

Town of Union Planning Board Minutes

Tuesday, June 9, 2015

A regular meeting of the Town of Union Planning Board was held Tuesday, June 9, 2015, at the Town of Union Office Building, 3111 East Main Street, Endwell, New York.

Members present: S. McLain, L. Miller, S. Forster, S. Daglio, A. Elwood,
T. Crowley, L. Cicciarelli.

Others present: Marina Lane, Paul Nelson, Kurt. Schrader, Jim Taber,
John Anastos, David McDonough, Sarah Campbell,
Steve Trishka.

A. CALL TO ORDER

Chairman McLain opened the meeting of the Planning Board at 7:03 PM.

B. MEETING MINUTES

1. Approval of 2/10/15 Meeting Minutes

Chairman McLain asked for a motion to approve the 2/10/15 Meeting Minutes as written.

Motion Made: L. Cicciarelli

Motion Seconded: L. Miller

MOTION: Approval of the February 10, 2015, Meeting Minutes

VOTE **In Favor:** L. Miller, S. McLain, A. Elwood,
S. Forster, L. Cicciarelli

Opposed: None

Abstained: S. Daglio, T. Crowley

Motion Carried

2. Approval of 3/10/15 Meeting Minutes

Chairman McLain asked for a motion to approve the 03/10/15 Meeting Minutes as written.

Motion Made: S. Forster

Motion Seconded: S. Daglio

MOTION: Approval of the March 10, 2015, Meeting Minutes

VOTE **In Favor:** L. Miller, S. McLain, S. Daglio,
S. Forster, A. Elwood

Opposed: None

Abstained: T. Crowley

Motion Carried

3. Approval of 4/14/15 Meeting Minutes

Approval of the April meeting minutes was postponed until the next meeting scheduled for July 14, 2015.

C. Country Pines Pavilion, 1660 Union Center-Maine Hwy.; D. McDonough Special Permit for Floodplain Development

1. SEQRA Determination

Ms. Lane reviewed the Short Environmental Assessment Form with members of the Planning Board. She noted that a lot of new information had come to light which affected how the impacts were rated on part two of the EAF. Ms. Lane stated that she was considering the entire project's impact on the intensity of land use, including floodway development and the concert venue. Because the proposed concerts may potentially be very large, they constitute an expansion of the outdoor entertainment use. Mr. McDonough disagreed with this assessment since he had been having concerts on this site since 1998 and he did not consider the addition of two buildings an expansion of the use of the property. Ms. Lane replied that it was not just a change in the number of buildings on the site, but a larger number of concerts would generate a moderate to large impact on the intensity of the land use. She said she based this on complaint phone calls that the Code Enforcement Office had received about other concerts that have been held at the site earlier in the year, evidence that the length and the number of the concerts that were now held at the site had already had a large impact on the character of the existing community. The concerts also have the potential to cause a moderate impact to the existing level of traffic. Additionally, the proposed fence could have a moderate impact because the fence could increase the potential for flooding, drainage or problems with the flow of flood water on the site as it is located in the floodway. Ms. Lane also advised Mr. McDonough that he would have to be careful of any expansion to the east on the property because of the possible presence of wetlands there. All the other impacts on Part 2 of the EAF form were considered to have no, or a small, impact on the environment.

Ms. Lane concluded her report with a summary of the significance of the potential impacts on the environment. This is a two-phased project, and in order to avoid segmentation, the two-phases are reviewed under the same SEQRA review for potential negative impacts to the environment. The property is zoned General Commercial, and the parcel is 8.674 acres, largely green space, and has mixed uses, including the Dublin Double Pub, a small commercial auto retail business, and the concert area. The concert area is a non-conforming use, not currently permitted in the General Commercial zoning district. The addition of two new structures constitutes an expansion of the nonconforming use, as does the present expansion of formerly permitted hours of operation. The expansion of a nonconforming use requires approval by the Zoning Board of Appeals. In addition, the developer

plans the construction of his proposed rest rooms and cold storage building in the floodway and floodplain. This requires a special permit and site plan review from the Planning Board.

The site is served by private water and septic tank. The proposed two structures would result in an increase of approximately 600 square feet of impervious area, and a stormwater management plan is not required. Potential impacts are changes in the base flood elevation or flow of floodwaters primarily due to the solid fence that is being erected. This can be mitigated by removing the solid fence. The developer has made plans for numerous musical acts, which have already been reported as disruptively loud, and later at night than was agreed upon in 1998, at which time six acts per summer were allowed, to no later than 11 PM. The developer must get approvals to expand the hours of the nonconforming use, or comply with the previously determined hours of operation. In addition, the concert events must comply with the Noise Ordinance adopted in 2011 to successfully mitigate that negative impact.

The proposed use will generate traffic impacts during concert events. Working with the trained traffic control experts will help mitigate the impacts. The project will not have a significant visual impact. The project, after careful review of all factors, will not have a significant impact on the environment if the mitigation measures are followed. If the applicant cannot agree to these steps, Planning staff recommend a noise analysis, a floodplain hydraulic study, and that a parking plan be submitted.

At the conclusion of Ms. Lane's report Mr. Nelson asked Ms. Lane whether there had ever been a formal ruling either by the Town Board, the Zoning Board or the Planning Board regarding the number or the duration of the concerts. Ms. Lane noted that no Board had formally approved any agreement about the uses of the property. Ms. Lane stated that Town Board minutes from 1998 had indicated that the owner had agreed to the Town Board to hold no more than six concerts per year. Mr. McDonough stated that he has been holding concerts at his facility since the installation of the concert stage in 1998 and that nothing will be changed by the addition of the cold storage building and the replacement of a bathroom.

Ms. Sarah Campbell, the attorney for Town of Union resident Steve Trishka, stated that she was at this meeting to represent him because Mr. Trishka was concerned about the expansion of the use of the facilities due to the addition of the new buildings at the site. Mr. Trishka lives on Sylvia Drive and has already endured a lot with the noise associated with concerts now being held at the Pavilion. Ms. Campbell asked permission to speak for a few minutes so that she could shed some light on what had happened in the past.

Ms. Campbell noted that previously the property had been utilized for a concert use but that at some point in time the zoning code had changed. Since the law changed, outdoor concerts are no longer a permitted use and so the factors that are the most relevant to the grandfathered use of the property include the duration, the intensity and the frequency of the concerts taking place. She explained that legal non-conforming, or grandfathering, is an opportunity for a property owner to continue their business as they had been previously conducting it in the face of legislation which prohibits it. But the primary tenet of grandfathered uses is that they are not allowed to expand. Therefore the concerts are not allowed to become more frequent; they are not allowed to become longer in duration; and they are not allowed to become louder. While she does not know the regulatory history regarding the concerts in the past, she does know from Mr. Trishka that there has been a significant increase in the frequency and the duration of the concerts. Ms. Campbell noted that the concerts may end at 11 PM but they also start at 2 o'clock in the afternoon, resulting in nine or ten hours of uninterrupted music on either Thursdays, Fridays, Saturdays, or Sundays. She concluded her presentation by saying that her attention was drawn to this application due to the addition of the cold storage building. She stated the addition of the cold storage building is only intended to increase the ability of this applicant to service and increase the number of customers, which is not permitted under a grandfathered use. She concluded her presentation by stating that if the applicant wants to expand the use, there is a process for it by applying to the Zoning Board of Appeals to expand the non-conforming use.

Ms. Miller questioned Mr. McDonough about the number of people he expected at the concerts and he replied that it was between 1,000 and 1,500 people. There were also concerns about the traffic control and parking during the events and Mr. McDonough replied that he had staff from the Sheriff's office perform traffic control during the concerts. The Planning Board members also asked about the status of Mr. McDonough's liquor license at the Pavilion and he replied that the law had changed so that he now has a permanent license which can be renewed seasonally. Ms. Lane asked him whether the proposed new fence was a requirement for his liquor license and he replied that he just wanted a fence to clearly distinguish his property's boundaries and that he longer was interested in installing the new fence as part of his application. Since questions remained about what the historical agreement had been made regarding the concerts in the past and what impact there would be to the floodway with the addition of the two buildings, the motion to approve the SEQRA determination was postponed.

2. Public Hearing: Special Permit for Floodplain Development

Chairman McLain called for a motion to call for a Public Hearing related to the Special Permit for Floodplain Development to be held July 14, 2015, at 7:00 PM.

Motion Made: A. Elwood
Motion Seconded: L. Cicciarelli
MOTION: Motion to call for a Public Hearing for a Special Permit for Floodplain Development to be held on July 14, 2015, at 7PM.
VOTE: **In Favor:** L. Miller, S. Daglio, S. McLain, S. Forster, T. Crowley, A. Elwood, L. Cicciarelli.
Opposed: None
Abstained: None
Motion Carried

**D. Broadway Diner, 3130 Watson Boulevard; L & J. Anastos
Advisory Opinion to the Zoning Board of Appeals**

Ms. Lane presented her memorandum to the Board. Leon and James Anastos, the owners of the Broadway Diner, submitted a sign application for a new 23-foot high by 12.04-foot wide pylon directory sign at 3130 Watson Boulevard, consolidating the Rollo State Farm insurance business and Broadway Diner signage into one sign. In addition, the sign company, JAX Signs, Inc., has attempted to place the proposed pylon sign just higher than the existing car wash sign, which is located to the west at 3128 Watson Boulevard, also along the shared property line. Pylon signs are not permitted in the property's zoning district, which is Neighborhood Commercial. Monument signs are the only free-standing sign permitted, with a maximum height of five-feet (5').

The Broadway Diner had previously received a use variance for an existing pylon sign to be relocated to the corner of 3140 Watson Boulevard, but found the location is not very visible for west-to-east traffic. Therefore, they are proposing to have a sign at 3130 Watson Boulevard, at the 23-foot height for better west-to-east visibility. In addition, they are requesting two area variances for the front and side (west) setbacks to zero feet.

The requested variances are: 1) a use variance for a pylon directory sign in a Neighborhood Commercial Zoning district; 2) an eight foot (8') area variance for a zero foot setback on the west for the sign; and 3) an eight foot (8') area variance for a zero foot setback at the front side for the sign.

The Planning Department staff recommends that the Planning Board recommend to the ZBA: 1) approval of the use variance to replace an existing, nonconforming pylon sign; 2) approval of the eight foot (8') area

variance for a zero feet setback on the west for the sign; and 3) approval of the eight foot (8') area variance for a zero feet setback on the front side for the sign.

Mr. Taber then gave a short presentation about the size and location of the new sign. Since the top of the car wash sign is 14 feet and the bottom of the existing State Farm sign is 13 Feet Mr. Taber is proposing a combined sign height of 23 feet which would require an eight foot variance. He added that the Broadway Diner sign would also be internally illuminated. Mr. Forster noted that the Neighborhood Commercial zoning code would not permit internally lit signs at that location. The internal illumination of the sign was not on the original application so Ms. Lane advised Mr. Taber to talk to Code Enforcement about that issue. Mr. Nelson suggested that if the sign were moved to a different location on the property, there would be more visibility and the sign would not have to be as high because the car wash sign would not be in the way. Mr. Crowley then asked if it would be legal if the sign were placed on the top of the building with ground lights illuminating it. Ms. Lane replied that it would not be legal. Since the variance being requested did not refer to an internally lit sign, it was decided that this would not be included as part of the motion regarding the area and use variances.

Chairman McLain made a motion to recommend approval of the following variances by the Zoning Board of Appeals.

1. Use Variance for directory pylon sign

Motion Made: A. Elwood
Motion Seconded: L. Miller
MOTION: Recommendation of approval of the use variance for a directory pylon sign by the ZBA.
VOTE: **In Favor:** A. Elwood, S. McLain, T. Crowley, L. Miller, S. Daglio, L. Cicciarelli
Opposed: S. Forster
Abstained: None
Motion Carried

2. Area Variance of eight feet side setback

Motion Made: A. Elwood
Motion Seconded: S. Daglio
MOTION: Recommendation of approval of the area variance of 8' for a zero foot setback on the west of the sign by the ZBA.

VOTE: **In Favor:** A. Elwood, S. McLain, T. Crowley,
L. Miller, S. Daglio, L. Cicciarelli
Opposed: S. Forster
Abstained: None
Motion Carried

3. Area Variance of eight feet front setback

Motion Made: A. Elwood
Motion Seconded: S. Daglio
MOTION: Recommendation of approval of the area
variance of 8' for a zero foot setback on the
front of the sign by the ZBA.
VOTE: **In Favor:** A. Elwood, S. McLain, T. Crowley,
L. Miller, S. Daglio, L. Cicciarelli
Opposed: S. Forster
Abstained: None
Motion Carried

E. Zoning Board Code Revisions: Advisory Opinion to the Town Board

The Planning Board reviewed proposed changes to the zoning text, per Section 300, Article 40, Supplementary Use Requirements; and Article 53, Setbacks, Yards, and Encroachments. Listed are the recommendations by the Planning Board to the Town Board:

- 1) The Planning Board voted unanimously to recommend denial of the following: the insertion of the word "improved" to amend section 300-51.8 - Location and areas computed as parking spaces. The amended code would insert the word "improved" to read "Areas which may be considered as off-street parking spaces include any private garage, carport or other improved area available for parking other than a street, entrance and exit lanes or a driveway, except that no vehicle shall be parked or stored in any required fire lane." The members feel that the wording was too restrictive and they also want to encourage porous areas.
- 2) The Planning Board had previously made a recommendation for Article 53 Setbacks, Yards, and Encroachments, section 300-53.4 (B) to read "An awning or movable canopy shall not project more than 15 feet (versus the proposed 5 feet) on a residential building."
- 3) The Planning Board voted unanimously to recommend the insertion of "as an accessory use" to Article 40 Supplementary Use Requirements, Section 300-40.19 (A) for clarification purposes. The sentence would read: "Trailers, recreational vehicles and boats may be placed on a residential lot as an accessory use for the purpose of storage of such trailers, recreational vehicles or boats but shall not be parked within the required accessory side or rear setback

of the premises, shall maintain a minimum front setback of 10 feet and shall comply with section 300-53.14, Visibility at intersections.”

4) The Planning Board voted unanimously to recommend the addition of “Parking for a multifamily use within 200 feet of any multi-family residential building is permitted in an Urban Multi-Family zoning district by Special Permit from the Planning Board.” to Section 300-51.4 so that it conforms to keep the Town of Union’s Code uniform with Johnson City.

5) The Planning Board voted to recommend approval of the insertion of the wording “only one curb cut per driveway is permitted and” to Section 300-521.7 Design standards. At a previous meeting, five out of six members had disagreed with this wording. During discussion, the members agreed unanimously to recommend the insertion "with front property lines less than 100 feet" and all of the members thought that citizens with less than 100 feet property width could apply for a variance if they wished to have more than one curb cut. This would allow those with more than 100 feet of frontage to have two curb cuts.

6) The Planning Board voted unanimously to recommended the insertion of the following phrase “in a residential district and 16 square feet for industrial/commercial property in a commercial/industrial zoning district” to Section 300-52.3 Signs authorized without a permit. The sentence would now read “One real estate sign on any lot or parcel, provided that such sign is located entirely within the property to which the sign applies, is not directly illuminated, does not exceed six square feet in area in a residential district and sixteen square feet for industrial/commercial property in a commercial/industrial zoning district and is removed within seven days after the sale, closing, rental or leasing.

7) The Planning Board voted unanimously to recommend the change to Table 52-1, to increase the size of the monument sign in Urban Single Family, Urban Two-Family, and Single Suburban Family to 12 square feet for a church or religious institution. The Planning Board voted five in favor and two opposed to increase the height of monument signs in Neighborhood Commercial to 8 feet.

8) The Planning Board voted unanimously to recommend the insertion of the following sentence to Section 300-60.7 Penalties for offenses: “Any violation of the provisions of this chapter shall be subject, upon conviction, to a penalty or fine up to and not to exceed two hundred fifty dollars (\$250) or to a term of imprisonment of not more than fifteen (15) days, or both. Each day such violation is committed or permitted to continue shall constitute a separate violation.”

9) The Planning Board voted unanimously to recommend the deletion of B (2) “Maximum areas in the Table of Sign Regulations (Table 52-1) represent the cumulative sign area for all signs on the lot.” from Section 300-52.6 Specific

provisions by zoning category. This requirement had been very restrictive for plazas with multiple signs.

10) The Planning Board voted unanimously to recommend the insertion of the following phrase to Section 178-19 Snow and ice on sidewalks: "including curb cut areas providing handicapped access." The sentence would now read: "The owner of a house or any other building and the owner or person entitled to possession of any vacant lot and any person having charge of a church or public building in the Town shall keep the sidewalks adjacent thereto, including curb-cut areas providing handicapped access, free from the obstruction of snow and ice."

Chairman McLain asked for a motion to recommend approval of the code revisions to the Town Board.

Motion Made: L. Miller
Motion Seconded: S. Forster
MOTION: Approval of the Zoning Board code revisions as written
VOTE **In Favor:** L. Miller, S. McLain, T. Crowley, S. Forster, A. Elwood, S. Daglio, L. Cicciarelli
Opposed: None
Abstained: None
Motion Carried

F. Other Such Matters as May Properly Come Before the Board

Ms. Lane noted that Rich Laganiere has submitted an application to use an existing warehouse at 402 Airport Road for an indoor hockey training center that will run year round.

G. Adjournment

Chairman McLain asked for a motion to adjourn the meeting at 9:40 PM.

Motion Made: L. Cicciarelli
Motion Seconded: S. Daglio
MOTION: Adjourning the meeting.
VOTE: **In Favor:** S. McLain, T. Crowley, L. Miller, S. Forster, S. Daglio, A. Elwood, L. Cicciarelli
Opposed: None
Abstained: None
Motion Carried

Next Meeting Date

The next meeting of the Planning Board is tentatively scheduled for Tuesday, July 14, 2015 at 7:00 PM.

Respectfully Submitted,

Carol Krawczyk