

Village of Liberty

Planning Board Minutes

Thursday, January 9, 2025, 6:00 P.M.

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

Also Present: Gary Silver, Village of Liberty Attorney, Marisol Torrens, Code Enforcement Officer, Caren LoBruto, Thomas Zweck, Brian Russell, Mike McGuire. **Village of Liberty**

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

Also Present: Gary Silver, Village of Liberty Attorney, Marisol Torrens, Code Enforcement Officer, Caren LoBruto, Thomas Zweck, Brian Russell, Mike McGuire and Isaac Indig.

Absent: Dara Smith, Maureen Crescitelli, and Denise Corbett

Motion to approve planning board minutes from December 12, 2024 made by Stacy Feasel. Seconded by Maureen Stabak. Motion carried unanimously.

PUBLIC HEARING:

1. **NYSEG – SBL# 114-2-27** – Continuation of public hearing from November 2024 that was held open

Motion to re-open the public hearing made by Dara Smith. Seconded by Maureen Stabak. Motion carried unanimously.

Mike McGuire, attorney representing Delores Russell. My client owns the property at 91 Wierk Avenue. Until 2023, her next door neighbor was Mr. Houghtaling. He provided Christmas trees to most of us who were interested in purchasing them. Although NYSEG is on the other end of the block, it is basically a residential area. I recognize that it is a mixed zone. In 2023, NYSEG purchased the property and shortly thereafter, Mr. Houghtaling's house came down. I don't know that there was a demolition permit or not, but let's assume there was. Soon thereafter the fences went up, the barbed wire went up and the containers went in. If you view the Village Code, the preamble to that code talks about where we have a lot next to a residential lot, the residents will be protected against the industrial use of that lot with vegetation, at least a 20 foot set back and none of that was done. Clearly, since we are having a hearing now, NYSEG went ahead and just behaved as doing what they wished and our position is that whatever they have done should be torn out. They obviously can't re-build Mr. Houghtaling's house but the property should be put back the way it was minus the house and then with proper guidance, as you all know and the public knows, the purpose of the planning board is to ensure that the

development within a Village or Town is done in accordance of the wishes of the municipality in general which is expressed through the code. Lots is which NYSEG has produced would require a buffer of 20 feet, there would be vegetation and screening so that my client didn't have to look out her window in the morning and instead of seeing Mr. Houghtaling's Christmas trees she sees barbed wire, fences and storage containers. They say a picture is worth a thousand words so I will offer this to the board with permission of the chair. Photograph #1 shows the proximity where the fence is maybe on the property line. There is no buffer at all and what my client gets to view is barbed wire and grey storage containers which is clearly contrary to what the Village code provides for. The Village code is merely an expression of what the people of the Village Board want. This is a view looking back at my client's home and you see the storage containers are just there. It is like living in a construction zone that will never end. It won't be more beautiful when it is finished, it will only be worse. The third photograph depicts the yard, which I can't say is unkempt, but is certainly not what I would expect from NYSEG. They are more interested in rates than they are keeping the beautification of the Village or just being a good neighbor. They have no interest in that, clearly. The manner in which this yard was built, they never bothered to come in and tell my client what they wanted to do. I would just ask the board, and I know most of you and how dedicated you are and that you are certainly not doing this for the money. I would ask that you follow the mandate in your oath and provide my client some relief and merely enforce the code. Set forth directions to NYSEG to provide some foliage, some screening. I don't know what barbed wire is really essential that close to a residence, but if they believe it is for their own security, I respect that but there should be some screening. I thank this board for the time to speak and I would be happy to respond to the board if they have any questions.

Steve Green, are there any other comments from the public?

Motion to close the public hearing was made by Stacy Feasel. Seconded by Maureen Stabak. Motion carried unanimously. Public hearing was closed at 6:08 p.m.

OLD BUSINESS:

1. **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. Create two apartments downstairs for a total of 4 apartments. The two apartments upstairs have been vacant for 25 years and are currently rented illegally.

APPLICANT DID NOT ATTEND THE MEETING

2. **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.

Gary Silver, I would just like to address counsel's comment where he refers to the code. Code Section 87-19 (a) states Where a commercial or manufacturing use is contiguous to an existing

residential use in any district (including those situated on the opposite side of a highway) or any approved residential lot in a residential district, the Planning Board may require that the minimum front, side and rear yards be increased by up to 50%. The Board may also require, for purposes of separating incompatible activities or shielding the residence from negative impacts, that a buffer consisting of a solid fence of wood and/or a twenty-foot-wide dense evergreen planting not less than six feet high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded. See also the landscaping standards contained herein. So it is not obligatory to the board, but the board clearly has discretion.

Steve Green, we have a revised plan showing the containers moved to the back and some screening. This isn't a survey and we don't know how close the fence is. These plans are signed by an engineer, but this is not a survey.

Caren LoBruto, there is a survey in the plans.

Gary Silver, the site plan needs dimensions on it. We need to know how far away it is going to be. Code Enforcement needs to know that you are approved to have things here and here. But I am looking at the plan and I measured it and it is not where it is supposed to be and it is the only way she can confirm that everything is being placed according to the plans approved by the planning board.

Caren LoBruto, there is a survey and in the plans is a base map from that survey.

Steve Green, but an engineer cannot sign a survey. A surveyor has to sign the survey. So with that being said, they need the dimensions of where things are.

Gary Silver, distances from the boundary lines and things like that.

Steve Green, right. An engineer is not allowed to do that by law.

Mike McGuire, if we move the containers to the back, it will take them out of my client's sight line. Also, if they provide some screening or fencing or foliage at least along the border of my client's property and theirs, I would submit that it could be achieved at a relatively low cost and would certainly aide in my client's property line.

Steve Green, where we don't have an actual survey, we don't really know where things land. There's a tree line and a fence line but we don't know the distance. I think that putting screening on a fence is no different than looking at the containers.

Mike McGuire, obviously our preference would be a solid fence which is as your discretion.

Gary Silver, it says consisting of a solid fence of wood and/or a twenty-foot-wide dense evergreen planting not less than six feet high. So you have that authority.

Steve Green, they can put a wood fence right on the line which is going to block that window even more. Do you really want to do that because the whole goal was to get rid of the containers so that she can see through.

Mike McGuire, she doesn't want to see the containers but Steve makes a good point. We don't want to eliminate the natural light. If we require the 20 foot buffer, that would open up for some natural light. There is currently only an 8 foot buffer.

Marisol Torrens, the buffer is for the front or the side?

Gary Silver, both. So again, it is clearly up to the planning board which option they choose. They obviously want to hear from the public and you represent the neighbor. If you had your choice, which option would you prefer?

Mike McGuire, the 20 foot buffer.

Brian Russell, I would rather see trees than what we see now. I think if it blocks the industrial zone right next to us then that is better than what we see now. Light is less important.

Gary Silver, a wood fence or evergreens.

Mike McGuire, it would certainly be helpful. I understand how valuable real estate is. If they can come off the property line more so that when the evergreens grow up in a few years they don't grow into the house.

Marisol Torrens, evergreens grow tall and wide. As a code enforcement officer, years from now, I am going to receive a call that NYSEG is not maintaining the trees and they are growing onto my property or sap is falling into my driveway and onto my car etc. These things need to be considered as well. If that should happen, it would be the property owner's responsibility to take care of whatever branches are on your property. I am telling you this from experience.

Stacy Feasel, I have a perfect suggestion. A wooden fence and a vine that grows on the fence. I have one too. It is beautiful and purple.

Gary Silver, Marisol is right. Even if we require them to maintain the evergreens, there can be diseases that affect the trees etc. and there could be endless conflict between neighbors. If the trees die they have to put new trees in and the new trees are going to be small.

Marisol Torrens, like Gary said, if NYSEG takes responsibility to take care of them, they might have to come onto your property to take care of them. In the future, someone can tell NYSEG that they don't want anyone on the property.

Gary Silver, this board will make a decision using discretion.

Mike McGuire, I appreciate you. I know the board doesn't have to do this. There are species of evergreens that don't drop sap or anything and act more as a hedge row.

Steve Green, you still have the maintenance factor.

Multiple discussions at once.

Gary Silver, they can technically put a fence right on the property line.

Mike McGuire, so the trees could wind up being a foot off the property line.

Steve Green, so you don't know where the property line is?

Mike McGuire, I am assuming that it is where the fence is but I don't have a survey.

Caren LoBruto, it was surveyed. I know it is not to the standards that you want.

Steve Green, was it staked?

Caren LoBruto, we don't usually stake the property while surveying it. We go out and stake it later.

Steve Green, so do you intend on staking it?

Caren LoBruto, I don't know what the intent was. We can have it staked if that would be easier for the planning board.

Gary Silver, it would probably be easier for the code enforcement officer so that when she goes out there she can look at the survey in her hand and see the stakes. Otherwise, how does she really know where the property line is?

Steve Green, it makes it difficult to see where things land without a survey.

Caren LoBruto, from what I understand, the fence is 8 feet off the property line. The house ranges anywhere from 2 – 6 feet off the property line.

Gary Silver, we can't tell where the property line is from this. We have no idea.

Caren LoBruto, the tree line is basically on the property line.

Marisol Torrens, a fence can only be 6 foot high on the side.

Steve Green, he was saying that his mom stands at the kitchen sink and looks out the window down the road and this blocks the view. It is either the fence, trees or open fence. I understand what you are saying but you have to decide how you want to do it.

Gary Silver, it is either this type of fence, a wooden fence, trees or they can do nothing.

Stacy Feasel, don't forget that a wooden fence also blocks out some of the sound that could be coming from there. I just put up a wooden fence on my property and it just looks good.

Brian Russell, why put up a wooden fence and just cover it when we should have had this option to have this common courtesy to begin with and now it is already up.

Gary Silver, the board doesn't really have the discretion to tell someone that they can't put up a fence on their property line so long as it follows the code. You're right. There is no question that they should have been before this board before anything was done. But here we are now. It is a matter of trying to address what the situation is now. They have a right to put the fence there or almost as close to the property line as they want.

Brian Russell, what about the containers?

Steve Green, they are going to move the containers.

Gary Silver, this is a commercial zone and they are allowed to make use of this property. What does the board think?

Maureen Stabak, I think the solution is the wooden fence. The trees could cause more issues. We have spent thousands of dollars removing trees. I like Stacy's idea of the fence and possibly putting vines on the fence.

Gary Silver, the thing is that she can't put vines on the fence because it's not her fence.

Stacy Feasel, the fence can be 6 feet and 8 feet so there is a lot you can do there.

Gary Silver, all you can do now going forward is to use your best discretion as a board.

Multiple discussions at the same time.

Marisol Torrens, the job of the code enforcement officer is to make sure that everyone complies with the code. It is not just about the dollar. That does not fix it. For people like this corporation, this is just pennies to them. It is about compliance. The fence can be 4 feet high in the front and 6 foot high on the sides. If they want it higher than that, they have to go to the zoning board and request a variance.

Gary Silver, so if they want barbed wire, they would have to make the fence 5 feet high with barbed wire or you can go to the zoning board of appeals to request a variance for a higher fence.

Marisol Torrens, right now the fence is 6 feet high and with the barbed wire, it is 7 feet.

Gary Silver, code section 87-13(F) Fences and walls. Except as otherwise required herein or approved by the Planning Board as part of a site plan, fences and walls:

(1) Shall not exceed six feet in height when erected in required side or rear yards and shall not exceed four feet in height when erected in the required front yard.

Gary Silver, so that specifically means that you do have discretion to allow the fence to be higher.

Marisol Torrens, also, once a fence is higher than 8 feet, it will need an engineer due to the wind and stability of the panels.

Caren LoBruto, that is what they have in place and that is what they would desire to keep. I did tell them that the code limited it to 6 feet but now I understand that the planning board has discretion to make it higher. They would prefer to be able to keep the barbed wire. They have been having a problem for quite a while now with people stealing.

Steve Green, so we as a planning board have a right to allow the fence to be higher?

Gary Silver, you do have that right. That is to your discretion.

Marisol Torrens, the fence is 6 feet and then the barbed wire on top makes it 7 feet. So it is 7 feet high with the barbed wire.

Steve Green, so the question is do we allow the whole length to be a certain height or just a certain section?

Marisol Torrens, whatever you decide.

Steve Green, this is about the house.

Gary Silver, that is up to you to determine.

Stacy Feasel, this area is undeveloped.

Marisol Torrens, there is nothing there. I would suggest the whole length so that it looks nice.

Gary Silver, so when they do the survey with the dimensions, if they can show where the back line is near the Russell house.

Mike McGuire, the fence is going to be lower than the house.

Gary Silver, so if the fence went a couple feet past the property line, is that okay?

Mike McGuire, yes that is reasonable.

Steve Green, that is the best compromise that we can come up with.

Stacy Feasel, they are willing to put shrubs in the front. I see that on the design. So that would be nice on the corner.

Marisol Torrens, just be careful because you cannot block the sight distance on the side. So someone will have to keep maintaining them.

Steve Green, it is 30 feet off the property line.

Marisol Torrens, oh okay, beautiful.

Gary Silver, going forward they should try to be good neighbors.

Caren LoBruto, yes. This shouldn't have happened. There were certain employees of NYSEG that just went ahead. I don't know if they didn't understand the rules or what the problem was.

Gary Silver, my guess is that the reason that the storage containers are on the right hand side is that when they were being delivered, someone said just put them there.

Marisol Torrens, if there are any questions about the rules, they are welcome to call my office.

Gary Silver, so let's recap. At the last meeting they added two light poles and we said that they needed to be down lit. We need a survey so we can clearly see the boundaries of the property. The corners of the property need to be staked. You will allow a wooden fence that is 6 feet high with 1 feet of barbed wire on top making it a total of 7 feet high and you want the fence from the front of the property to about a foot or two past the Russell property.

Maureen Stabak, I would like to know if the property owner is happy with the fence?

Brian Russell, we are not going to be happy with anything less, but we can deal with it. My question is that if the barbed wire is allowed to be a foot higher than the fence

Gary Silver, the barbed wire can't be higher than 7 feet.

Marisol Torrens, exactly. That is what is existing there now.

Caren LoBruto, they are asking for the wood fence to be 7 feet high.

Marisol Torrens, so they want to put barbed wire on top of the 7 foot fence?

Steve Green, not on the wood fence.

Marisol Torrens, are we only going to do a wood fence on one side and leave the existing fence the way it is?

Steve Green, the 7 foot wooden fence will be along the Russell property.

Maureen Stabak, yes because he doesn't want barbed wire on his side of the property.

Marisol Torrens, and it will be 7 foot. Let me correct my notes.

Caren LoBruto, I would like to make the changes to the site plan. So they added two new poles. They will be corrected to meet the code. We made them replace the fixtures on the existing poles to bring the overall light situation under control.

Steve Green, has the light been a problem?

Caren LoBruto, there were complaints at the last meeting about the lighting.

Steve Green, when we went by the lights were out so we couldn't tell.

Caren LoBruto, we did do the 30 foot buffer in the front yard with a 10 foot landscaped area and that is per zoning code section 87-20 and we proposed evergreen juniper and evergreen red cedar along the front there. The conex trailers will be moved to the rear and there will be 11 of them. They are 10 x 40 each.

Marisol Torrens, so the 11 containers includes the other 2 from the other property? There are two containers near the main property. There used to be a fence there and they took that fence out to essentially make one big lot. There are two containers there next to the building and there were 9 containers on the other side.

Gary Silver, I would like to see the distance on the boxes from the rear property line on the survey.

Steve Green, do you own the property in the back?

Caren LoBruto, no the property behind the Russell property is owned by someone else.

Steve Green, they are supposed to be merging the lots, right?

Caren LoBruto, they are working on it.

Gary Silver, I know she emailed Sunny today asking for the status.

Marisol Torrens, so these two containers over here are not included in the 11 over here. So there are 11 over here and 2 over here. If they are combining the lots, they should show everything on this plan.

Gary Silver, they can amend this application later to include that.

Steve Green, my question is that the fence has to be a certain number of feet off the property line, correct?

Gary Silver, no, I don't think our code says that.

Marisol Torrens, you can build a fence right on the property line. When the survey comes, we will know exactly how many feet off the property line the fence is.

Caren LoBruto, if we can get the survey to you prior to the next submission, is that helpful?

Gary Silver, yes. Nobody has any desire to make someone spend more time than need be so anything you can get to us is helpful.

NEW BUSINESS:

1. **LE DEVELOPERS LLC – SBL# 115-1-9** – Requests special use permit to change the use from a warehouse to a retail showroom for appliances. All storage and delivery of appliances will be from another location. Zone: C. Location: 100 Mill St.

Isaac Indig, on behalf of the owner. This is an existing building and we would like to bring it back to life.

Marisol Torrens, so he is trying to change the use from a warehouse to a retail showroom.

Isaac Indig, right. It will be an appliance showroom and the top floor will be offices.

Steve Green, this has been empty for 20 years.

Marisol Torrens, it used to be a warehouse for something.

Gary Silver, I had some questions about the EAF.

Marisol Torrens, we fixed it already.

Gary Silver, question #6, #9 and #14.

Marisol Torrens, everything has been updated or corrected. I will email you a copy of it.

Gary Silver, we need to address the parking requirements. Your application does say retail so I am assuming that you are selling things from here?

Isaac Indig, you are not going to be able to walk in and purchase from here.

Gary Silver, how many employees will you have?

Isaac Indig, they have 3 now.

Gary Silver, so you will need 3 parking spaces for them. There are 13 spaces on your plan, so you basically have 10 parking spaces for people coming in.

Steve Green, there are no specs on here for the parking code, so I don't know.

Gary Silver, our code is very simple. If you don't go by one of these then you can use industry standards.

Isaac Indig, just to be clear. You cannot walk in here and go shopping. You make an appointment and come in and look and see what he has and choose what you like and it gets delivered.

Stacy Feasel, so you will deliver it?

Isaac Indig, yes but not from this location. It will come from New Jersey.

Stacy Feasel, and it is appliances?

Isaac Indig, yes.

Steve Green, it is a showroom.

Isaac Indig, yes.

Gary Silver, the code section for parking is 87-16. If the industry standards are inadequate...if you don't have industry standards then for commercial use it says you need one space for every 250 square feet.

Steve Green, there is no square footage on here.

Gary Silver, office space says one space for every 300 feet of floor area. You can do separate calculations. One calculation for downstairs and one for upstairs. We need the square footages so that we can determine how many spaces are required. If for some reason, you can't fit that number of parking spaces, you would have to go to the zoning board of appeals for a variance.

Multiple conversations amongst members.

Gary Silver, this board doesn't have the discretion to vary from the requirements.

Isaac Indig, so if someone buys a building, they can't just use it for anything?

Gary Silver, whatever the zone allows.

Marisol Torrens, he would not meet the requirements so he would have to go to the zoning board for a variance. This is an existing building and it is pre-existing from before he purchased it. He is only coming here because he is changing the use.

Steve Green, the building has been vacant for 20 years.

Marisol Torrens, but if it stays as a warehouse, it will be the same use and considered pre-existing, non-conforming.

Steve Green, if they got a special use permit at that time, that permit is null.

Marisol Torrens, I understand that. We have a lot of places like this. In a case like this where they cannot comply with the parking, we need to send them to the zoning board or?

Gary Silver, yes. There are a list of uses for the zone you are in. Without coming to the planning board you can do agriculture, bed and breakfast, cemetery, essential service nursery and greenhouses, one family detached dwellings, personal service, places of worship, parsonages, public parks and playgrounds, retail establishments and two family dwellings. However, because it was a warehouse, if you wanted to do any of those, you would still have to come to this board for the change of use. Special uses that require planning board approvals include animal hospitals, auto service, bowling alley, lumberyards, business and professional offices, daycare facilities, eating and drinking establishment, funeral homes, health care, home occupation, hotels and motels, laundry establishments, light industrial uses, machine shops, manufactured home parks, nursery schools, outdoor sales, planned unit development, printing operations, private community recreational facilities, recreational centers, research development labs, residential conversions, seasonal recreational camp school, theaters, wholesale warehouses and vehicle service.

Marisol Torrens, I understand that but he is still not going to meet the parking requirements. So why we don't send him to the zoning board? I am not saying to approve it, I am saying to send him to the zoning board.

Gary Silver, prior to going to the zoning board, you at least need the dimensions of the parking spots.

Marisol Torrens, he is going to come to my office tomorrow and I am going to tell him exactly what he needs to bring to be prepared.

Gary Silver, just so you know, the zoning board only meets when necessary so it may take us some time to get everyone's availability.

Isaac Indig, so when would I be required to come before the board to use a building?

Gary Silver, if you purchased a building and intended to use it as the same use it is presently then you can just use it. But because this building hasn't been used in so long and you are changing the use, you have to come to the planning board.

Isaac Indig, the owner bought the property because he saw the building and he was going to use it for the same thing.

Gary Silver, the only thing I can tell you is that he should have had an attorney who looked into it before he bought it.

Marisol Torrens, I said the same thing. He should have come to my office prior to buying and tell me exactly what they want to do and I will tell them. We are giving you the option to tell your client to go to the zoning board to request a variance for the parking spaces that you need and cannot provide. They will say yes or no. If they say yes, then you come back here and get an answer from this board.

Gary Silver, you always want to check with the municipality regarding the zoning before buying anything.

Isaac Indig, ok thank you. So I have to go to the zoning board then come back here?

Marisol Torrens, yes come see me tomorrow.

Motion to close the meeting was made by Stacy Feasel. Second by Maureen Stabak. Motion carried unanimously.

Meeting was adjourned at 7:04 p.m.