

**MEETING OF THE
TOWN OF ALLEGANY PLANNING BOARD**

**Monday, April 8, 2013
at 7:00 p.m.
Allegany Town Hall
52 W. Main Street, Allegany, NY**

AGENDA

Salute to the Flag

Minutes

March 4, 2013
March 11, 2013

Old Business

None

New Business

None

Other Business

Zoning ordinance update:
Temporary Uses: Section 5.02
Article IX, Site Plan Review
Definitions relating to Dimensional Regulations

Correspondence

None received

**Next Planning Board meeting:
Monday, May 13, 2013**

**Town of Allegany Planning Board
Meeting Minutes**

Monday, April 8, 2013 at 7:00 P.M.
Allegany Town Hall, 52 W. Main Street, Allegany, NY

APPROVED June 10, 2013

Present:

Frank DeFiore, Chairman
Pete Hellier
Rick Kavanagh
Helen Larson
John Sayegh

Also Present:

Carol Horowitz, Town Planner; Lynette Semsel, Secretary;

Chairman DeFiore opened the meeting with the Pledge to the Flag at 7:00 PM.

Mr. DeFiore made a motion to approve the minutes of the March 4, 2013 special meeting. 2nd by Mrs. Larson. Ayes all. Carried.

Mr. DeFiore made a motion to approve the minutes of the March 11, 2013 meeting. 2nd by Mrs. Larson. Ayes all. Carried.

Old Business: None

New Business: None

Other Business: Zoning ordinance update:

Temporary Uses: Section 5.02 – Temporary Motor Vehicle Sales

Per the Planning Board's request at the March 11 meeting, Mrs. Horowitz consulted with the Town Attorney, Wendy Tuttle, about the possibility of charging a security deposit from the temporary motor vehicle sale permit applicant in addition to the application fee. It was Ms. Tuttle's opinion that the Town could not require it for two reasons: 1) If the purpose is just to make sure the applicant picks up the trash, the appropriate party to require the security deposit is the property owner as they would ultimately be responsible for making sure the area is cleaned. 2) It would be inequitable to require a performance bond for just this one type of use if the Board is not going to require the bond for everyone.

Based on Ms. Tuttle's recommendations, Mrs. Horowitz said she did not make the change to the section. She then asked for any discussion. Mr. Sayegh said he didn't agree with Ms. Tuttle's opinion as he reasoned the security deposit/bond requirement could be phrased so the Planning Board would impose such deposit with the option to not require it depending on the situation. Mr. DeFiore asked if any other communities required a security deposit. Mrs. Horowitz said she could not find many communities that specifically regulate temporary auto

sales and those that do are mostly based in Florida. Most of those did not require security deposits but they all did have a fee. She is not aware of any towns in our area that regulate temporary auto sales. Mr. DeFiore said the Board does have the ability, if the permit holder for the temporary vehicle sales event does not follow the stipulations that are set up, of not allowing that holder to obtain another permit. Mrs. Horowitz stated the permit holder would be ineligible to obtain a new permit for one year from the date of the suspension order issued by the CEO; however, she questioned the Board as to whether that suspension was long enough. The Board decided that 18 months would be a better amount of time. Mrs. Horowitz will make the change.

Temporary Uses: Section 5.02 – Temporary Motor Vehicle Sales – Part D

This section was added per the request of the Planning Board at the March 11, 2013 meeting to address other transient outdoor sales. These permits would not go through the Planning Board but would be issued by the Code Enforcement Officer directly.

Under section (e) to clarify the organizations that would be exempt, the sentence will read: *This section does not apply to not-for-profit organizations, causes and benefits and/or religious organizations, such as Girl Scouts, Boy Scouts, school groups, the Salvation Army, etc., which may conduct sales events as fund raising activities on a site with the property owner's permission, without the need to apply for a Temporary Use Permit.*

(3) Application Process – (b) Mrs. Horowitz stated the Town Attorney suggested that the ability to impose conditions be added; therefore, she has done so.

(4) Standards – (d) To further clarify the sentence, it was changed to read: *Cumulatively, there shall be no more than a total of four Transient Sales Events and/or Temporary Motor Vehicle Sales Events per premises per calendar year.*

(5) Violations – (b) The suspension time was changed from twelve months to eighteen months to coincide with the suspension for the Temporary Auto Sales.

Mr. Hellier made the motion to refer Section 5.02 Temporary Structures or Uses with the changes to the Town Board for their consideration with the recommendation that it be approved. 2nd by Mr. Kavanagh. Ayes all. Carried.

Mr. Hellier made the motion to recommend to the Town Board that the fee structure for Part C of Section 5.02 Temporary Structures or Uses be \$500 (Five hundred dollars) and for Part D of the same document the fee would be \$100 (One hundred dollars). 2nd by Mr. Kavanagh. Ayes all. Carried.

Mrs. Horowitz will draft a letter to Mr. John Hare informing the Town Board of the Planning Board's decisions and Chairman DeFiore will sign it.

Site Plan Review: Article IX, Site Plan Review

Mrs. Horowitz went over the changes in Article IX stating first that she had changed the title from Site Plan Approval to Site Plan Review as the Board does have the ability to deny a site plan.

Section 9.01 Purpose: When reviewing site plan applications, the use is considered acceptable in the zoning district. The purpose of the Site Plan Review allows the Board to look at the design of the site; therefore, Mrs. Horowitz revised the Purpose section and moved the function paragraph from 9.02(C) and included it also.

Section 9.02 Applicability and Exceptions:

- (2) “New related land use under Permitted Uses which does not have an adverse impact on the community as determined by the Code Enforcement Officer’s assessment...” has been deleted.
- (6) “or additions of less than 5,000 square feet, whichever is the lesser” was added. This would cover large buildings such as Friedsam Library at St. Bonaventure when they added the rare book room. Even though the addition was huge, it didn’t increase the building by more than 25%. The addition then did not need to come before the Planning Board.
- (11) The Board decided to add “and except for billboards and other off-premises signs” to the exemption.

Section 9.03 Authority:

(B) Area Variances: Mrs. Horowitz changed this title from *Permits and Variances not to be issued*. There is a provision in state law that says to apply for an area variance, a building permit application must be requested and denied by the Code Enforcement Officer (CEO). The reason is that the applicant is appealing the decision by the CEO to the Zoning Board of Appeals (ZBA). There is a provision in the state law that says, if the applicant is applying for subdivision, site plan or special use permits and knows a variance will be needed, the applicant has the ability to go directly to the ZBA for that variance without first getting a denial from the CEO. There is nothing in state law that says which board has to act first. Mrs. Horowitz feels the ZBA should always act first to either allow or deny the variance. In that way, the Planning Board will know if they can approve the application.

Mr. Hellier mentioned that the wording does not include there must be an active site plan application either simultaneous or prior to the application to the ZBA. Mrs. Horowitz will rewrite the section to include that.

(C) Integration of Procedures was already in the Ordinance but Mrs. Horowitz moved it to this section.

Section 9.04 Application Content:

This section was revised to group requirements by topic and some items were deleted because they relate to subdivisions.

Section 9.06 Application Procedure

(3)(a) Due to the fact that it takes time for the newspaper to set up the legal notice, it was decided to reduce the minimum number of days for publishing to five (5) days before the public hearing. The wording was also changed to clarify the statement.

(3)(c) The Town will take over the mailing of the notices rather than the applicant for the variance. Mrs. Horowitz mentioned that in our current ordinance, there is nothing that requires the Town to provide any kind of notice of the public hearing to the abutters. The only requirement is in accordance with state law that the notice of the public hearing needs to be published in the newspaper; however, past practice has been that notice was provided to the abutters.

(F) Abandoned Application: Mrs. Horowitz added this section as it was not in the previous ordinance. If there has been no activity by the applicant for six (6) months, this gives the Planning Board the ability to deny the application.

Section 9.08 Project Completion and Certificate of As-built Project

(C) Letter of Certification

(1) This combines existing language in the ordinance with a new requirement for a Letter of Certification for post construction. This allows the Planning Board to require as a condition of approval that the project has been built according to the approved plans which takes the onus off the Code Enforcement Officer and puts it back on the applicant. Before a Certificate of Occupancy which states that the project has been built to code can be issued, this Letter of Certification looks at the “soft” issues such as lighting, landscaping, etc. and must be provided by the applicant from a licensed professional engineer, surveyor, or architect.

(3) In cases where the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather, a temporary Certificate of Occupancy can be issued.

Section 9.09 Amendments to Approved Plan

This is a new section which allows an applicant to get an application for an amendment. The Planning Board then gets to make a determination on whether it's a minor or major amendment.

(B) Includes criteria that indicate what minor changes might be.

Section 9.10 Revocation of Site Plan Approval

This section is also new and states, if the current owner or operator fails to comply with any conditions of approval, the site plan approval can be revoked.

Mr. Hellier made the motion to refer Article IX Site Plan Review with the changes to the Town Board for their consideration with the recommendation that it be approved.. 2nd by Mr. Sayegh. Ayes all. Carried.

Mr. Hellier also requested that Section 9.06(b)(3)(c) be flagged so the Town Board will recognize the change as it might mean a higher fee to cover the added postage since the Town will do the mailing. Mrs. Horowitz said she will include that in her cover letter to the Town Board.

Correspondence

Mr. DeFiore received a letter from the Village of Allegany regarding the wellhead protection. Mrs. Horowitz said she has devoted a meeting to the wellhead protection as part of the schedule of the review of other zoning district regulations. Since the Board has been making good progress on reviewing the zoning ordinance as an entity, she doesn't see any compelling reason why the Board should take this up as a separate item right now.

Bonaventure Square

Mrs. Horowitz brought up the article re Bonaventure Square in the Progress Edition of the *Olean Times Herald* quoting Jason Crisafulli as saying they are reserving Phase II for other restaurant and retail uses. Her concern is that they used up all of their available capacity for retail and restaurant in Phase I. If they propose to do something other than the sportsplex, then that will require an amendment to the Town Board's Planned Development approval. It also raises the potential to reopening SEQRA and taking another look at things such as traffic flow, adequacy of parking for what they are proposing. Mr. Hellier suggested Mrs. Horowitz draft a

letter for Mr. DeFiore's signature informing Kinley Corporation of the issues that will need to be taken care of depending on the direction they take.

Mr. DeFiore asked if there was any other discussion. Mr. Kavanagh addressed his concerns on this project to the Board:

- the scope of the entire approval is completely different;
- this project no longer applies as a destination location;
- it no longer resembles the "Town Board Approved" architecture of St. Bonaventure;
- the multiuse building does not conform to the 417 Corridor District and will have a 400 foot wall of yellow and windows with no breakups (Microtel);
- the Planning Board is not holding Kinley to the same fire they would have held Ross Wilson to.

He then recommended the board recall their motion on approval and rethink the project. There were no other comments by the Board members.

Mr. Hellier moved to adjourn. 2nd by Mrs. Larson Ayes all. Carried.

The meeting was adjourned at 9:09 p.m.

Respectfully submitted,



Lynette K. Semsel
Secretary