

Town of New Paltz
Zoning Board of Appeals
FINAL Meeting Minutes

August 12, 2014
7pm

Meeting opened at 7:15 with roll call.

Present: Linda Donovan, Patricia Schwartz, Ed Burke, Bob Hughes, Gail Christmann, Joe Moriello (counsel), Rich Olson (counsel)

Approval of May, June and July 2014 minutes postponed until there is a full Board present.

The public hearing for Wilmorite was opened, and Joe Moriello left the meeting.

Mike Simon of BME representing Wilmorite: requesting 3 variances: Height 5 feet (35 to 40 feet); stories (2 ½ to 3); minimum distance between buildings. Linda's question: please explain your justification for the decreased distance between buildings. Simon: various layouts were considered; the wooded area at rear, trying to preserve green space, create village feel rather than spacing out buildings. Prudent to cluster. Allows less infrastructure, road, sanitary sewer; decreases maintained lawn, less fuel, manpower. Trying to avoid buffer areas also. **Linda:** and the fire department's opinion? Simon: They have apparatus, they are okay with the distance. Linda: fire suppressant devices in buildings? Simon: Correct. Worked with fire department on locations, putting in fire lanes. Linda: Please verify Wilmorite worked with the environmental consultant Spider Barbour. Simon: VME has a specialist in their office who met with Spider, worked on wetland areas. Spider's letter corroborates this. **Ed:** regarding the factual background packet—are you familiar with it? It's part of SEQRA. Questions: the project was larger, was scaled back, 14 buildings/148 units to ___ buildings/120 units; when did that happen. Simon: Not sure, this project has been in the works for several years. Ed: 2 phase project, which is the first phase? Simon: 3rd map in the application form shows rendering, bottom right corner breaks into phases. Phase 1, total of 7 buildings, 1 faculty building. Phase 2, 3 buildings student, 2 faculty buildings. Ed: Phase 1—what is the expected time to build? Simon: Do site prep work, then start buildings, within a year Phase 1 is done, go right into Phase 2. Believe work flow is coming in from campus first, then moving toward Rt 32. Ed: Would appreciate a phasing map. Letter 2/11/13 from Environmental Conservation Board urges ZBA to deny variances until further steps are taken. Linda: They have not approached me. They did a view shed test. Ed: We should reach out to see if this is still their opinion. On the 5 questions in the application, C, re separation of buildings, is it substantial. Simon: The requested variance is not substantial because otherwise it is more detrimental

to aesthetics and the environment. The closest residence area is 250 feet; the closest neighborhood is 450 feet. We do not consider this substantial, also give the fire department has allowed the construction and looking at the area. The balloon study photo is in the package, feel comfortable it is not a detriment to the view shed. Ed: the other height variance is 14% over the building height, not substantial. Building separation is supposed to be 80 feet, asking for 50-60 feet, are you saying 30 feet variance? Simon: 30 feet is the closest. Ed: the variance is closer to 65%. Simon: it varies, 50-40, still feel it is not a substantial request, goal is to have better plan as proposed, bringing buildings closer. A lot of code is based on apparatus and safety features, the fire department has the capability. Ed: the new dorm going up looks like it's all steel. Are these buildings going to be wood? Simon: yes, wood, full sprinklered. Ed: If variances are not granted there are 2 alternatives; would you get the same amount of beds as the law currently reads? Answer: Yes. Ed: How close would you be to the wetland buffers? Simon: Alternative A, Alternative B1 significantly intrude into the wooded area, get close to wetland areas. NYS DEC says 100 feet is adjacent area; Army Corps of Engineers doesn't; the proposed layout would be getting into those zones. Ed: What are differences between A, A1 and D1? Simon: In A, the 3 buildings closest to campus are faculty. In D, faculty buildings are back into the woods. Same amount of parking in both, approximately 450-500 spaces.

Bob: you're asking for variances for a plan the Planning Board has denied for land use approval. **Joe Picciolti:** under town code, nothing disallows the ZBA from making a zoning decision. Planning Board can't tell another board not to act. Under SEQRA, in the DEC's view, how agencies are to conduct themselves—agencies may have different findings. We are continuing to move forward with all involved agencies, would like this board to act, close the public hearings. Overall distances of separation average 37%. Ed: We're not approving an average; paperwork stated 40 feet, not 30 feet; we need to know what you're asking. Linda: reading from the material, page 2—heights 40 feet, proposed building separation 80 feet, 30 foot minimum. Bob: no argument here between the ZBA and PB. Denial of process in litigation, don't know how it's going to be resolved. Environmental and fiscal impacts, question of the number of units, no clear answer why so many are needed. SUNY is now building a dorm, maybe you don't need one building. Picciolti: the fiscal issue is not before this board. There is agreement of 98-99% of findings by the PB. In terms of rationale for the PB decision, we have a quarrel with that. DEC is processing the brownfields application. Bob: part of our determination is based on findings from the PB, input from different consultants. Home rule, wetlands ordinances come into play, the project has to be held to that. We don't know the outcomes, you're building for students who are supposed to be learning values, and we have strong values in New Paltz. Picciolti: this board has findings showing issues have been mitigated as relates to the variance requests. If successful in court, we are going forward. The expectation is the ZBA will keep moving forward. Bob: why are so many dorms needed? Picciolti: documentation is in SUNY/SUNY Foundation. Has nothing to do with this project. Need for housing has never changed, no impact on this application. Determined by SUNY New Paltz. Studies, polling, comparisons to other colleges in the state. Ed: Couldn't see new dorm numbers in the documentation, asking applicant to go back to the college to ask if the dorm being renovated included in needed number of beds. Picciolti: there is a dearth of campus housing compared to other liberal arts colleges in New York State. Simon: the 4/10/14 letter from Donald Christian speaks to need for the new dorms and the proposed project in response to the 1/14 ZBA meeting.

Linda: Mr. Olson points out in the findings statement that the college says it has the lowest number of beds among colleges. After construction there will be 49 beds per 100 students, and the SUNY average is 59 per 100. This finding statement was made by the Planning Board as lead agency. Ed: where did SUNY NP rank 10, 20 years ago? Did they grow or others built dormitories? Picciolti: enrollment figures go back to 1995. Ed: enrollment is growing through graduate students, who don't need on campus housing. Ed doesn't see an answer to the self-created hardship question. The project chose to bring the buildings together closer than required, so yes, this is self-created. Picciolti: that is not a criteria to be used for denial. Linda: confirming the project could be built without variances. Simon: could get separations, trying to do the right thing, better project, more of a village type feeling. Pat: a major issue was fire safety, which has been handled by the fire chief's 89/1/13 letter.

Linda: the Planning Board deals with issues, ZBA deals independently with others. Wants to make clear if we approve variances, after the lawsuit is settled, if compromise changes the plan, does that change the legality? Picciolti: no changes are contemplated. In terms of site plan changes, those have been handled. The PB findings on the site plan issues are all positive. Impact of the lawsuit on variances? Nothing. PB findings being challenged are not related to site plan issues. Gail asked about variance running with property. Rich Olson clarified the variance is good for a year, if not acted upon, the variance becomes voided. If acted upon within the year, variance runs with the property.

Rich Olson: 3 variances. If successful, plan comes back. Bob: question a detriment to neighboring properties—PB finding detrimental fiscal/services impact, significant impacts on community character and population. Picciolti: not a site plan issue. Bob: we need to look at detriment to neighborhoods. Fiscal impact impedes on residents to the detriment. If not granted the variances, no detriment to the public. Picciolti: your responsibility related not to fiscal impacts. Physical/environmental only. Rich: That is being challenged in the court. No impact on height, proximity of buildings. If court finds for PB, it's moot. Picciolti: PB is SEQR lead agency. ZBA must decide if variances appropriate for this project.

Public Comment

Paul Brown: (Kitty Brown asked for written comment to be read into the record, copy given to ZBA). Paul's comments below:

Supports applicant's request to make a decision. Requests ZBA act to deny all 3 variances. 1. Request based on flawed assumption, no objective data. Need for housing established by SUNY. Have tried to find info. SUNY Foundation not subject to FOIL. Have Foiled all this data, not been given any to this point. Have ZBA members verified data? Data re other villages—census of rental space in particular? Adequate rentals in New Paltz, fiscal havoc on NP economy. If need for project not justified, no basis for variance. 2. Use to be authorized by variances not to alter essential character—this project will. PB denied, NP School District is against it, Ulster County Supervisor also. Can shrink size of project to avoid wetlands. 3. Most likely detrimental impact—developer unable to prevent non-students from renting. This is rental housing. Rental housing to ZBA, dorms to IDA. No discrimination allowed by law. Highly likely to result in negative consequences.

Ira Margolis: This is off site rental property, not college housing. Benefit private corporation, without taxes, college gets a share. Economic benefit to college—cheaper to maintain property. Want variance so don't have to impede on wetlands, we have a law, not a reason to ask for that variance, and they just can't do it. Home rule protects our community from outside interlopers. Also other SUNYs have dorms—are they college projects, or private paid for by taxpayers? There is student housing in the village. Lots of residents earn a living renting apartments. Need for student housing is college propaganda. College spoke to fire department, but refused to speak to the police department. Police chief says \$23-24 million to protect this project. Village is forcing landlords to close their businesses to accommodate the college. How many dorms off campus that have to be paid for by 4,000 taxpayers?

Ken Wishnick: Realtor here for 8 years, more than average exposure to students/families/landlords. Need for student housing—important factors: SUNY NP is only SUNY campus that is walking distance around the village. Other campuses need car/public transport to get to village. If there was a housing shortage we wouldn't have so many students. Some of the families want higher quality housing than is available in dorms or off campus. SUNY has told Ken they need luxury units to attract more well-to-do students/families. Part of decision which school to go to. NP one of the highest rated schools with the housing we currently have. We don't have substandard housing in NP. Also—this board not supposed to withhold acting—can the board legally choose not to act pending the litigation? Applicant said they can push housing units together, will save construction costs, more profit for developer. Can doesn't mean should. NP Times has rental ads year round. Have served as director of planning and economic development for NJ, co-adjutant professor at Rutgers for train new PB/ZBA members. Decisions to make, not always clear what to do.

Re self-created hardship—if someone gets a building lot, just shy of requirement for size, obvious place for a house, versus a parcel near Water Street Market putting up a 5 story hotel—making money at the expense of the community. Someone proposing a project chose a parcel to purchase, it was not the only parcel available. ZBA not obligated to fit the project into the parcel for the applicant. Weigh best interest for community versus what is before us. Proposed offer—offer of exchange by developer for approval. Not being offered by this project. Instead they are going to take away tax dollars, nothing in return. Nothing says we have to allow 732 units—cut project to fit property and zoning. Building separation helps give community feeling. View shed to be impacted, see Catskills over ridge from Rt 32. Not obligated to give someone something varying from zoning regulations just because they want it. Decide based on community interests.

Tim Rogers: Don't see board's role to look at a group of variances, but at 3 variances. The 3rd one makes sense, clustering, less encroachment, less impervious surface. Height, stories are about making the building higher to give more units and financial gain for the developer. Can't grant a variance for financial gain for developer.

Irwin Sperber: Gardiner resident, taxes go to NP for school district. NP actions set precedents for Gardiner, other towns in the region. Proposed variance justifiable because there is a sprinkler system, Fire Department is okay with that. Also need to consider worst case scenarios—power outage, including diesel generators (i.e., Fukushima)—sprinklers are not a guarantee of protection. PB denial of the

project—but Wilmorite wants variance approvals—every reason to believe Wilmorite could use variances in case against NP PB. Wilmorite not an exemplary corporate citizen. PILOT a tax avoidance scheme. Basis for ZBA approval—responsibility to exercise discretion for fair, good for community. Full authority to exercise our own judgment, not intimidated by threatened lawsuits from development. Large taxable property off tax rolls, not fair to citizens paying taxes.

Kitty Brown's comment (read by Paul Brown): Wants to understand. Page 16 Mr. Eldridge notes "open space areas"—PB documentation shows no further development of wooded areas. No conservation easement, would impair SUNY Foundation's options for further development. Postpone action until conservation easement submitted for approval by Town of New Paltz.

Bob Gabrielli: Always pay 100% of my tax bill. Was SUNY NP commuter student for 6 years. Self-generated, economically driven. Student housing. Worked for state investigating frauds. Lack of representations documented. Boards have been asked to request financial projects, never received. Demand applicant produce written representations. Verbal representations not enforceable. Student use—college/town good for each other. Member NP Property Owners' Association, no landlord has been asked about vacancy factors, leases. Significant economic bearing on this project, the outcome of the lawsuit. Town fills need for college—off campus housing. 80% second year students look for off campus housing per a study. College has never approached landlords. Representations of student-only use—can it be enforced? Might end up being Section 8 housing, do a lot of damage. Categories of property cost—tax, mortgage, insurance; maintenance almost optional, landlords will chintz on maintenance. Bob Hughes interjected: we're identifying issues with a specific project, not averse to Section 8 housing.

Tammy Friedman: Agree with other speakers. Personal situation—volunteers bringing environmental speakers to college. Came to board for variance for fence, told we aren't here to fight your battles. Two weeks later guy came out with a shotgun, shot himself because no one else was around.

Jeff Logan: Open space, amount of land. 1/14/14 Doug Eldred PE—original plans up to 1,400 units, dorm fashion. Later changed terminology to "they" from "we." College/developer intermingling. We're getting a sales pitch. Prepared conventional plan, met all criteria. Two story units, 80 feet separation. 2.4 acres to be removed from woods, 1.4 acres additional impervious area. Plan presented to us is a self-created problem. ZBA will never get in trouble by upholding the zoning law. Community has spoken out, welcome housing. Went from 1,400 to 732 units; is further development in place?

Motion to close public hearing made by Ed Burke, seconded by Gail Christmann. Public hearing has been held open 5 months. 62 days to make decision. Rich Olson: lots of information presented. Can close, will keep open for written comment for 10 days. Amended motion to take written comments through 8/31; seconded by Gail Christmann. All in favor.

Kim Hoover, Albatross Capital Group public hearing

Fence, pergola, front yard setback. New sign setback. Motion to open public hearing by Bob Hughes, seconded by Pat Schwartz, all in favor. Plan to buffer thruway. Covered walkway for drop-off of bridal

party, pergola needs variance. Flowers/shrubs purple and white planned. Privacy fence 6 feet, wood. Deer fence on thruway side, with arbor vitae, clematis up fence. Determined 6 foot fence does not require variance in B2 zone, no restrictions on fences/walls except on residential boundary. Sign setback requirement 10 feet from property line; 7.5 foot variance requested. Motion to close public hearing by Bob, seconded by Pat, all in favor.

Motion to grant variances as follows—Motion by Bob Hughes, seconded by Pat Schwartz to grant a variance for the sign setback requirement of 7.5 feet based on the location of the property and the distance from other public access. All in favor.

Motion by Bob Hughes, seconded by Ed Burke, to grant a 26 foot 2 inch setback variance for the pergola for this property due to the nature of the business, the fact that it is not in a neighborhood where the setback would be necessary but is in a business district, and the structure proposed will enhance the business district. All in favor.

Phillipe Subey/Laura Fritzke-Subey—bought home in May, 1-2 feet from Zagarovsky (9 Dubois). Letters from 3 neighbors, no objections. Motion made to set public hearing for September 9 by Pat, seconded by Bob, all in favor.

Motion to adjourn meeting by Pat Schwartz.

2nd by Bob Hughes.

All others present in favor.

Meeting adjourned at 10:34 pm.

Submitted by Gail Christmann