORDER:

A motion was made by Mayor Corby, seconded by Trustee Boehlert to call the meeting to order at 4:05 PM.

Vote: Corby - yes, Sherwood – yes, Boehlert – yes, Pierson – yes. **Motion carried.**

Attorney Essler thanked Attorney Turner and representatives from the Planning Board and the APRB who shared emails with him regarding the regulating plan for the 75 Monroe Avenue project and where the process of that plan should be going.

He reviewed the history of the regulating plan. He said that the applicant first brought up the concept of the regulating plan which is referenced in the Village Code as something that needs to be done as part of this process. He explained that the Code doesn't define what should be in a regulating plan in any detail nor does it describe where it should fall in the process timeline. The applicant's attorney, Frank Hagelberg, wrote the first draft of the regulating plan. As the Board began making changes to the plan, they struggled with what they are supposed to do, how much they are supposed to do, and how much should be left to the PZBA and the APRB. They have gone back and forth on a number of issues that may or may not be discretionary. Trustee Boehlert wrote new text that is simpler and references the drawing, which is in fact, the regulating plan. Mr. Essler said the Code gives no specific guidance on what the plan should contain. However, he said it is his belief that before a regulating plan can be adopted, the SEQR process has to be undertaken. It was Mr. Essler's conclusion that the adoption of this regulating plan would be an action under SEQR and it would require the Board of Trustees to complete a SEQR review. He said the Board hasn't had a chance to take a look at the SEQR review yet. Mr. Essler further concluded that this would be a Type 1 Action because it exceeds the 25% rule for many criteria because it is adjacent to the canal. A Type 1 Action requires a coordinated review. Since there is no requirement about when a regulating plan needs to be adopted, it would be appropriate to let the process take its course and let the Planning Board begin their review so they can send comments on the Special Use Permit to the Trustees. He said while the Village Board gets SEQR

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underway, the Planning Board can begin their initial review and provide the Trustees with helpful input.

Mr. Essler said after SEQR is completed and once the regulating plan is adopted, the Village Board can proceed with the Special Permit. Then the project would go to the Planning Board for site plan approval and then to the APRB for architectural review. He stressed that the Board cannot adopt a regulating plan until the SEQR review has been completed. Mayor Corby noted that a "1409" review for SHPO must also take place.

If the Village Board is interested in APRB comments, they could ask that board to give them to the Trustees for purposes of the regulating plan. However, the formal APRB process comes after the Special Use Permit is granted. Mr. Essler said the SEQR, the Special Use Permit, and the regulating plan will all happen relatively close together.

Mr. Turner asked if in terms of timing, the project will go back to the Planning Board for Special Permit comment review and recommendation, and then the guidelines and regulating plan will happen after that. Mr. Essler replied that was correct.

Trustee Pierson said he would like to see communication between the PZBA and the APRB so that they are on the same page as far as approvals go. Mr. Essler said that most of the requirements that are so specific that they'd require a variance are not those subjective issues that the Trustees have to consider on the Special Use application.

APRB Chairperson Paul Zachman said the APRB has already started their process by looking at conceptual plans. He said it seems that this is a regression. It seems that through the Special Permit process, which has been paused and then restarted, the Village Board is developing quite a specific plan ahead of the Special Use Permit. He said the APRB, by using conceptual plans, gets close enough for the Trustees to do a regulating plan so the applicant can know exactly what they can design their heights to. The regulating plan can contain input from the APRB and recommendation from the PZBA.

Mr. Essler said he sees the regulating plan as being what, in many jurisdictions, would be called a concept plan. Mayor Corby commented that a regulating plan is like a concept plan that addresses site specific issues. He said it provides guidance but input from the Planning Board is needed to develop this plan.

Mayor Corby said he has shared with the APRB some of the discussions the Trustees have had. Some concerns are height variability so the project does not look like one long row. Another is the importance of the view as you approach from the west on the canal because it is the introduction to the village. Mayor Corby said he looked at aerial photos of other canal towns from Tonawanda to Fulton and Canastota to see examples of authentic canal architecture. He found that three stories is the maximum scale you see. He found that there are very few buildings left in tact. One good and complete example is the Seneca Falls Knitting Mills. He said what you see is a hierarchy in mass of one or two taller buildings in the middle with a cascading lower scale on the edges. Mayor Corby stated that the Trustees would defer to the APRB for the scale. In the end, the Trustees have to answer the questions for the Special Use Permit because they have a legal obligation to answer them. However, he emphasized that as has been said from the beginning, the Trustees will answer them based on input from the Planning Board and the APRB. He said the intent is not to impose something and have everyone agree to it. The intent is to try to work together to design the project the way it looks most appropriate and has the least visual impact.

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George Wallace said he is concerned about who gets to decide. He stated that the APRB has put in lots of time on this project yet based on this discussion, it is still unclear who gets to decide. Trustee Pierson said speaking for himself, that because he was elected by the people, he is going to decide. He said the Trustees have had many questions about the numbers of people in the space and they have had to do a lot of due diligence to figure out whether or not the number of units was appropriate for the site. He said they went through various meetings that were of a private nature with the applicant and with professional experts in the field to learn what a reasonable return on the investment was. Because of these kinds of things, the Trustees pushed “pause” on the whole project. He said they now need to push “start” again. He said the Board members are open to APRB recommendations but at the end of the day, the Trustees have to make the decision. Trustee Pierson said the regulating plan is writing up what has been created and putting it into words to protect the village so that it can’t be said that we didn’t have it in the Code.

Attorney Turner reiterated what he believed to be the conversation thus far. He said that it sounds like the Village Board is contemplating sending the application back to the Planning Board. That will then require the APRB to answer the questions that Planning has put to it. This will involve APRB looking at the concept of buildings and mass to see if they think the plans will satisfy the provisions of the Code that they have been asked to look at. The application will then go back to the Planning Board with a general “yes, this is what we looked at and it makes sense architecturally”. The Planning Board will finish the findings required. Then the application will go to the Trustees. They will do SEQR, formulate design guidelines and a regulating plan. The design guidelines and regulating plan can’t be so specific that they step on the Planning Board’s site plan approval process. However, it will outline the general regulation about where the buildings will be, the stories of the buildings, and it will give guidelines about the numbers etc. Once that has been completed, the application will go back to the Planning Board for site plan approval and the APRB for their approval.

Mayor Corby said that a regulating plan is another tool to make sure there is a strong argument on issues that matter, issues that the Board discovers during the Special Use Permit process. Mr. Turner agreed but added that the Trustees must come up with a regulating plan based on findings and recommendations of the Planning Board, which will incorporate information given to them from the APRB. Then, when and if a Special Permit is granted, the application goes back for site plan approval and APRB approval on all the specifics of the plan.

Paul Zachman said the plan is a conceptual plan. Mr. Turner said it is a plan that regulates. He said the Trustees’ permit approvals are going to be constrained by the regulating plan. He said the gross motor will be the Trustees after input from the other two boards. The fine motor will be the Planning Board and APRB after the regulating plan and guidelines and after a Special Permit has been issued.

George Wallace said that simply put, the boards will do their work and offer guidance and advice. As a result of that, the Village Board, in conjunction with the applicant, will create this regulating document.

Mr. Essler said the Village Code itself contains some very specific requirements but the Board of Trustees will be allowed, in addition to those requirements, to add some additional design guidelines into a regulating plan. He said what the Special Use Permit really is, is simply approving the overall use. It is then up to the Planning Board during their site plan approval

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process, to determine the details such as where every tree will be etc. Then the APRB will finalize the details on such things as building materials, elevations and so forth.

Trustee Boehlert asked what the best way would be to address the question of variances. Mr. Essler said that the Trustees will have comments from the Planning Board and will know what they think about issues that may not be code compliant. They can then grant a Special Use Permit contingent upon the applicant receiving the variances or they can ask the applicant to obtain the variances first, before the Special Use Permit is granted.

Paul Zachman noted that this regulating plan will be just for this project, the development of 75 Monroe Avenue, and that the R-5 section of the Code will remain intact for other future projects in the R-5 district.

Mr. Essler said that procedurally the next steps will be to send the application to the Planning Board to finish up their recommendations to the Trustees and to the APRB so they can review the application. Concurrently, the Trustees will need to look at the traffic studies and other items required to complete the SEQR process. The Trustees will need Planning Board input to complete SEQR. Mr. Essler suggested that a facilitator is needed to oversee the SEQR process.

A **motion** was made by **Mayor Corby, seconded by Trustee Sherwood**, to formally request the Planning Board and the APRB to begin their review of the preliminary plans supplied by the applicant for the proposed development of 75 Monroe Avenue. Before this motion was voted upon, APRB Chairperson Paul Zachman suggested additional comments should be added to this motion. Board members agreed with his comments. Therefore, a **motion** was made by **Trustee Boehlert, seconded by Mayor Corby**, to amend the first motion to include in the request to the APRB and the Planning Board, the review and refinement of preliminary concept plans submitted with the application for a Special Use Permit for 75 Monroe Avenue, to note self evident issues and to submit to the Board of Trustees, suggestions to be included in a Regulating Plan and Design Guidelines as follows:

- R-5 Code items that will be expressly or additionally constrained or relaxed by the Regulating Plan and Design guidelines,
- R-5 Code items that would require anticipated variance relief based on review of the associated concept plan,
- Additional regulation of items not covered under the current R-5 Code that would be applicable to this development as per the preliminary concept plan.

The reviews by PB and APRB will take place in the same course of time as the Special Use Permit review is going on.

Vote: Corby - yes, Sherwood – yes, Boehlert – yes, Pierson – yes. **Motion carried.**

ADJOURNMENT

A **motion** was made by **Mayor Corby, seconded by Trustee Boehlert**, to adjourn this meeting at 5:15 PM.

Vote: Corby - yes, Sherwood – yes, Boehlert – yes, Pierson – yes. **Motion carried.**

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