

**MINUTES OF BUSINESS MEETING
HELD BY THE PLANNING AND ZONING COMMISSION
SEPTEMBER 6, 2017**

ROLL CALL:

Members Present: Eric Prause, Chairman
Michael Stebe, Secretary
Timothy Bergin

Alternate Members Sitting: Julian Stoppelman
Patrick Kennedy

Absent: Andy Kidd, Vice Chairman
Jessica Scorso
Teresa Ike

Also Present: Gary Anderson, Director of Planning
Renata Bertotti, Senior Planner
Nancy Martel, Recording Secretary

NEW BUSINESS:

The Chairman opened the Business Meeting at 11:31 P.M. The Secretary read the legal notice for the application when the call was made.

GERALD M. CATOLANE – For a 2-lot resubdivision at 98 Bush Hill Road - Resubdivision (2017-051)

MOTION: Mr. Kennedy moved to approve the 2-lot resubdivision at 98 Bush Hill Road; to approve the lot frontage at a building line; and to accept the payment of a fee in lieu of open space with the modifications as specified in staff memoranda from:

1. Michelle Handfield, Assistant Town Engineer, dated August 10, 2017;
2. Matthew R. Bordeaux, Environmental Planner/Inland Wetlands Agent, dated August 8, 2017;
3. Kim Dubanoski, Chief Sanitarian, dated July 28, 2017 to Renata Bertotti, Senior Planner.

Mr. Stebe seconded the motion and all members voted in favor.

The reason for the approval is that the proposal meets the requirements of the zoning and subdivision regulations. The fee in lieu of open space dedication is appropriate due to the character of the original parcel, in terms of overall area, presence of wetland, and general location.

Mr. Stoppelman questioned if the Commission sets the fee in lieu of open space.

Ms. Bertotti replied that the regulations outline the fee, either 10% of the value of undeveloped land or up to a maximum of \$2,000 per lot.

Mr. Prause commented that the fee in lieu of makes sense as there is not a suitable place on the property.

CHR CAPITAL, INC. AND COMMUNITY HEALTH RESOURCES, INC. - For a 13-unit multi-family residential building and a single family home at 698 and 694 North Main Street, and 50, 51, 60, 70, and 71 Kathleen Way. – PRD Zone Combined Preliminary and Detailed Site Development Plan (2017-059); Erosion and Sedimentation Control Plan (2017-060)

Mr. Kennedy stated that he is sympathetic to the idea that the location is not necessarily the best. In his opinion, the project is better suited to another location. The attorney for the applicant is correct, he explained, as this is an established zone and the application is for a permitted use within the zone. Mr. Kennedy reported that the Commission must apply the regulations to the application, and the applicant is clearly entitled to approval. This is not a zone change, he noted, and the Commission would be struck down in court if it were handled that way.

Mr. Bergin requested clarification of the vote from the perspective of the staff. If it is not a zone change, he asked whether it is a formality that the Commission approve the detailed site plan, and what the implications would be.

Mr. Anderson replied that a PRD application works hand in hand with a plan, and that is the plan that is being acted upon this evening at the Commission's discretion, he explained. The Town's position is that this is the same as if the applicant had come for their original PRD, because the Commission still has to approve that plan, he said. The Commission is being asked to approve the PRD, which is in conjunction with a different plan than what was approved previously, Mr. Anderson explained. In the past, he said, that process has been referred to as a "zone change." Regardless of whether that is the correct way to refer to it, Mr. Anderson stated, the fact is that there is a preliminary plan in place and this would be a new plan, and that is what the Commission would be approving this evening.

Ms. Bertotti concurred that Mr. Anderson's explanation is what has been discussed with the Town Attorney. According to Attorney O'Neil, she said, the Commission must review the original plan. She stated it is not as if the prior PRD never existed; that approval stands no matter what. Ms. Bertotti reported that if this application is not approved, there is an existing approval for a PRD zone for the development of seven single-family homes. In order to make a change, the Commission is entitled to review the matter from the beginning.

Mr. Bergin asked if the criteria that should be weighed are whether or not the use conforms with the purpose of the PRD zone and how well the application corresponds with the Plan of Conservation and Development.

Ms. Bertotti said that is correct. When the Commission looks at a development, the Commission takes into account how it fits the neighborhood in the sense of design and physical impact, she described. The Commission, she explained, is more accustomed to review in the sense of a transition from single-family to multi-family from the design perspective, which is appropriate considering the plan change. Ms. Bertotti stated the Commission must consider whether it is suitable to change from a single-family home development to a multi-family home development, the impact on the neighborhood, and whether it is appropriate as a transition in development.

Mr. Bergin questioned potential changes in the future use.

Ms. Bertotti responded that Zoning does not regulate tenancy or ownership. If the use of this property changes, e.g., market-rate apartment, in her opinion the only portion that would require a Commission review would be whether or not the waiver for parking is still appropriate. Ms. Bertotti reiterated that a change in tenancy or ownership is not a change in use, whereas a change from single-family homes to a multi-family development is, in Staff's opinion, a change of use.

Mr. Anderson added that, as the public hearing and business items are listed, this is a 13-unit multi-family residential building, which is how it is considered. He reiterated that is what the Commission must act upon.

Ms. Bertotti noted the most recent similar case the Commission reviewed was the Broadleaf development at Evergreen Crossing. There was an approval for Phase 2, which encompassed either two or three buildings, she reported, and the applicant returned to the Commission requesting the addition of one more building, which required a preliminary plan change and zone change. Such a change included increased density, which was not evaluated by the Commission, she reported, as well as an increase in traffic generation and impacts not foreseen at the original plan review.

Mr. Prause stated that the issue is very confusing because there is conflict between the applicant and the Town Staff's opinion. The Town Staff's opinion is that the item has to go back through a public hearing as it is essentially a zone change again; however, the applicant's opinion is the opposite, he noted. For the use, Staff said the Commission will be approving the 13 units, Mr. Prause explained, but the applicant alluded to the fact that, if the operations change, they will return to the Commission, though that is not what Staff is reporting. Mr. Prause expressed that, since this application has reached the point of a public hearing, at some point, all parties agreed this is the standard process for the PRD zone. He related his interpretation varies from Mr. Kennedy's. The Commission should follow standard practice, he said, and if the matter is brought to the Commission at a later date, so be it, he stated. Mr. Prause said he was of the opinion that the Commission should look at the Plan of Conservation and Development and make sure the proposal falls within the PRD regulations.

Mr. Kennedy reported that the fact that this application went to public hearing is somewhat meaningless, as there are certain matters under State Statute that must go to public hearing, but public hearings may be held on matters that do not require public hearings. In his opinion, he said, the regulations must be rewritten making multi-family a special exception use, which would enable the consideration of affect on property values, density, and whether it is consistent with the purpose of the zone. Mr. Kennedy reiterated that this proposal is a permitted use in the regulations.

Mr. Prause said that it is rare for a PRD to change to a different kind of PRD. Once something is changed to PRD, it is usually set, he said, but this is a rare case.

Mr. Kennedy agreed with Mr. Prause. However, he said, there is an avenue to analyze it under State law that, in his opinion, any Superior Court will apply. He explained that if this application is approved, the proposed motion is not written correctly. Mr. Kennedy reported there is no need to consider whether it is consistent with the Plan of Conservation and Development or appropriate for the location; all that needs to be said is that the reason for the approval is that it meets the PRD zone regulations. It is a site plan, he said.

Mr. Bergin questioned why the Commission would approve site plans for uses as of right, and whether this is in the Commissions' purview.

Mr. Kennedy replied that, partly because of the procedural ambiguity and the question of how this is handled, the process has been more elaborate than a straight forward site plan application. In the final analysis, he explained, this is an application for a permitted use in an established zone. The Commission's role is administrative, he noted, to determine whether the application meets the regulations and, if so, the applicant is entitled to an approval. Mr. Kennedy expressed that when setting zoning, the Commission acts legislatively, either writing zoning regulations or adopting a zone for a particular property. In that situation, he reported, the Commission has maximum discretion and the Commission is to determine whether the zoning is consistent with the Plan of Development. Mr. Kennedy stated that, once zoning has been established and something is a permitted use, not a special exception use, if it meets the regulations, the application is entitled to approval. In certain situations, he reported, there are regulations involving the circulation of traffic, for example, where there is discretion to determine whether a plan meets the regulations, and even in that instance it would be a modification or condition on the plan. In terms of the regulations, there is nothing about the proposal that the Commission can object to, he noted. He reiterated that, if the application is treated as a zone change and not approved, the decision would be reversed in court.

Mr. Anderson suggested that, if there is disagreement regarding the scope of what the Commission is actually approving and their purview, the item could be tabled the Town Attorney could attend the next meeting. He does not know if doing so would answer the question, but it could provide additional comfort for the Commission.

Mr. Prause said that the Town Attorney's has already provided his opinion to the Commission. The TLC decision, in Mr. Prause's opinion, was very general, the language was not consistent,

and it only mentioned the ability to modify a plan, not reject a plan. Mr. Prause said he thought the Commission should follow what Attorney O'Neil has stated.

Mr. Stoppelman stated that, in the past, the Commission has considered the color of a building in terms of modifications to a PRD zone, and he viewed this application as a modification. In his opinion, he said, the proposal has value. While he understood the objections of the neighborhood, he saw no evidence that the negative consequences the residents expressed would come to fruition. Mr. Stoppelman stated that, on the basis of the evidence, he would be in favor of the modification to the zone.

Mr. Stebe said that he was struggling with the application. On the basic level, the PRD zone is tied into the plan, and the plan is tied into the PRD zone, he stated. Mr. Stebe explained that the plan needed a full review from the Commission regardless of holding a public hearing or not, because it is a drastic change. In the past, applicants have returned to the Commission due to a change from individual houses to duplex houses, he reported, and that required a public hearing and new business. Mr. Stebe read from the regulations at Art. II Sec. 7.01.02, which states "with a reasonable consideration of the character of the neighborhood." The area is an industrial site and BJs is nearby, he noted. Nearby is Residence A, but in another direction, there is a burrow facility, he reported, and uses are mixed. Mr. Stebe stated that whether the proposal is the most suitable for the space is debatable. However, in his opinion, it is reasonable that the use would be appropriate. He stated that it would be hard to say it is not a subjective decision if the Commission denies the application; that is where the Commission will come into difficulty if a decision is not based on an actual point of reference. Mr. Stebe further read, "the use must be attractive and suitable in relation to the surrounding buildings," and is comprised of multiple types of housing, which this proposal is. Furthermore, in Art. II Sec. 7.02.03, he reported, the regulation states the type of building that is proposed is a permitted use. In his opinion, there is not much leeway in this decision, as the use fits the PRD zone, the building is a permitted use, and there is no defense to denying the application.

Mr. Prause agreed that the Commission could review the item legislatively, but the application qualifies more as a zone change than anything else, he said. He read from Art. II Sec. 7.01.01., "the development of a planned site is to encourage the most appropriate use for the site, preserving natural features," and noted that the regulation includes trees in that definition. The property does serve as an important buffer, he said, and Art. II Sec. 7.01.02 states, "A PRD zone shall allow a mix of housing types and a development density suitable to the area." Mr. Prause noted in the area there are single family homes and, in his opinion, the plan does not appear to be a good fit. He noted there are other PRDs in the area and other multi-family homes in the area, but said he would prefer not to have the property change to a multi-family housing at that lot. He commented that the work that CHR performs is very important and providing housing for the homeless is important, but he is of the opinion that this location is not appropriate.

Mr. Kennedy referred to Art. II Sec. 7.01, the purpose of the PRD zone. He said it is important to remember that that is delineated as the purpose, and while it could be considered in acting on the zone change application, in terms of interpreting some vagueness or ambiguity, vague statements of purpose always yield to what is specifically designated as a permitted use. The criteria mentioned in Art. II Sec. 7.01.02 are the types of things that would typically be seen in

special exception criteria, he noted. Mr. Kennedy suggested that the regulations should probably be rewritten to make uses that the Commission may not feel are appropriate for this zone, including multifamily housing, special exception uses; then Art. II Sec. 7.01.02 could be used as special exception criteria. Art. II Sec. 7.01 does not override the designation of something as a permitted use, Mr. Kennedy said.

PRD Zone Combined Preliminary and Detailed Site Development Plan (2017-059)

MOTION: Mr. Kennedy moved to approve the PRD Zone Combined Preliminary and Detailed Site Development Plan with the modifications as specified in staff memoranda from:

1. Michelle Handfield, Assistant Town Engineer, dated September 1, 2017; and
2. Bernard Kalansuriya, Design Engineer, dated September 1, 2017 to Renata Bertotti, Senior Planner.

The reason for the approval is that the proposed PRD Zone Combined Preliminary and Detailed Site Development Plan meets the PRD zone regulations.

Mr. Stoppelman seconded the motion.

MOTION: Mr. Stoppelman moved to table the application. There was no second to the motion to table the application.

Mr. Prause commented that when the change to a PRD was approved in 2011, his opinion was similar to his opinion now. To move to a PRD would sacrifice the buffer in the area with the industrial zones to the west and south, he explained. Mr. Prause felt the current plan is a step in that direction. He reiterated that he does not feel this use is appropriate as it is eliminating some of the natural features protecting the neighborhood and the housing type is inconsistent with what is there now.

Mr. Stebe agreed that this is not the best building fit. He disagrees about the buffer, as the current PRD has four houses and a cul-de-sac, which would take away more vegetation than the current plan will. The location of the building will deflect more than trees without leaves for six months of the year, he stated. Mr. Stebe avowed the plan is not the best fit, though it is permitted within the regulations.

Mr. Kennedy, Mr. Stoppelman and Mr. Stebe voted in favor of the motion to approve with modifications. Mr. Prause and Mr. Bergin voted against the motion. The motion passed 3 to 2.

Erosion and Sedimentation Control Plan (2017-060)

MOTION: Mr. Kennedy moved to certify the Erosion and Sedimentation Control Plan with the modifications as specified in staff memoranda from:

1. Michelle Handfield, Assistant Town Engineer, dated September 1, 2017; and
2. Bernard Kalansuriya, Design Engineer, dated September 1, 2017 to Renata Bertotti, Senior Planner.

Mr. Stebe seconded the motion and all members voted in favor.

TOWN OF MANCHESTER – For renovations to Verplanck elementary school at 126 Olcott Street. – Inland Wetlands Permit – Determination of Significance (2017-066); Inland Wetlands Permit (2017-066); Erosion and Sedimentation Control Plan (2017-057); Special Exception Modification (2017-058)

Inland Wetlands Permit – Determination of Significance (2017-066)

MOTION: Mr. Kennedy moved to find the proposed activity at the above-referenced location as shown on the inland wetlands permit application 2017-066 will not have a significant impact on the wetlands and therefore will not require a public hearing. Mr. Bergin seconded the motion and all members voted in favor.

Inland Wetlands Permit (2017-066)

MOTION: Mr. Kennedy moved to approve the inland wetlands permit for renovations to Verplanck Elementary School at 126 Olcott Street. Mr. Stebe seconded the motion and all members voted in favor.

The reason for the approval is the proposed activity does not disturb the natural or indigenous character of the land by significant impact or major effect. The permit is valid for five years and work in the regulated area must be completed within one year of commencement.

Erosion and Sedimentation Control Plan (2017-057)

MOTION: Mr. Kennedy moved to certify the Erosion and Sedimentation Control Plan with the modifications as specified in staff memoranda from:

1. Rob Topliff, Parks and Recreation Facilities Manager, dated August 10, 2017;
2. Michelle Handfield, Assistant Town Engineer, dated September 6, 2017;
3. Bernard Kalansuriya, Design Engineer, dated September 6, 2017 to Renata Bertotti, Senior Planner.

Mr. Stebe seconded the motion and all members voted in favor.

Special Exception Modification (2017-058)

MOTION: Mr. Kennedy moved to approve the special exception modification for renovations to Verplanck Elementary School at 126 Olcott Street, with the modifications as specified in staff memoranda from:

1. Rob Topliff, Parks and Recreation Facilities Manager, dated August 10, 2017;
2. Michelle Handfield, Assistant Town Engineer, dated September 6, 2017;
3. Bernard Kalansuriya, Design Engineer, dated September 6, 2017 to Renata Bertotti, Senior Planner.

Mr. Stebe seconded the motion and all members voted in favor.

The reason for the approval is that the proposal meets the special exception criteria.

TOWN OF MANCHESTER PLANNING AND ZONING COMMISSION – To revise Art. IV Sec. 13.05.05 to prohibit corrugated plastic signs. - Zoning Regulation Amendment (2017-055)

MOTION: Mr. Kennedy moved to approve the zoning regulation amendment to revise Art. IV, Sec. 13.05.05 to prohibit corrugated plastic signs. Mr. Bergin seconded the motion and all members voted in favor.

The reason for the approval is that the proposed amendment is consistent with the Plan of Conservation and Development.

The zoning regulation amendment will be effective on September 18, 2017.

Mr. Prause inquired if Staff received an opinion from CRCOG on this application.

Ms. Bertotti replied that Staff did receive an opinion from CRCOG. She read from the report “The staff of the Regional Planning Commission of the Capital Region Council of Governments has reviewed this referral and finds no apparent conflict with regional plans and policies or the concerns of neighboring towns.”

ADMINISTRATIVE REPORTS:

Mr. Bordeaux distributed a report from the Public Works Department proposing to build a salt storage barn at 864 Middle Turnpike West. The location is past Verplanck School near the landfill site, he explained. He described that the proposal would be an addition to the existing barn. Mr. Bordeaux described an area to be paved surrounding the salt storage barn, which will be in the upland review area of a watercourse.

Ms. Bertotti stated that there are two things she would like to bring up: One was to schedule a workshop to look into farms and accessory uses related to farms, she reported. She stated that the second item, the temporary health care structures workshop, has not been scheduled during the month of September due to staff conflicts.

Mr. Anderson informed the Commission that he sent a memo to the Board of Directors, though there have been no comments to date. In his opinion, The Board of Directors is deferring to the Commission to begin the process when the workshop is scheduled.

APPROVAL OF MINUTES:

August 14, 2017 – Public Hearing/Business Meeting

MOTION: Mr. Stoppelman moved to approve the minutes as written. Mr. Stebe seconded the motion and all members voted in favor.

RECEIPT OF NEW APPLICATIONS:

1. MICHAEL AND SALLY FLYNN – Special Exception Modification (2017-071); Design Overlay Review (2017-072) – Special Exception Modification under Art. II Sec. 11.02.01 for construction of a 35’ x 45’ building at 230 Middle Turnpike West.

2. **FRANCIS BURNS – Special Exception (2017-073)** – Request a special exception under Art. II Sec. 16.15.02(k) for automotive repair and service at 191 Adams Street, a.k.a. 195B Adams Street.

MOTION: Mr. Kennedy moved to close the business meeting and Mr. Bergin seconded. All members voted in favor.

The Chairman closed the business meeting at 12:20 A.M., September 7, 2017.

I certify these minutes were adopted on the following date:

November 6, 2017
Date

Eric Prause, Chairman