

Village of Liberty

Planning Board Minutes

Thursday, November 14 2024, 6:00 P.M.

Planning Board Members Present: Steven Green, Chairman, Stacy Feasel, Member, Maureen Stabak, Member, Dara Smith, Member.

Also Present: Gary Silver, Village of Liberty Attorney, Denise Corbett, Planning Board secretary, Caren LoBrutto, Miguel Casanova, Thomas Zweck, Debra Atkins, Brian Russell, Dolores Russell, Jaime Peralta, Tom Halpin and Yitzzy Klein.

Absent: Maureen Crescitelli, Marisol Torrens

PUBLIC HEARING:

1. NYSEG – SBL# 114-2-27

Stacy Feasel made a motion to open the public hearing. Seconded by Dara Smith. Motion carried unanimously.

Steve Green, read the public hearing notice regarding the NYSEG application.

Tom Halpin, it already exists. Why are they coming to the planning board now when it is already there?

Debra Atkins, yea it is already there.

Gary Silver, they need to come before this board for approval.

Debra Atkins, so there is nothing new? This is just for what is there?

Gary Silver, correct.

Brian Russell, thy put those lights up and those lights shine right into my grandma's house.

Caren LoBrutto, what is there now is exactly what we are asking for. The switchgear, transformers, the light poles and con ex boxes. This does need site plan approval so that is why we are here.

Tom Halpin, is this a 24/7 operation?

Caren LoBrutto, it is obviously going to be most active during storm events. There are no new employees and the operation is tandem to the existing operation with hours from 7:00 am to 4:30 p.m. Monday through Friday.

Debra Atkins, the entire yard is lit up and there is activity going on there all the time. I'm sure that the neighbor who lives right next door can attest that there is activity there beyond those hours.

Gary Silver, planning boards don't regulate hours of operation. I appreciate Caren's understanding of the hours of operation but if there are other village codes that are being violated then obviously the Code Enforcement Officer can take action. If you want to go outside in your yard at 10 o'clock at night and do something, you can. As long as you are not violating any codes.

Brian Russell, what about the lights?

Gary Silver, the board hasn't voted on anything yet. At the last meeting, it was discussed that the lights had to be downlit.

Brian Russell, there is something else that I would like to address. My grandma's property is directly next to this lot. They had a concrete wall that separated the properties and they just took that down. It was right on our property line. We got no notice or anything. They put up a chain link fence feet from her home. When my grandma looks out her kitchen window, she sees storage containers like she is in a prison. We are also concerned about our lawn. We have spoken to NYSEG previously about the rocks in the lawn. They said they would send some landscapers over to make everything look nice and be a good neighbor. We haven't heard from them in months. I honestly think they blocked our numbers. The lights, the storage containers and this industrial use that is going on there right next to my grandma's house that she has owned for over 20 years is now being trampled on. That is how we feel. There are also storage containers that are feet away from my grandma's house that say caution on them so we are concerned that there may be some type of chemicals being stored. We are concerned that they are here now to ask for approval retroactively for a project that is completely done and finished. This is affecting my grandma's quiet enjoyment of her home. We are getting legal counsel for the issues we have and we are asking the board to postpone making a decision tonight so that we have some time to see what we can do on our end.

Debra Atkins, I own the property right below their property and it is true. It is butted right up to her house with rocks, chain link fence and containers dividing these two properties with no notice at all. My property has been in the Atkins family for many, many generations. If I was living in that home that we own, I would be very upset. We got a registered letter after the fact.

Brian Russell, it is literally 2 or 3 feet from my grandma's house.

Gary Silver, some of the things that you described are matters that can be considered by the planning board. Many of those items are private matters that we can't address.

Brian Russell, I understand that. I am just asking that you give us some time to speak with our legal counsel so that we can try to have an opportunity to protect the value of my grandma's home and the impact that this had had. There is no denying that. Who would purchase this home now? There are a lot of factors here, but most importantly, is the quiet enjoyment of her property. My grandma has to watch a corporation trample on her property and in my opinion, it is despicable.

Maureen Stabak, why are they coming here now after it has already been done? I don't understand.

Gary Silver, it is standard practice for things like this to happen in the planning board. Obviously, it is a better practice to come to this board first but that doesn't always happen. When the Code Enforcement Officer finds something that is in violation, then they will come before the board to try to get approval.

Maureen Stabak, okay so what prompted this application?

Denise Corbett, I believe Caren and Marisol had a conversation, correct?

Caren LoBrutto, Marisol and a NYSEG representative had a conversation and Marisol told them that they needed to pull a demolition permit, which they did. They were also told they need to come before the planning board.

Denise Corbett, I believe this all came about because of complaints that my office received. That is what prompted Marisol to do a field investigation and check the records and here we are.

Maureen Stabak, so who gave them a demolition permit?

Denise Corbett, Marisol.

Caren LoBrutto, the demolition permit was issued after the building had already been demolished. That was part of her enforcement.

Gary Silver, the plans show that the chain link fence was removed. Where was it removed?

Steve Green, it is not clear where the chain link fence is.

Gary Silver, this must be the back so it is on the other parcel that they own.

Steve Green, I think we need to talk to Marisol.

Gary Silver, the only thing that the planning board can do is either approve it or deny it.

Discussion amongst board members as they review the plans.

Denise Corbett, the next meeting is December 12, 2024.

Steve Green, we just looked at everything that is here and the building inspector is not available. The board needs to talk to her. We want to keep the public hearing open and wait until next month.

Gary Silver, obviously, we weren't aware of any of these issues before today.

Caren LoBrutto, thank you.

OLD BUSINESS:

1. **NYSEG – SBL# 114-2-27** – Requests site plan and special use permit for a power equipment laydown area to store transformers, switchgear, two storage containers. The area will be fenced with a 6 foot fence and will be lighted. Address: 45 Wierk Avenue. Zone: Commercial.

No discussion. Applicant will come back next month after meeting with her client to discuss concerns.

NEW BUSINESS:

1. **JAIME PERALTA – SBL# 104-1-4** – Requests approval to convert a single family house into a 4 family house. Current owner purchased the house that was already a 4 family and he is looking to legalize it with the Village. Zone: R-2. Address: 30 Marion Ave.

Denise Corbett, does anyone need a copy of Marisol's notes?

Gary Silver, so what we did when someone got approvals that they shouldn't have, we decided that because it wasn't their fault, we would waive the public hearing.

Steve Green, he has been here before because George and I were going back and forth on the survey. He had to have a survey done.

Gary Silver, my only question is that because there were no set spots for parking previously, the question is whether you need a public hearing or not because it will be different on the outside. There will be designated parking spots that were not there before. So the question is whether he should have a public hearing or not. He has a survey now, which is great. But they are adding parking spots. Because of where it is located, I would be surprised if anyone has any comment on this but I think it is appropriate to allow the public an opportunity to speak because there is a change proposed.

Steve Green, how many apartments?

Denise Corbett, 4 apartments.

Steve Green, so there is no dumpster pad shown. Where is that going? Multi-family requires that so we would have to address that.

Gary Silver, tell him exactly what he needs and schedule a public hearing for the next meeting.

Denise Corbett, so you can require the dumpster be shown on the plan, that is totally up to you, but we usually have the owner schedule a meeting with Lynn from DPW and he will tell them where the dumpster should be located. If you want the plan to show it, that is totally up to you.

Steve Green, we still need it on the site plan because he is going to want it in the back so he will need to take a look at it.

Gary Silver, is that the only other thing that you see that he needs?

Steve Green, he is turning it into a multifamily right?

Denise Corbett, well a multifamily is 3-4 units.

Steve Green, so does that fall under the code with landscaping or anything?

Gary Silver, you always have the discretion to require it.

Steve Green, it is down below the school. So talk to Lynn and see what he says.

Gary Silver, so the only thing he needs is the dumpster pad. So if you want, you can schedule a public hearing, you can?

Dara Smith made a motion to schedule the public hearing for December 12, 2024 at 6:00 p.m. Seconded by Maureen Stabak. Motion carried unanimously.

Denise Corbett, so Jaime, what the planning board said is that you have to come back on December 12th and have a public hearing. They also want you to reach out to Lynn at the DPW in regards to the dumpster pad. So you will have to call him and schedule a meeting. Call me tomorrow and I can explain it more.

Gary Silver, the best thing to do is put something in the ground, stakes or something, where Lynn wants it while he is there so that you can have the engineer draw it on the plan.

Denise Corbett, are you still working with David Ryan?

Jaime Peralta, yes.

Denise Corbett, so he would need to show the dumpster location on the plan where Lynn decides he wants it. Give me a call tomorrow.

Jaime Peralta, okay. Thank you.

2. **76 CHAMPLIN LLC – SBL# 107-3-9**- Requests approval to add an apartment in the attic of existing building. Current owner purchased the house in this existing condition and he is looking to make the apartment legal. This apartment is currently rented. There are currently 6 apartments, which includes the attic apartment. Zone: R-2. Location: 76 Champlin Ave.

Miguel Casanova, I'm here on behalf of Shloime Spitzer. He has an apartment upstairs that he wants to make legal. When he bought the house, it was already there.

Gary Silver, on the EAF form item 3c where it says N/A, that needs to be corrected to show the total acreage.

Denise Corbett, I filled that part out for the applicant so I will correct it to say .46 for the acreage.

Gary Silver, read Marisol's notes on this application regarding not being able to recall if there was a fire escape when she did the fire safety inspection.

Miguel Casanova, yes there is a fire escape. I also put up the smoke detectors and fire extinguishers in the hallway. Marisol did do the fire safety inspection and she told me that it passed.

Gary Silver, continued to read Marisol's notes stating that it currently meets all fire and safety codes and that the apartment is currently occupied. So you want to make it legal now?

Miguel Casanova, yes. The only thing we did to that apartment is paint and put new counters and stuff. The apartment was already there though.

Gary Silver, it didn't appear that Marisol had any issues with this one so if you want to schedule a public hearing on this one.

Denise Corbett, they are here to make this legal as it was already there when they purchased the building. Do you want to waive the public hearing or schedule a public hearing?

Gary Silver, it is up to you. It is the same as the other one except the other application had actually gone through the process and did what they were supposed to do and the prior code enforcement officer messed up. This one, they never got a permit. I would schedule a public hearing and give the neighbors an opportunity to speak.

Dara Smith made a motion to schedule a public hearing on December 12, 2024 at 6:00 p.m. Seconded by Maureen Stabak. Motion carried unanimously.

Denise Corbett, please call the office tomorrow and I will explain it to you.

Miguel Casanova, okay. Thank you.

3. **240 CHESTNUT ST LLC – SBL# 110-3-18** – Requests special use to re-establish the use of 2 apartments that are above the store front. Apartments have been vacant for 25 years. Apartments are currently rented illegally. Zone: C. Location: 240 Chestnut St.

Thomas Zweck, representing the owner.

Gary Silver, you have a few more issues here. It is a little more complicated. Let's assume that those apartments were legal non-conforming at some point in time. The fact that they were vacant for so many years means they lose that status and it means that you have to comply with the present zoning. The present zoning is the C district and it does not allow apartments above commercial properties. There are only two things that you can technically do. One is to seek a use variance. There are two different types of variances. Use and Area variances. Area variance is numbers. It is too big, it is too small, I need more set back or less set back etc. A use variance is a use that is not permitted by zoning district. The statutes are a little bit different. This is a self created hardship and for a use variance the rule is very clear, you have to deny it.

Thomas Zweck, we did a walk through of the building with the inspector and we told her what we were doing beforehand.

Gary Silver, I understand that. She is the code enforcement officer and I am the attorney. I am telling you what the law is and the point is that this board could not approve what you are asking because it is not permitted by the zoning. Unless there are factors that I am unaware of, legally the zoning board couldn't give it to you because if you acquire property subject to the restrictions it is a self created hardship and the zoning must deny any application for a use variance. You bought the property in 2022 when the zoning was already in place. I can't tell you that you can't apply to the zoning board but it is my job as the attorney to tell you the law and my advice to the zoning board would be to deny it based upon the law. The other option you have is to go before the village board and say in the C district it doesn't allow living over the store so you can ask them to change the zoning because why wouldn't they want people to have apartments above these buildings. In the DCC zoning district, they allow apartments over the store but not in the C district which borders it.

Thomas Zweck, Cora Components is occupying about 50% of that building. The back warehouses are full of equipment and making trusses. The front half of that building is not in use. We have had advertised for rent but nobody is interested in coming to Liberty. We have had people come up and look at it but they either don't like the location or the building. If you look at where the counter was, that is actually laid out to be 10 apartments. 5 upstairs and 5

downstairs and possibly 3 more across the back. We actually went to the assessor's office to see what kind of assessment we would be looking at and the feasibility of actually doing this. We did get that back and they would like to proceed with that thought process.

Gary Silver, the assessor is the Town and they have no say in what can be done there. It would be no different if you went down to NYC and asked them if you can have apartments there. The argument that you are making could be a very good argument to make in front of the Village Board. Policy wise you can say to them that the way they are restricting uses in this zone doesn't make sense and they should open it up so you can get more use out of it. It could be a very good argument.

Thomas Zweck, so the problem is that there is a store front on the bottom, right? So you have the front building that sits closest to the road and then you have the old loading dock that sits between the two main buildings. So if we were to out apartments downstairs, that would no longer be commercial space and we would have 4 apartments in that building. It has a separate water meter, separate electric panel, separate heating. Would that be conforming to the zoning?

Gary Silver, no. You can have 1 family and 2 family in the zone.

Thomas Zweck, it says multi family.

Gary Silver, let's look at the zone. Multi family would be a special use permit.

Thomas Zweck, so this would be multi family.

Gary Silver, it is not a multi family as defined in the code.

Thomas Zweck, what is the definition as defined by code? I am trying to understand.

Gary Silver, I appreciate that you are trying to understand. You have a property that you want to make use of.

Thomas Zweck, it would be more taxes. We estimated the value of the tax increase to be \$250,000 to \$300,000.

Stacy Feasel, that could be an argument to the board as well. We have had people come in and have the zoning changed in the past. That was just recently.

Thomas Zweck, this is where Marisol told me that I needed to go. Now I am being told that I have to go to the zoning board.

Steve Green, that is correct. But we would have to deny it.

Gary Silver, a multi family unit is defined is a building or portion thereof containing more than 2 dwelling units but intended for single ownership. So ownership is not intended for a co-operative or condominium. Multi family just means more than 2 dwelling units.

Denise Corbett, right so more than 2 units.

Gary Silver, a multi family is defined as more than 2. He is saying that he wants to have 4?

Denise Corbett, that is what he is saying.

Thomas Zweck, so if I put two more in, I would have 4 apartments.

Gary Silver, I think you can do this. I think you are right. What he is looking for is approval for a multi family.

Denise Corbett, he is going to need a public hearing anyway so we can change the wording on the agenda and amend the application for next month.

Steve Green, do you have drawings?

Thomas Zweck, I sent them to her. That is all she said she needed.

Denise Corbett, I sent them to you all in email. This is just a layout of the apartments though, not a site plan.

Thomas Zweck, I already have dumpsters and everything.

Gary Silver, it talks about code section 87-29 but that section is talking about multi family dwelling projects and this is not at all what this is.

Steve Green, when he came in for the application for Kora Components, there was a survey.

Denise Corbett, if it was submitted, I can look in the files upstairs. How long ago was that?

Thomas Zweck, 2022.

Denise Corbett, hopefully it is up there. I can't promise anything.

Steve Green, that would give us a better understanding of the layout that he has.

Dara Smith, so the store front would be gone?

Thomas Zweck, yes.

Maureen Crescitelli, I don't think you have a problem with parking.

Gary Silver, if there is any ambiguity in the zoning law, it must be viewed in favor of the property owner. That is the law in the state. Our code references 87-29 but that is wrong. That is for projects. We do have a definition of multi family and that is a building containing more than 2 dwelling units and intended for single ownership. So what he is asking for would apply.

Thomas Zweck, now does that apply to other 13 that I am thinking about on the other side of the building?

Steve Green, that would be different because now you will be required to have a whole site plan.

Thomas Zweck, agreed. But I wouldn't have to go to zoning and all that?

Steve Green, it would be an apartment complex which is different and Marisol would have to look at it.

Gary Silver, each apartment will be separate and have a kitchen and bathroom? Nothing is shared?

Thomas Zweck, agreed.

Steve Green, do we have to look at the sewer main?

Gary Silver, all of those things have to be looked at. You have to go to Dave Burke for that.

Thomas Zweck, we are good there. I have a separate 4 inch main coming in.

Gary Silver, I appreciate that but we still need our guy to do that.

Thomas Zweck, I have the survey.

Denise Corbett, can you email it to me?

Thomas Zweck, I will stop in and see Dave on Monday.

Gary Silver, this is on a state road.

Denise Corbett, yes it is on 52 so it will need a 239 review.

Maureen Crescitelli made a motion to schedule a public hearing on 12/12/24. Seconded by Dara Smith. Motion carried unanimously.

Thomas Zweck, Thank you. Have a good night.

Motion to close the meeting was made by Stacy Feasel. Second by Dara Smith. Motion carried unanimously.

Meeting was adjourned at 6:50 p.m.