

VILLAGE OF CANTON PLANNING BOARD MINUTES

December 11, 2018 7:00 P.M. Municipal Building, Canton, NY

Members Present: Chairperson Barry Walch, John Hill, Nick Kocher, Jessica Prody, Charles Rouse, Code Enforcement Officer Jeff Murray, Recording Secretary Ginger Thomas

Others Present: Kristie Sibbitts-Quicke, Eric Burch, Charlie Carvel, Constance Elen, Brooke Rouse, Randy VanBrocklin, Jamie Sinclair, Tim Danehy

Minutes

A correction was requested in the November 13, 2018, Village of Canton Planning Board Minutes to modify the description of the pyramid-shaped, architectural structures the Baptist Church members want removed from the church. Mr. Hill made a motion to approve the minutes with the change. The motion was seconded by Ms. Prody and carried.

Baptist Church Repairs

Mr. Rouse reported that following the previous Village Planning Board meeting, he had looked at the architecture of the Baptist Church and the repairs already made to the rear of the church. He stated that he thought there was still some architectural value in the pyramid structures and he would prefer to see the structures kept intact. While acknowledging that the Planning Board may not be able to require the structures be repaired, Mr. Walch said he would also like to encourage the church members to replace the pyramid structures. They are almost 8 feet in height. Mr. Rouse said he understood the cost of removing the structures and putting on a cap, may or may not, be cheaper than keeping them. There may be avenues the church could find to get the funds for the repairs. The Planning Board would like the members of the Church to research the cost of preserving the pyramid structures. It may cost the same amount of money to repair them as it would to remove them. It would be a compelling argument for removing the structures if it was going to cost thousands of dollars to repair them, but if the cost were only a few hundred dollars, the Planning Board would recommend repairing and preserving the structures.

45 Main Street Sign Proposal

All sign requests are reviewed by the Planning Board. Ms. Brooke Rouse explained the sign for the new store at 45 Main St. will be a decal of the logo and placed on the glass of the window. The colors will be black and the white color approved in the Historic District color pallet. The size is less than the maximum size allowed in the C-1 district measuring 54" X 50". It does not exceed 80% of the store frontage. Ms. Prody made a motion to approve the sign as proposed. The motion was seconded by Mr. Kocher. The motion was carried, with Mr. Rouse abstaining.

It was discussed that according to Zoning Code, a change of use, in the Historic District, needs to come before the Planning Board. The use of the building at 45 Main Street will be changed from an office occupancy, to a mercantile use, which is an allowed use in the C-1 district, but still

needs to be reviewed by the Board. A simple drawing and statement of use need to be reviewed by the Planning Board.

Ms. Rouse stated that she was intending to open the next day. In order not to stifle any business in the Town, Code Enforcement Officer Murray suggested he could issue a temporary Certificate of Occupancy until the next meeting of the Planning Board when the use could be reviewed. The temporary Certificate of Occupancy could then be converted to a permanent Certificate. It was recommended a 45 day permit be issued since the Planning Board was bound to meet again within 45 days. Ms. Rouse shared that, "For full transparency, I had a soft opening on Sunday. The normal hours are intended to start tomorrow."

Informational Session about Future Fay Subdivision

Code Enforcement Officer Murray explained that the subdivision, proposed by Dan Fay, which was discussed at the last Planning Board meeting is required to be reviewed by the Village Board of Trustees and a public hearing will need to be held. Mr. Murray said he had spoken with the owner Mr. Fay who gave him the impression only one lot would be subdivided at first. However, Mr. Charlie Carvel said he would be discussing subdividing 7 parcels. Mr. Carvel brought a preliminary layout for the Board's comments and so they would have some information about the project. After the Village Board reviews the project and holds a public hearing, the project will return to the Planning Board for more precise review and recommendations.

Mr. Carvel showed on the layout the 3 1/2 acre parcel which belongs to Linda Fay. He explained, "The proposal is to subdivide it into seven lots which would involve cutting out property for a house which exists on a 2 1/2 parcel now. All lots will be in conformity with lot size requirements." It will involve a new road section down the center of the area with water, sanitary sewer, and storm water sewer. Mr. Carvel said, "It will be pretty much a typical subdivision but small in scale. Obviously the intent is to create some taxable property for Mrs. Fay's use and also for the Village." The property is located behind existing road front properties on Miner Street and Lincoln Street. The new road will come off Miner St. and up the middle of the subdivision. A house already located on the property will become one of the lots of the subdivision. Water, sanitary and storm sewer will come off Miner St. Mr. Carvel explained the area is not totally dry but the storm drainage is very deep on Miner St. and runoff will drain towards Miner St. A SEQRA is not needed because the area is not a designated wetland and the subdivision is not of sufficient size to require a SEQRA.

Mr. Carvel explained he and Mr. Fay have bounced back and forth about how to subdivide the property but to do any subdivision a survey and a topographical map would be needed so they will do it all at once. He shared that the land has not been surveyed yet and none of the technical work has been done yet. There will be a cul-de-sac at the end of the road sized adequately for the fire trucks' turning radius. There will be a fire hydrant in the subdivision. Eventually the Planning Board will see the technical detail. The frontage and depth of all lots will exceed Code requirements with room for appropriate setbacks. Board members discussed the fact that the

proposed lots were generous in size, almost double the size of existing lots near by. Mr. Carvel was thanked for providing the Board with information about the subdivision and expressed excitement to see potential for new houses.

St. Lawrence Health Systems Solar Collectors at E. J. Noble Building

Chairperson Walch explained that several Planning Board members observed that the signs installed by St. Lawrence Health Systems were accompanied by, “features of galvanized pipe and the back side of solar collectors in the same eye-catching region as the signs themselves.” He continued, “In the Sign Code it says all transformers and other equipment must be shielded in ways approved by the CEO and I don’t think he had the chance to approve it. We have asked folks from SLHS to come back and see what we can do to work it out.”

Mr. Eric Burch, representing St. Lawrence Health Systems explained, “Unfortunately it was an after thought and oversight on our part when we had the idea of adding solar power to the system versus taking it off the grid thinking it would be a good green solution. It was kind of a quick last minute decision that is definitely on us. We apologize for that. What we are looking at is what would be an acceptable solution. We are always looking for low impact for the community as far as aesthetics.”

Mr. Walch said he assumed the signs used LED bulbs and regarding the solar collectors, asked, “How much current does each of those draw?” He pointed out the LED bulbs were not that bright but were on many hours of the day and he wonder if there was really that much savings of cost. Mr. Burch explained solar power was not a money making venture, it is a long term investment and is more an effort to go green. It may actually cost St. Lawrence Health Systems money. The North Eastern Sign Company sized the collectors to the power draw of the lights. A company in California sent back requirements and designs. The collector are not large in size. The lights are on all night, which can be 18 hours in the Winter. The collectors charge the capacitor which keeps the lights lit during the dark hours. It is an active system running off a 12 volt circuit so there is not a converter in the system. Power is stored in batteries which are in the big aluminum boxes in the back of the collectors. This is all new technology for SLHS. The collectors could be moved but the longer the run on a 12 volt system the less voltage. Mr. Burch said that is why the collectors are near the signs. He shared, “We looked at putting them on the existing light poles but the collectors are big enough where in order to get them on a light pole and get them out far enough it is quite a torque and the poles aren’t designed for that.”

Mr. Walch suggested it was the galvanized pipe look and the bracket look that is interfering. Mr. Burch suggested perhaps cladding, or disguising them in some form, may be something they could look at to mask the collectors to some degree. It was mentioned that bushes might provide a natural screen. Another problem was the collectors interfering motorists’ line of sight. Ms. Prody cautioned about a bush screen interfering with visibility. “Even with signs, people do not always follow directions. If you had a set of bushes there you might not see someone turning into the exit lane. People aren’t alway smart and turn into the exit lane, so I would be worried a little bit about a screen like that.” She also shared that she had no problem with the aesthetics.

She likes solar panels but knows other do have problems with solar panels. It was discussed that if moved, the panels might have to be pretty far back from the road.

Planning Board members wondered if SLHS could look at possible ways of masking the collectors and also the possibility of moving them, then bring ideas back to the Planning Board. Mr. Burch stated they might have to wait until spring to take them down because they are cast on concrete. When asked if the collectors could be put behind the tree line, Mr. Burch said they probably could be moved but it may require more panels or larger panels because increased distance from the sign increases the voltage drop. Ms. Prody suggested a solution might be found which would not involve taking the panels down and later putting them back up.

Mr. Burch said SLHS could employ architect Brooks Washburn to explore ideas for moving the collectors to a new location or painting or cladding them so they would blend in better. Mr. Hill mentioned that lowering the collectors might be helpful if they could be lowered without being in danger from lawn mowers, snow plows, or flying snow. It was discussed that the collectors are not rotating, collecting only from the South. Vegetation could be planted to the north of the collectors but since the collectors were placed just outside of the Department of Transportation right-of-way, there may not be adequate space to add plantings without them being in the right-of-way.

Mr. Kocher pointed out that traffic lights painted green were more inconspicuous than the galvanized steel and painting might be part of a solution. Mr. Burch was asked to let the Code Enforcement Officer know when they have ideas and another meeting can be held to work together on a solution.

25 Court Street Change of Use to Office Use

Mr. Jamie Sinclair said that “Long term plans are certainly no secret. We ultimately plan to use the building as a church but I would love an office right here in Canton as soon as possible. So I figured since the building already has offices, I’ll just move right into Rick’s. I just wanted to run it by you guys first. I’m not even sure if I need permission since it already has an office, it’s not really changing anything but I figured I wanted to be on the up and up rather than subverting.”

Mr. Walch stated that it is a change of use from restaurant to office space. Mr. Sinclair asked, “Can we continue it’s use as a restaurant and just use the office in it?” Mr. Walch said, “As far as I know, it can be run as a restaurant.” To keep the restaurant closed and just use the office, Board members pointed out would be a change of use.

Mr. Kocher asked, “Is it church office space? Because it would still be a church buying the property, operating it as church property, which to me is not allowed.” He continued, “That’s my concern that this is establishing a beachhead for eventually using it as a church. I am very concern about us making any kind of determination on this property while there is an ongoing ZBA evaluation going on. The last thing I want to do is see this purchased and then used as a

church office and that used as rationale for a hardship in some other legal action. I don't feel comfortable making a determination on this while there is other ongoing business with this property." Mr. Kocher summarized, "As far as I am concerned churches are not allowed in that district. There are other available properties and I see no way that I am ever going to vote, yes, for that being a church. So why go in that direction partially? That is unfair to him, that is unfair to the Village, unfair to the CFC." Other members of the Planning Board agreed that nothing can be done on this case until the Zoning Board of Appeals makes a decision.

Mr. Sinclair asked, "It doesn't matter who we are, it matters how we use the building, correct? You don't judge because of who the people are, but the use?" Planning Board members confirmed that it was the use that was considered. Mr. Sinclair also asked, "We are going to own the building but we just have to use it within the certain requirements allowed?"

Ms. Prody pointed out, "You can apply for a change of use if you aren't going to run it as a restaurant and as long as that is really clearly spelled out of what is allowed in a C-1 property, that change of use will probably be allowed. I think the problem here is that if you are using it as your office, as a reverend. What is happening in that office is some of your ministry. At that point that it becomes church work. And so what is the line of when something is a church and when it isn't? You are not gathering here to worship but you will be doing church things. And so then at that point, while the ZBA is trying to decide if that is allowable in that space, we can't make a decision on that. If you guys wanted to run a restaurant in there and you wanted to become a restaurateur, that would be wonderful. Or, if you wanted to turn it into some other allowable thing in C-1 Code like office space, but not for church, commercial office space. Not for doing church matters because at that point it goes into that realm of being a church."

Mr. Rouse added, "What your professional office would be, would be a detail in that conversation. If you're a lawyer, that is fairly explainable. You're a bank, that is fairly explainable. Your office would be appropriate in that zone."

Mr. Sinclair commented, "The Zone Code doesn't necessarily specify how the office is used." It was pointed out by the Planning Board that the Code says "professional offices." Mr. Sinclair claimed, "It certainly is a profession."

Ms. Prody said, "For me, where it gets messy is that, when I think of a church, as one who grew up in multiple churches, it is not just the Sunday worship or the Saturday morning worship. It is the community and the work that happens in that building otherwise. To me what you would be doing in there would be church work, and thus, it becomes church."

Mr. Kocher added that the Episcopal Church property has the church itself and, at one time, there was a Rector living in the Rectory building. He suggested that Mr. Sinclair having an office at 25 Court St. could be compared to the Rectory building which is still church property.

Mr. Rouse stated, "In my view, and maybe I differ from everybody else in this regard, but unless they, as an organization, were formally, in writing, to present to us they never intend to have a church in that building and we were somehow able to document that, I'd be unwilling to entertain this request any further."

Mr. Sinclair asked, "Does this mean we cannot use the building in any capacity, even in line with the zoning because we are a church?" Mr. Rouse said that would be his view, until the ZBA makes a decision.

Mr. Walch pointed out, "You can always do a compliant, allowed use like, retail store, personal service shop, launderette, restaurant or tavern, theatre. Any of those things are allowed with a Certificate of Occupancy and if it meets the requirement of that particular thing. A launderette would have to have space and water. It is the same for other uses in that building. If it is not a restaurant, then it gets studied pretty heavily. We really can't say 'yes' for anything at this point."

Mr. Sinclair continued, "So help me a little more specifically. How do we go about using this as office space?"

Code Enforcement Officer Murray replied, "You can't.

"Because of who we are?" inquired Mr. Sinclair.

Mr. Murray answered, "No. We just got to keep it going in the proper procedures, in the proper time. We can't get ahead of ourselves because when we do that we are going to end up backtracking like we did the last time that I made a mistake. I don't want to be standing in front of a whole bunch of people again being told that I made a mistake. We are going to do this just the way it should be. I think the ZBA has got to make their determination before we can do anything. Even if you use it as an office, if you applied your tax exempt to it, well then you have already attached the church to it. We have got to do it in order. Let the ZBA make their decision. Whatever happens there, then we deal with it in the next step. That's how we have to do this. We just have to follow the procedures and get the procedures down so we are doing them the same every time. Mr. Sinclair said, "I do follow that but does the Code actually require that? Require that we wait for the ZBA to make a ruling on a different request?"

Mr. Kocher responded, "The only way we can vote yes on this is if you get a favorable decision from the ZBA. We right now, per code, do not have the ability to say yes. It is not who you are as people it is what you are as an organization, which is a church, which is not allowed in the C-1 district. So having an office space where you are doing work for the church makes that essentially church property which is not allowed. I guess it was more semantics when you said, is it who we are. No, not you Jamie, or who your members are. But what you are as an organization is not allowed use in that district. We do not have the authority to reinterpret the Code to allow this. That is where the ZBA comes in and that is why I am uncomfortable."

Mr. Hill added, "This Board should be aware that there is possible litigation involved with any decision that the ZBA makes. And any decision by us, before the ZBA, would throw a wrench into that also. I am not an attorney, and I don't claim to be, but I have dealt with this kind of stuff before and one thing leads to the next, to the next. My own opinion is that we should wait for the ZBA to render their decision and go from there. They are going to have a big investment in this property, so I can see his point, but I would be awful careful as a Planning Board trying to circumvent the process. The process is so gray, too. We are in uncharted territory here and again if there is possible litigation afterward, I can't see where that would help us at all."

Ms. Prody asked, "Has our lawyer been consulted as to whether or not we should be moving forward on questions like this?" Mr. Walch responded, "I have talked to him and he said 'Don't do anything until the ZBA is done.' That is really what the opinion of the lawyer is too. His version is always don't give a use variance either. He is the one who has to defend us. He wants us to not do anything that is going to make it hard to do that."

Mr. Sinclair thanked the Board for considering his request and asked, "Two brief follow ups. Could I have that in writing from you guys or from Jeff, just a denial of the request. Because I will appeal that with the ZBA. Secondly, I was interested in the Special Exception use. It is very interesting to me." Referring to the Village Code, Mr. Sinclair continued, "It is possible the ZBA will conclude we are not allowed as a delineated use but then the next section down, you might recall this, is 325-11, 2-d. It says, in the C-1 district, uses deemed similar to uses otherwise permitted in the C-1 district are permitted by Special Exception of the Planning Board. I realize that is an involved process but I was hoping to get that moving."

Mr. Walch point out, "That really means it is limited to those things, a, b, c, and d, that they could give as a Special Exception just as we have opportunities to give Special Permits. But the things we can give Special Permits for are still listed out; rooming house for example is the one we ran into with Grace Episcopal. We can't just do it for something that has popped up out of the blue."

Mr. Kocher added, "That is at our discretion. Part of the duties of the Planning Board is to look at how would a Special Use Exception affect adjoining properties. We have already had the issue of the liquor license. It is not something where we have to automatically rubber stamp and say, 'Yes, it is going to happen,' just because it can be allowed as a special use, because otherwise it would just be in that first list, if we didn't have to look at it on a case by case scenario."

Mr. Sinclair stated, "I believe it requires a hearing with 10 days public notice and then you consider the request for special exception."

Ms. Prody clarified, “ We wouldn’t do that though until the ZBA rules. So it is not really a process we can start now until we know how the ZBA is going to decide. Mr. Walch reiterated, “There are choices “a” through “d” but it is still limited by what can be special excepted.”

Continuing the conversation about the Village Code, Mr. Sinclair stated, “D would include things similar to 1, r, charities/fraternities. I tried to make the case that we are that the other night. Some of you guys heard that. We are certainly similar, so it is worth consideration at least.

Mr. Murray reminded Mr. Sinclair, “You still have to wait until the ZBA makes that determination before this Board can do anything.” Ms. Prody added, “It is not something you can get the ball rolling on until that decision is made because there is no need for a Special Exception if the ZBA rules in your favor. If they don’t, then you can come to us with that and we can make a decision at that time, but the reality is that if we started that process now it would be basically saying to the ZBA, ‘It doesn’t matter what you do.’ So we have to wait for that process.

Next Meeting

The next meeting of the Village Planning Board was scheduled for January 8, 2019.

Adjournment

The meeting was adjourned at 8:00 pm.

Respectfully submitted,

Ginger Thomas, Recording Secretary

Chairperson Barry Walch