

**Village of Pittsford  
PLANNING AND ZONING BOARD OF APPEALS  
Regular Meeting – November 28, 2011 at 7:00 PM**

**PRESENT:**

|                      |  |
|----------------------|--|
| Chairperson:         | Remegia Mitchell   |
| Members:             | Sally Chamberlin<br>Meg Rubiano<br>George Wallace<br>Lili Lanphear |
| Attorney:            | Jeff Turner  |
| Building Inspector:  | Edward Bailey  |
| Recording Secretary: | Linda Habeeb   |

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

**ZONING BOARD**

**Esther Winter, 50 State Street ~ Special Exception Use Permit**

**Present:** Esther Winter, Canalside Music Together Inc.

**The Secretary read the legal notice that was published in the November 17, 2011 edition of the Brighton Pittsford Post:** *“Please take notice that a public hearing will be held before the Village of Pittsford Planning and Zoning Board of Appeals at the Village Hall, 21 North Main Street, Pittsford, New York, on Monday, November 28, 2011 at 7:00 pm, to consider an application made by Esther Winter for a special exception use permit to operate an instructional music studio at 50 State Street, pursuant to § 210-26A (23).”*

**SEQR:** Chairperson Mitchell stated that this is a Type II SEQR Action under SEQR § 617.5(c).

**Discussion:** The applicant stated that she is proposing relocating the existing business, Music Together, located at 17 South Main Street, to 50 State Street. She stated that because the peak times for her business are at off-peak hours for neighboring businesses, parking should be adequate. The average class consists of 12 children, with their parent or caregiver, and lasts approximately 45 minutes. She stated that she is considering adding art education classes during the afternoons, so that the hours of operation will be 9 am – 5pm. She also stated that there will be no food or drink allowed during classes, so trash will be minimal. Mr. Bailey stated that the owner of the building is required to obtain a building permit and Certificate of Occupancy prior to operation of this business

**Public Hearing Opened:** Chairperson Mitchell opened the public hearing at this time. The Secretary reported that the Village received one phone call from a resident in support of this application.

**Public Hearing Closed:** Chairperson Mitchell closed the public hearing at this time.

**Motion:** Chairperson Mitchell made a motion, seconded by Member Wallace, to approve the application for a special exception use permit to operate an instructional music studio at 50 State Street (C/upper), based on the amended schedule to include afternoon art education classes, in addition to the music classes presented in the application, with the following conditions:

1. The occupancy will be limited to a total of 30 individuals, including students, staff and parents/guardians, etc., at any given time.
2. Only one class session will be held at a time.
3. There will be a minimum of 15 minutes between classes.
4. The landlord is required to obtain a building permit and Certificate of Occupancy prior to operation of this business.

**Vote:** Chamberlin – yes; Mitchell – yes; Lanphear – yes; Rubiano – yes; Wallace - yes.  
**Motion carried.** The decision was filed in the Office of the Village Clerk on November 28, 2011.

***Findings of Fact:***

- This is an appropriate business use in the Northfield Common business complex. Therefore, no undesirable changes will be produced in the character of the neighborhood by granting this special permit.
- The granting of this permit will not have an adverse effect or impact on the physical or environmental conditions of the district.
- The benefit sought cannot be achieved by a feasible method other than a special permit.

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**Sean Jefferson, 1 Grove Street ~ Review of Special Exception Use Permit**

**Discussion:** Chairperson Mitchell stated that at a regular meeting of the Village Zoning Board held on November 22, 2010, the Board voted to approve the application for operation of a private music studio at 1 Grove Street, with the condition that the Planning Board would review the permit approval in one year. The Building Inspector reported that there have been no issues or problems with this business.

**Public Hearing Opened:** Chairperson Mitchell opened the public hearing at this time.

**Public Hearing Closed:** Chairperson Mitchell closed the Public Hearing at this time, as there was no one wishing to speak for or against this application.

**Motion:** Chairperson Mitchell made a motion, seconded by Member Lanphear, stating that there have been no issues or problems with this business in the past year.

**Vote:** Chamberlin – yes; Mitchell – yes; Lanphear – yes; Rubiano – yes; Wallace - yes.  
**Motion carried.** The decision was filed in the Office of the Village Clerk on November 28, 2011.

**Information only:**

**Gene O'Donovan, 6 South Main Street ~ Special Permit**

**Discussion:** Mr. O'Donovan presented a preliminary proposal for operation of a frozen yogurt shop at 6 South Main Street. He stated that it would be a self-serve dessert and cold drinks business, with only casual seating. The deliveries will be made with box trucks, and trash totes will be used to dispose of the trash. The hours of operation will be 11am to 10pm, with the possibility of later hours in the summer months. There will be fewer than 20 seats indoors, a reduction from the 24 seats that Canaltown Coffee Roasters currently has. There will be 3 outdoor tables, with 9 chairs outdoors, in the size, height, location, and format as are currently allowed for the coffee shop. There will be no outdoor table service. Trash receptacles will be located indoors, and the owner will be responsible for emptying outdoor receptacles on Main Street near this business. There will be little waste material, mainly fruits such as berries or canned fruits plus paper containers. Delivery trucks will be limited to "box" trucks, and no semi-trailers will deliver to the store. Deliveries will be 1-2 times per week, and will be made in the morning, before 10 am, to avoid conflict with other merchant hours of business. Deliveries will be made to the side door.

The applicant indicates that he is aware of the APRB requirements with regard to changes in windows, signage, etc. Board members had no unaddressed questions or concerns about this special permit application.

**Continuation of Public Hearing**

**James Aiello, 21 Lincoln Ave ~ Use Variance**

**Present:** James Aiello, owner; Peter Weishaar, McConville, Considine, Cooman & Morin; Robert Pogel, Real Estate Appraiser

**Discussion:** This is a continuation of a public hearing for a proposal seeking a use variance from the requirements of § 210-11 of the Village Zoning Ordinance so that the existing structures located at 21 Lincoln Avenue can be utilized for multi-family occupancy, with three units in the former funeral home and one unit in the carriage house. As presently zoned, the property may be used as a funeral home or as a single-family residence. The applicant has indicated that the former funeral home has been rendered functionally obsolete as a funeral home due to significant changes that have taken place in the funeral business. He stated that although the property has been on the market continuously, there have been no offers to purchase the entire parcel as a single-family residence or as a funeral home. Mr. Aiello has engaged the services of a commercial appraiser, who concluded that he will not be able to obtain a reasonable return unless a use variance is granted, permitting the property to be used for multi-family purposes.

Mr. Weishaar stated that a letter from him to Mr. Turner, addressing the remaining issues regarding the subject property, was submitted into the record. He also noted that the price of the property has been reduced again, and there has still not been anyone interested in purchasing the property.

The applicant stated that that would require an investment of approximately \$81,000; other properties in the Village are functional as they exist and wouldn't require a substantial investment. He further stated that an investor would expect a rate of return of 10 percent.

Board members questioned whether it is their charge to assure that the applicant realizes a certain rate of return on his property.

**Public Hearing Opened:** Chairperson Mitchell opened the public hearing at this time and the following person spoke:

**David Weir, 19 Lincoln Avenue,** stated that he supported the proposal to subdivide the existing lot into two separate lots, creating a single-family lot on each of the subdivided lots.

Chairperson Mitchell explained that that is not the proposal before the Board at this meeting.

**Public Hearing Closed:** Chairperson Mitchell closed the Public Hearing at this time.

**Motion:** Chairperson Mitchell made a motion, seconded by Member Chamberlin, to deny the application for a use variance for 21 Lincoln Avenue, as submitted.

**Vote:** Chamberlin – yes; Mitchell – yes; Lanphear – yes; Rubiano – yes; Wallace - yes.

**Motion carried.** The decision was filed in the Office of the Village Clerk on November 28, 2011.

***Findings of Fact:***

1. This is an application for use variance to permit a four-unit multi-family development of a former funeral home and barn where the principal permitted uses are single-family residences and non-commercial horticultural or gardening.
2. Multi-family units are a permitted use only in the R5 zone in the Village of Pittsford.
3. Prior to the applicant's acquisition of the subject property, the subject property was utilized as a funeral home, which use was not only pre-existing, but became a use permitted by a use variance granted in the 1960's.
4. The applicant owned a corporation which purchased both the subject property and the related funeral home business in 1995.
5. The applicant then sold the corporation in 2003, taking back a mortgage in the amount of \$211,000.00. There was no indication on the record regarding the sales price, how much of that sales price was related to the value of the real property, or how much of that sales price was related to the value of the funeral home business. However, as the record was developed, it became clear that these facts were irrelevant to the applicant's reasonable return analysis.
6. In 2007, the applicant took an additional \$255,000.00 collateral security mortgage against the subject property. There was no indication on the record with regard to

the consideration for this mortgage. However, again, as the record was developed, this fact too became irrelevant to the applicant's reasonable return analysis.

7. In June of 2009, the applicant and the corporation which owned the subject property executed a mortgage modification and extension agreement with regard to the 2003 mortgage, which agreement indicated that the then outstanding balance of the mortgage was \$176,186.83.
8. The mortgagor eventually defaulted on both the 2007 collateral security mortgage and the 2009 modification and extension agreement and the applicant accepted a deed of the subject property in lieu of foreclosure of the two mortgages.
9. The deed in lieu of foreclosure reflects an acquisition consideration of \$222,422.00. Again, the derivation of that figure is unclear from the record, and again as the record was developed, that issue is irrelevant to the applicant's reasonable return analysis.
10. Applicant retained the services of Robert G. Pogal, SRPA, in January of 2011 to prepare an appraisal in support of his use variance application.
11. The record developed in this matter indicates that, as a result of the recent market changes in the funeral home business, the subject property could no longer be operated profitably as a funeral home.
12. The testimony of both the applicant and the appraiser stated that all of the past history of sales, mortgages, and deeds should be ignored and that the Board should rely solely on the current fair market value of the property as the starting point for the Board's use variance deliberations. The appraisal submitted by Mr. Pogal indicated that the fair market value of the property as of April 18, 2011, was \$190,000.00.
13. Further testimony and documentation submitted regarding the use variance request indicated that in March of 2010, at a time when the fair market value of the property was quite likely in the range of \$190,000.00, the property was listed for sale at a listing price of \$475,000.00.
14. The listing price has been reduced over time to a point where, as of November of 2011, the listing price is now \$319,000.00, even though the fair market value is \$190,000.00.
15. As indicated above, the subject premises consists of the funeral home structure, and a vacant barn, together with a large, paved parking area.
16. The record shows that only offer received by the applicant was an offer to purchase the barn alone for \$150,000.00. That offer was contingent upon the Zoning Board of Appeals granting the subdivision of the subject premises into two lots – one for the barn and one for the funeral home.
17. The requested subdivision was denied in November of 2010.

18. The applicant has testified that no other offers have been received.
19. The appraisal asks the Zoning Board of Appeals to review the reasonable rate of return issue based upon expected net income from the rental of the subject premises under three different scenarios: "as is", after renovation to a state suitable for single family residence, and after renovation to a four-unit multi-family development.
20. According to the appraisal, renting the residence "as is" would require no renovation expenses and based upon a fair market value of \$190,000.00, the rate of return for such rental would be 1.89%.
21. Renovation of the property to a state suitable for rental as a single-family residence would cost \$81,295.00, resulting in a total investment in the amount of \$271,295.00.
22. The rate of return after such renovation would be in the amount of 5.18%.
23. The cost of renovation of the subject property to a four-unit complex would be in the amount of \$176,905.00 for a total investment of \$366,905.00.
24. The applicant claims that the rate of return from such investment would be in the amount of 10.14%
25. The Zoning Board of Appeals retained a consultant with expertise in real property renovation, development, and management. That consultant found that the applicant's appraisal underestimated certain rental costs, and therefore, a more realistic view of the rate of return to be expected from the four-unit complex would be 7.3%.
26. The applicant's appraiser opined that in order for a prudent investor to invest in any property for rental purposes, that prudent investor would require a rate of return of 10% or greater. The Zoning Board of Appeals' consultant concurred with that assessment.
27. The applicant's appraiser further opined that since renovation to a single family residence would require a significant investment, and since the expected rate of return for that investment would only be 5.18%, then no prudent investor would invest in such a renovation.
28. The Board determined that the "prudent investor" test was not the appropriate measure of whether the applicant could realize a reasonable return for any use permitted in the subject district.
29. The Board found that the correct measure of reasonable rate of return is the rate of return realized, or expected to be realized, by the rental of other single-family residences in the Village of Pittsford.
30. In determining the above-mentioned range of rates of return, the Zoning Board of Appeals utilized the purchase price information for properties set forth on pages 21 and 23 of applicant's appraisal, together with the reasonable rental rates and costs of rental contained in the applicant's appraisal.

31. The Zoning Board of Appeals further determined that purchase price of those properties was a reasonable measure of the funds invested in those properties in order to determine the rate of return.
32. The Board found that the reasonable rate of return to be expected from the rental of a single family residence in the Village of Pittsford is between 3% and 6%.
33. Thus, based upon an investment of \$271,295.00, the total investment necessary to renovate the subject property into a single family residence, a rate of return of 5.18% was well within the range of the rate of return to be reasonably expected from the rental of a single family residence in the Village of Pittsford.
34. The applicant owns a piece of property in the Village of Pittsford which is zoned for single family use.
35. By investing \$81,295.00, (there is certainly sufficient equity in the property to warrant that type of loan and mortgage), he will have the ability to realize substantially the same rate of return as other renters and potential renters of single family residences in the Village of Pittsford.
36. Since the applicant can realize a reasonable rate of return for the rental of the subject property for a use permitted in the district, he is not entitled to the granting of a use variance.
37. It should be noted that a realistic analysis of the rate of return that could be expected from a four unit multi-family complex on this property is only 7.3%, which is not substantially different than the 5.18% to be expected from its rental as a single family residence.
38. If the Zoning Board of Appeals were to grant a use variance based upon the claim that the reasonable rate of return for the rental of single family residences in the Village of Pittsford is 10%, then every single family residence located in a single family residence use zone would be entitled to a use variance.
39. The applicant's request for use variance was properly denied and therefore since the Zoning Board of Appeals took no action, it was not required to complete the SEQRA process.

**Liaison Update:**

Trustee Galli reported that:

1. A Crime Prevention Seminar with the Monroe County Sheriff's Office was held at the Library on November 1<sup>st</sup>, for the purpose of updating local merchants about crime issues in the Village.
2. Mayor Corby and Trustee Galli will be meeting with the DOT to discuss speeding issues on Jefferson Road.

3. There is a Canal Grant for Schoen Place improvements involving the Town and Village.
4. The Town, Village, and school are involved in a collaboration effort to meet with citizens and discuss various ideas.

### **EXECUTIVE SESSION**

**Motion:** Chairperson Mitchell made a motion, seconded by Member Chamberlin, to enter executive session for attorney/client communications.

**Vote:** Chamberlin – yes; Mitchell – yes; Lanphear – yes; Rubiano – yes; Wallace - yes.

***Motion carried.***

There being no further business, a **motion** was made by Chairperson Mitchell, seconded by Member Chamberlin, to leave executive session.

### **Member Items**

#### **Minutes:**

**Motion:** Chairperson Mitchell made a motion, seconded by Member Rubiano, to approve the 10/25/11 meeting minutes, as drafted.

**Vote:** Chamberlin – yes; Mitchell – yes; Lanphear – yes; Rubiano – yes; Wallace - yes.

***Motion carried.***

**Motion:** Chairperson Mitchell made a motion, seconded by Member Wallace, to approve the 11/3/11 Special Meeting minutes, as drafted.

**Vote:** Mitchell – yes; Rubiano – yes; Wallace - yes. ***Motion carried.***

**Adjournment:** There being no further business, Chairperson Mitchell adjourned the meeting at 9:15 pm.

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Linda Habeeb, Recording Secretary