

# Village of Liberty

## Regular Planning Board Minutes

### May 14, 2009

**Present:** Don Nichols, Chairman  
Adrian Gonzalez  
John Nichols  
Steve Green  
John Webber  
Langdon C. Chapman, Village Attorney  
Pam Winters, Code Enforcement Officer

**Absent:** Dawn Green, Liaison

**Also Present:** Frank Nutt, Jr. & son  
Albert Bitjeman  
Joel Gandula  
Lindsey Gandula  
J. Almondoval

Chairman Nichols calls the meeting to order at 7:00 p.m. and leads everyone in the pledge of allegiance

**ON A MOTION BY STEVEN GREEN, SECONDED BY ADRIAN GONZALEZ AND UNANIMOUSLY CARRIED, THE MINUTES OF THE JANUARY 8, 2009 MEETING ARE APPROVED.**

#### **02-09 Albert Bitjeman 2-lot Minor Subdivision** **43 Triangle Road**

Albert Bitjeman is present in this matter.

Albert: I'm here before you tonight to request a two-lot subdivision on my lot on Triangle Road where I just built the new office building. Mountain Bait and Tackle and Viele Surveying are no longer renting space in the building. The doctors currently occupying the other half of the building have expressed an interest in purchasing the entire building from me.

The survey map before you shows where I'd like to divide the property. In doing so the way I have, each of the two lots will have access to the sewer easement while maintaining the sideline setbacks required in your zoning. It also allows for ample parking for both the dentist's office and my restaurant.

Chairman Nichols: You'll have a completed and stamped survey for the next meeting?

Albert: Yes, Denise Birmingham will be doing the survey but she didn't have enough time to prepare them for tonight's meeting. And I actually didn't push the issue just in case you weren't satisfied with the lot lines and wanted something changed. Now that I know you're OK with this layout, I'll see that she has the maps ready for the public hearing next month. I don't want to be presumptuous but time is of the essence on this deal.

Pam: I'll also need you to mail me a check for the filing fee, certified notices and the hearing ad before the next meeting. I'll send you an invoice.

Albert: OK

**ON A MOTION BY ADRIAN GONZALEZ, SECONDED BY JOHN NICHOLS AND UNANIMOUSLY CARRIED, THE BOARD MOVES TO SCHEDULE A PUBLIC HEARING ON THE TWO-LOT SUBDIVISION APPLICATION SUBMITTED BY ALBERT BITJEMAN.**

**01-09 Immaculate Concepts**  
**Special Use Permit Application**  
**To Establish a Used Car Sales Lot at the**  
**Corner of South Main & Lake Streets**

Mr. & Mrs. Joel Gandula is present in this matter. An amended site plan has been submitted based upon an informal discussion held last month.

Joel: A few years ago, I came before you for permission to sell used cars at my existing detailing business located at 147 South Main Street. I received approval to display three (3) cars in front of my building. I'm back tonight for your approval to create a used-car display lot on the property adjoining mine.

Mary Morana currently owns the property. I'm presently renting the property from her with first option to purchase it. If I receive approval from you, I'll proceed forward with the contracts. I'm here tonight with a revised site plan based upon your comments last month. I'm requesting approval to display twelve (12) cars on this lot. My site plan indicates the parking layout, the area reserved for snow plowing/piling (large accumulations of snow will be physically removed from the site), existing utilities including water, sewer, manholes, electric as well as the existing road openings.

There will be no customer parking on this lot and therefore no through-traffic on the lot. Customers will either park in front of by existing business, on South Main Street in front of McCabe's or park in the Village-owned municipal parking lot across the street. The only improvement to the site will be some additional gravel/stone added; I don't plan on blacktopping the property anytime soon.

Chairman Nichols: I see you already have four or five vehicles already on the property.

Joel: Yes, I do.

Chairman Nichols: Are the cars in front of your shop right now customers cars or cars for sale?

Joel: Both

Chairman Nichols: So this will give you a total of fifteen (15) cars that can be displayed between the two lots?

Joel: Yes

Adrian Gonzalez: Can we do something in this case similar to what we did with Thalmann's Garage? In that case, he was given approval with a stipulation that he must return back to the Board for re-approval in five (5) years. The reason we attached the stipulation is for better control of junk cars.

Attorney Chapman: You can condition your approval however you choose as long as you're rational about it.

Joel: I'm fine with that.

Chairman Nichols: Does a special use permit go with the business or with the property?

Attorney Chapman: Your approval attaches to the property.

Chairman Nichols: That's what I thought. Why don't we make it a conditional approval for three (3) years and if all goes well at that time, we can modify the approval/condition as we see fit.

**ON A MOTION BY ADRIAN GONZALEZ, SECONDED BY JOHN WEBBER AND UNANIMOUSLY CARRIED, THE BOARD MOVES TO SCHEDULE A PUBLIC HEARING ON THIS MATTER NEXT MONTH.**

**Chestnut Street Apartments**  
**Request to extend conditional final approval**

Frank Nutt, Jr. is present in this matter.

Frank: I'm here tonight to get another extension of our conditional final approval. We need additional time to prepare drawings to submit to the Village Board to get their approval to move an existing sewer easement located at the back of our property. I've spoken with the Mayor as to what we'd like to accomplish and we need Board approval to continue the process and get the maps filed with the County.

Frank explains a little background history of his project to the newer members of the Board.

Frank: I'd like to request another six-month extension of my approval

Chairman Nichols: Are the engineers still working on a final design of something?

Frank: Yes. The relocation of this manhole needs to be added.

Frank and the Board continue to talk about manholes, the easement, pump-station, the existing sewer lines and it's present condition, what areas of the Village are serviced by this line, the upgrades made to the line last year, etc.

**ON A MOTION BY JOHN WEBBER, SECONDED BY STEVE GREEN AND UNANIMOUSLY CARRIED, THE BOARD AGREES TO ANOTHER SIX-MONTH EXTENSION OF CHESTNUT STREET APARTMENTS CONDITIONAL FINAL APPROVAL.**

Chairman Nichols: If we have no other business, I have two issues I'd like to discuss. The wall behind Sullivan's; what do we know about that?

Pam: We discussed this at the last department head meeting and I explained recent conversations I've had with the GC on the job. The Mayor asked that the owners be sent another letter regarding what appears to be an unsafe erosion condition. I sent the letter the next day. Both the owner and the general contractor called me to say that the original engineering of the wall failed the pull test, the wall had to be re-engineered and new plans were forthcoming and on their way to our engineers for review. If those plans meet with our engineer's approval, the contractor is prepared to start work within 2-3 weeks. Once work begins, they hope to see the wall completed in approximately three (3) months. I also received correspondence from the NYSDEC dated May 28<sup>th</sup> indicating that all of the storm water drainage associated with the bank behind the store has been re-inspected and is in compliance with their regulations.

Chairman Nichols: OK. And now Barton Road; there's a very large controversy going on here. If what I've been told is true, then the Board has been fed a pile of poop. The water line coming down Carrier Street is a 4" line with only about an inch or inch and a quarter of water flowing through it. They (the developers) were told this. The Village (water) guys did a flow test. They determined there is not enough flow here.

I know this may be hearsay but I was told that the workers in the Water Department were told to give it to the engineers to review and they were told it was OK. An inch and a quarter line is not going to supply this complex.

John Nichols: I can tell you, we had a small fire on Carrier Street. From the hydrant, we did not have enough water pressure to effectively fight the fire. We had to bring in a tanker truck.

Chairman Nichols: The point is, given all of this information, our engineers still OK'd the project.

Pam: This same conversation was had at the last department head meeting. The Mayor requested both engineers, Lanc & Tully and McGoey, Hauser and Edsell, be present to answer everyone's concerns. Dawn Kinisky and David Fritts both explained to those present that they took the results of the flow tests and, according to their calculations, the numbers worked. These same numbers were also reviewed and approved by the NYSDOH and HUD.

Chairman Nichols: How is that possible? Carrier Street is supplying the water for the entire project.

John Nichols: So now that you've already given final approval, how can you go back and request something different? You can't take it away.

Chairman Nichols: I think that we need to either somehow send a letter to the Village Board that we don't believe that that line is going to feed the complex and is not enough for fire suppression. I believe that if the flow is not there, I think we should make them install an (above ground) holding tank of sufficient capacity to ensure the residents safety.

I was told that the Water Department was told not to turn in a report detrimental in nature because they needed approvals by a certain deadline due to financial commitments.

Attorney Chapman: Does this project have final approval?

Chairman Nichols: Yes.

Further discussion continues regarding water flow calculations submitted in the developers report, the location and number of hydrants on the road and within the complex, the gallons per minute pumped by a fire hose, etc.

Chairman Nichols: I would like to somehow question the engineers on this and I'm not sure how to go about this.

Attorney Chapman: I'm not sure where your jurisdiction is on this? Is this the development owned by Ken Kearney?

Chairman Nichols: Yes it is.

Attorney Chapman: Just so you know, I've represented Mr. Kearney on other matters but your jurisdiction is done once you've signed off on any project.

Chairman Nichols: Even if the information we've been given is incorrect?

Attorney Chapman: Do you know that for sure?

Chairman Nichols: That's what we're trying to determine. From a practical standpoint, if I want to build 70 units of housing, how much water do I have to have? Had I had any inkling, if someone had even whispered in my ear, I would've questioned this. This all started last May or June. They had to have approval for the funding by September. I questioned the hell out of them as to how

they plan to fill the apartments every month I questioned the hell out of them about how they're going to fill this thing.

Attorney Chapman: How many total units are there?

Chairman Nichols: 72

Pam: And one additional for the on-site caretaker, so it's 73

Attorney Chapman: The last thing you want me to do is to advising you as to how much water you should have.

Chairman Nichols: I understand that, but I also want your opinion

Attorney Chapman: You're done at this point, as far as your authority but the question is there a fire code that comes into play here.

Steve: The plan itself is fine; that's what they came here for. This should've done to the water department for them to look at.

Chairman Nichols: And theoretically it did.

Pam: I gave copies of everything submitted to every department head. I always do.

Chairman Nichols: And our engineers approved it. But, what I've been told by our water department, I was told by someone higher up to shut up, that they want this project to go through.

Attorney Chapman: Who reviewed this?

Chairman Nichols: Michael Weeks from MHE

Pam: Mike did the plan review and advised the Board. Dave Fritts is currently the site engineer and is at the site on a weekly basis. Dave was at the department head meeting with Dawn from Lanc & Tully.

Attorney Chapman: And what did he say?

Pam: He agreed with Lanc & Tully in that the numbers work.

Adrian: Have we gotten any confirmation from anyone that the numbers are actually different than what was submitted?

Chairman Nichols: No. This is the first time I've even seen any numbers and, quite honestly, I was accosted by our current fire chief saying how the hell could we have approved something like this when there's only an inch and a quarter line available to feed this whole area, quite frankly, I have to agree with him that I don't think there's enough water there. I want to somehow question the engineers to show us how that much water, 240 gallons per minute.... Hell, a 3 ½" line puts out more water than that. You can't fight a fire with that kind of water.

Inaudible comments from Steve.

Chairman Nichols: The water department said that that line was diminished down to about an inch and a quarter. How much water comes through a four-inch line? A hell of a lot more than 240 gpm

Adrian: What agency or board has control over this now?

Attorney Chapman: I would assume the State Building Code or a fire marshal

Steve: Or the health department

Pam: The health department reviewed the plans and gave their approval.

Chairman Nichols: They signed off because the engineers said there was enough water.

John N.: So if these numbers are correct, and I assume the engineers are correct and everybody's signed off on this, and the Board has already given final approval, there's no where to go with this and we're spinning our wheels.

Chairman Nichols: It's not that I'm saying the numbers are wrong. I just don't believe that... what's wrong is that, when they compiled them that they didn't take into consideration all of the existing houses all along Carrier Street that use water.

Steve: They tested during the daytime when people are working and children are in school.

Chairman Nichols: How in God's name can 240 gallons per minute be enough water for all of the houses on Carrier Street plus 73 more?

Adrian does some calculations and the discussion continues.

John W: Where did they measure this?

Chairman Nichols: At the hydrant.

John N.: Our pumper truck would suck the line dry in seconds.

Chairman Nichols: Part of our responsibility is not allowing a project to go through that has a safety concern. And that's my biggest concern.

John W.: Isn't the solution to replace that line?

Chairman Nichols: The solution is to replace the line all the way up Carrier Street.

John W.: And that's costly.

Chairman Nichols: Of course. Is the Village going to withstand that? They haven't got enough money to throw out the window.

Steve: In this project, there are three holding areas for water. From a fire department standpoint, can they be utilized in some way?

Chairman Nichols: They're just detention ponds for storm water runoff. They'll be dry most of the time.

John N.: They wouldn't be able to supply enough water.

Chairman Nichols: I still think we have a responsibility to go back to the Village Board, who is our bosses, and say there is something screwy here and we need to have it looked at and we need assurances from MHE that there's water for fire prevention.

Pam: I have a concern here. Before I issue a Certificate of Occupancy on any building, it's been my practice to have everyone sign off first. The architect on construction, the electrical inspector,

Pete for any concerns he has regarding the roads, access and sewer and Ken for water. What if everything's built and after spending multi-millions on construction, they apply for a final c/o, I can't issue it because Ken won't sign off because he doesn't want to assume responsibility if there isn't enough water. This creates a huge legal quandary now with my neck on the chopping block. If I issue a c/o and there's a fire with, heaven forbid, injuries or casualties, will I be putting the Village at risk from a liability standpoint not to mention the me being sued personally and losing my job?

Chairman Nichols: There may be enough water to flush the toilet or take a shower but you can't fight a fire because you'll suck the line dry.

Attorney Chapman: And the engineers have been there?

Pam: Yes, they're there on a weekly basis and each visit generates a report. The DEC is also there frequently.

Attorney Chapman: I've worked with MHE before and it seems to me there should be a conversation with them regarding your concerns and to try to get some assurances from them. Ask them, "Are you sure you're right?"

I'm an attorney. I don't know about pipes, be it a six-inch pipe or a six-foot pipe. That's not what I do for a living. But at the end of the day, I have people in the court trusting my opinion, be it prosecuting or defending. And, in the same aspect, you should trust your engineers. But, likewise, there's nothing wrong with asking them, "Are you sure about this?"

Chairman Nichols: I can tell you that they absolutely did not take into consideration fire safety. It's impossibility.

Attorney Chapman: And that would be part of your conversation with MHE.

Adrian: And that's probably worthy of sending a letter to the Village Board saying we have a concern about the capability of fight a fire. Maybe we could address it by making the developer change something or install a holding tank

Chairman Nichols: Well, you can't do it now that they already have final approval and after the damn things been built.

Pam: They're starting their third building now.

Chairman Nichols: I know that.

There's more discussion about hydrants, volume, piping, upgrading the Carrier Street lines, the possibility of getting a grant to do so, fire department issues.

Chairman Nichols: I think that this board should send a letter to the Village Board saying that recently we've been notified that the maximum flow of 240 gallons per minute from the Carrier Street 4" main which will feed the Liberty Commons Development appears to be totally inadequate fire protection. We respectfully request that the Village engineers look into this, review it, and verify the accuracy of the information we have as to capacity for fire suppression.

John N: Today's pumpers pump 1500 gallons per minute. They're going to sprinkler the senior building?

Pam: Yes.

John N. How much water is that sprinkler system going to use?

Pam: I don't know. I'd have to refer back to the plans they submitted.

Further discussion continues about the sprinkler system, the overall construction of the building regarding firewalls, wall ratings, etc.

Pam: On Wednesday, a meeting is scheduled with Mr. Kearney, the engineers and the neighbor David Thomson, regarding numerous complaints Mr. Thomson has regarding drainage and storm water runoff. Perhaps if you're available you could sit in on the conversation and at the end of the meeting you can pose these concerns to everyone.

Chairman Nichols: I've available. What time is the meeting?

Pam: 11:00 a.m.

More discussion continues about renting the units, empty units, the architect for the job, the Chestnut Street apartment complex, workforce housing in the area, hydrants, water flow, fire fighting practices, etc.

Chairman Nichols: I believe the Village is really open to a liability issue here.

Attorney Chapman: Hypothetically, it could go this way: They apply for a c/o. Pam refuses to issue it. They sue the Village. They sue Pam. HUD is also involved. Courts will generally uphold someone's position and it's been my experience that rational heads will prevail. Lanc & Tully and MHE are not going to risk their licenses and jeopardize their livelihood by stating false or faulty information and the courts recognize that fact. The Division of Housing relies heavily on the opinion of engineers and it's my gut instinct that the engineers have done their job.

Chairman Nichols: I'm a past fire chief and nothing about this makes any sense. Before we send any letter, lets see how this meeting goes.

**ON A MOTION BY JOHN WEBBER, SECONDED BY ADRIAN GONZALEZ AND UNANIMOUSLY CARRIED, THE MEETING IS ADJOURNED AT 8:21 P.M.**

Respectfully submitted,

Pam Winters, Clerk

Date Approved: June 11, 2009