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**Town of Shandaken Planning Board
 Minutes for Regular Monthly Meeting
 October 11th, 2023**

The regular monthly meeting was called to order with the pledge of allegiance at 7:00 pm.

Roll called by acting Secretary to the Planning Board Olivia Amantia, and attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Present
Joanne Kalb	Absent
John Horn	Present
Allen Shiner	Present
Sam Spata	Present
Vivian Welton	Present

Roll Call Summary: 6 Present, 1 Absent

Others Present: Zoning Enforcement- Officer Grace Grant, Supervisor- Peter Disclafani, Tariq Gujar, Mike North, Mary Herman, Hilary Smith

Minutes:

Chair Rabuffo made a motion to accept the minutes from the previous month's meeting, with no corrections, Board Member Spata made a motion to accept the minutes, Chair Rabuffo seconded the motion, all in favor.

Communications:

The first order of business on the agenda is Aero Star Petroleum. Pine Hill resident Mary Herman wrote a letter to the board regarding her concerns pertaining to the Pine Hill Plaza re development. Letter is attached to these minutes.

Chair Rabuffo takes this time to address some of the points Mrs. Hermann made in her letter to the Board. Chair Rabuffo states he has been on the Planning Board for ten years, and no one cares or has any interest in any projects before the Board, until it affects them.

As far as the public feeling they are unaware of present or future projects and being in the dark about the information, the meetings are always broadcast live on television, and uploaded the following day on YouTube. Plans regarding projects are always available in the office, through the Planning Board secretary, and or the Zoning Officer.

The meetings are always open for the public to attend, and only when there is a Public Hearing, can the public address the board, and express their concerns for projects. It is not acceptable for the audience to interject or interrupt during meetings, they can address the Board during a public hearing, or by sending an email or a letter to the Board. Chair Rabuffo adds people need to pay close attention to procedures, if you wish to be involved.

The topic of future projects and plans being made & having pdf submission for easier access and viewing to the public, has been discussed and is a possibility for the future. The topic of what the Belleayre Plaza uses have been in the past is discussed.

ZEO Grant states the Pearlman's previous owners of the plaza, which is a pre-existing non-conforming use, did not require a special use permit. The previous owners had two special permits, one issued in 1993 to convert an existing retail space into a laundry mat, and one in 2001 to put an addition for a cooler. ZEO Grant states she has the paperwork if anyone would like to look at it, or copies can be made. ZEO Grant states as far as use is concerned the previous owners did not have a special use permit, it is a pre-existing non-conforming use. ZEO Grant adds there is a map in the file that shows the structures where they are located. The previous owners had site plan approval, to make these changes.

Chair Rabuffo states in regards to the new building being larger, the expansion of the use over 50 percent is a valid concern. There is a discussion amongst the Board whether the project should be referred to the Zoning Board of Appeals. Chair Rabuffo makes the decision to recommend that Aero Star go before the ZBA for interpretation of code section 116-58 A-1 as it pertains to the site plan currently under review. ZEO Grant states it is not a use issue, it's a question of expansion. Following several interruptions from the audience, ZEO Grant states it would be an area variance the applicant would need, in relief of 11658 A1, she states that an area variance, she believes is what is needed, because it has to do with the alteration or extension of existing structures.

Mike North states he did not run the numbers, but based on what an audience member said, during this nonpublic hearing, is there is a 40 percent increase, which is not a fifty percent increase, which is therefore allowed, if that's true I would argue that it doesn't need a variance by the regulations. Mr. North states as far as the pumps are concerned I don't know

that they are covered by the zoning , because they're not a building. Mr. North states he understands its up to the Planning Board, the new owner would like to open the business in a reasonable period of time. Board Member Spata states Mr. North is suggesting that increasing several pumps is not the same as expanding in a footprint. ZEO Grant states she is seeing a twenty five percent increase in the footprint of the gasoline station with the retail building, and seventy five percent for the laundry mat. If you were to include the pumps, it would be a two hundred percent increase. A discussion amongst the Board whether or not the gasoline pumps and land, should be included in the increase of the new plaza. Chair Rabuffo makes a motion to refer the applicant to the Zoning Board of Appeals, seconded by Board Member Spata, all in favor.

Communications

Other Business:

The Board went into an executive session to discuss a personnel issue.

Chair Rabuffo states the personnel issued was resolved to the satisfaction of the Board, the executive session was closed.

Old Business:

Adjournment: Board Member Spata made a motion to adjourn the meeting, board Member Christie seconded, all in favor. The Meeting was adjourned at 8:45pm. These minutes were prepared by the Planning Board Secretary Olivia Amantia

Attached Correspondence received prior to meeting.

October 10, 2023

To the Shandaken Planning Board,

First, I would like to apologize for talking out of turn and my outburst at the last couple of meetings. My intent is not to harass the board or disrupt the meeting. I am frustrated. I suppose I do not understand when the proper time is for the public to ask questions. Is there a public comment period at each meeting? Having served on several committees over the past few decades, I believe it is not only vital the community be heard, but such dialogue fosters community trust and knowledge. As the SPB members are aware the town of Shandaken has appointed a committee to review and revise the Town's Comprehensive Plan. It is vital that the members of this committee, of which I am the Chair, be able to work with and gain insight from the SPB so that we can effectively do our work. While the comments I have made here are mine personally, the research I have done is pertinent to my work with the committee. Therefore, my understanding of the zoning laws is important and I appreciate any assistance the SPB can give me to achieve this.

I found it very confusing that the hearing for the Mobile Plaza was scheduled as it did not appear the site plan was complete, and there were many questions that needed to be answered. The plans were not exhibited for the public beforehand, as they had been at hearings I have attended in the past. I do not believe I was the only one who was unaware members of the community were expected to go to town hall before the hearing to see the plans. I would like to know when and where is it appropriate for the community to get answers to their questions and concerns, if not at a public meeting?

Unfortunately, I was unable to get sufficient answers at the meeting, and I think now I have more questions than before. I have spent a lot of time researching procedures and the laws on my own to try and get this matter straight. I understand why The SPB had the hearing given the time frame allotted in the law. However, it is a disadvantage to the community to be asked to make final comment on something that is not final. I do not even know now if the hearing is still open as the plan was to be updated again after the last regular Planning Board meeting. So, I am respectfully asking that you consider my concerns before the next meeting.

There is a clear lack of support for a Dunkin Drive thru in Pine Hill. Initially just about everyone in Pine Hill was supportive of the Plaza reopening because many residents relied on the laundromat, the deli, and the food store. While it is in the applicant's right to sell whatever he wants, the lack of nutritious food and deli refutes the public support that was offered. I inquired with Nathans Famous, Inc. and was told they have no record of a Nathan's Famous franchise ever being in Pine Hill. I was told that their hot dogs and promotional materials such as signage can be purchased through commercial food distributors. The drive thru component upsets the community as it is out of character.

Gas Stations are a prohibited use in Hamlet Commercial Zoning.

The building appears to be non-conforming, and may have already been expanded to its limits as such.

§ 116-10. District Schedule of Use Regulations. Gas Stations are prohibited in HC, not allowed by Special Permit.

I have questions as to whether the applicant should have been sent to the ZBA in the first place or do they need to come before the Planning Board for a referral? Did the previous owners have a Special Permit or a Use Variance for a gas station, or was the use just accepted as is after Pine Hill disincorporated in 1985?

The zoning law states:

§ 116-58. Nonconforming uses.

(1) Shall not be enlarged or extended by more than 50%, altered, extended, reconstructed, or restored, except as provided in this article, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, nor shall any external evidence of such use be substantially increased by any means whatsoever. that if a building is non-conforming, it may not be made more non-conforming.

The applicant seeks to increase the size of the building by 40%, (possibly allowed with use variance if not moved) and place it on a different portion of the lot (clearly not allowed) and the appearance of his plans show "external evidence of such use is increased", not only by the increased size of the building(s) but by the increase of non-conforming gas pumps from 4 to 12, a 200% increase in the number of pumps.

In addition, if the current building is such a condition that it is not able to be remodeled, then the use should be discontinued, as it is used as part of a gas station complex that is prohibited in Hamlet Commercial in the first place.

It violates the spirit of the law if a building can be torn down, rebuilt on a different portion of the lot, and enlarged when the original building or use is non-conforming. Such actions would encourage continuing and expanding non-conforming uses, not disallow them. Isn't the objective of having nonconforming building/use laws not be rebuilt after they are so that gradually they would be phased out and we would have no nonconforming buildings or uses? Owners who do maintain buildings that are non-conforming can retain those buildings and uses, since they took care to maintain the structure knowing they could not rebuild from scratch. There are enough gas stations in 20 miles in either direction of Pine Hill to fill the fueling needs of the area.

I have lived in Pine Hill for 30 years and have seen many changes of the plaza over those years. Pine Hill disincorporated in 1985 and at that time the building would have been subject to the Shandaken Zoning Laws, if not already so. The plans show that existing building has a 12-foot set back making it a non-conforming building in addition to the prohibited gas station in a HC zone. The Perlman's had added to their business/buildings several times since I have lived in the hamlet, including (but not limited to) the "Beer Cave" on the east end of the property, the outdoor eating space that has since been enclosed, and the conversion of the laundromat from what was once a small home. I would like to know how these expansions are calculated in, now that the new owner wants to expand even more.

How big were the buildings at the plaza at the time the zoning on the parcel became effective? How much have the Perlman's already altered, expanded reconstructed or restored the non-conforming building up to or beyond this 50% limit before selling to AeroStar? How much square footage were these additions? This needs to be answered because if these additions exceed 50%, and AeroStar is allowed to go forth with their plans, wouldn't that set a precedent that each subsequent owner of the property would be able to rebuild, move and enlarge nonconforming buildings? When is the 50% increase reached? Does each owner get their own 50%?

Indeed, caselaw on the subject supports this:

'The Court noted that nonconforming uses of property are generally viewed as detrimental to local zoning schemes and as against public policy. Therefore, a zoning board is within its power and the courts will enforce "a municipality's reasonable circumspection of the right to expand the volume or intensity of a prior nonconforming use."

Steiert Enterprises, Inc. v. City of Glen Cove, 2011 WL 6224616 (N.Y. App. Div. 2 Dept. 12/13/2011)'

My experience on non-conforming buildings that I was not permitted to address the Planning Board about stems from the following situation: a property located at 31 or 34 Academy Street, Pine Hill, an old boarding house, was a non-conforming building, locally known as the Tilting Hilton. Investors bought it and wanted it to put Six apartments into this building. The building had a small footprint and was not suitable for 6 apartments. I had a conversation at that time with Art Christie and he told me that, as zoning officer, he had removed the condemned porch on this building and because it was non-conforming, and as it was now demolished, that the

applicant had no right to rebuild that porch. Also, it was my understanding if the building was taken completely down, they could not rebuild it as it was, they would have to rebuild according to current setbacks. The house next door to the Tilting Hilton was owned by Matt Strank, he told me that his experience was that he remodeled his house in its original footprint, as he could not take his house down and rebuild it differently, because his house was also non-conforming. I can tell you many of the stories where this is basically common knowledge to anyone who is a contractor in Shandaken. My husband and I were interested in buying the Tilting Hilton property so we could convert it to a storage area as we do not have a garage but then the owners took the whole building down, losing the footprint and there was nothing to remodel. We were told it is now basically an unbuildable lot would not have been able to build a suitable building within the current setbacks.

Pine Hill has a Historic District and 5 Historic Sites. The community went through a lot of work to have Pine Hill declared a historic district and five of the historic sites in Shandaken happened to be in Pine Hill. A drive through donut shop conflicts with the character of the immediate community, and Shandaken's attractiveness. Community Character can absolutely be taken into consideration when issuing a special permit. It was very disingenuous for the applicant to state in the comments to the Ulster County Planning Board that the gas station is ¼ mile from the town when it is literally within the historic hamlet boundaries.

The project does not meet the 50-foot setback requirement as required in the Shandaken Zoning Code. At the 7/12/23 Planning board meeting the applicants engineer admits that most of the Parking lot is State land and indeed the concrete over the tanks and where the pumps sit cross NY State land. The applicant seeks to move the pumps but creates new non-conformity by increasing the number of pumps by 200% from 4 to 12.

At the very least The Shandaken Planning Board should refer this matter to the Zoning Board of Appeals so that these questions can be further investigated and evaluated. Furthermore, the applicant has stated that he is not interested in installing electric charging stations, which would fill a need for green technology for the future, something other committees in Shandaken are working towards. This is the type of growth we should be encouraging.

The Setbacks and parking do not comply with the Zoning code

§ 116-58. B (2) No parking area shall encroach on any portion of a required front yard or within 50 feet of New York State Route 28 or 25 feet of any other public right of-way, whichever shall be the less restrictive.

The parking in front of the Laundromat is up to the property line leaving no setback. (2) The area of use by motor vehicles, including display and storage, except access drives thereto, as well as any structures, shall not encroach on any required yard area, and further provided that no building shall be erected closer than 50 feet to any street or lot line.

(3) No fuel pump shall be located within 25 feet of any lot line or within the required side or front yard, whichever shall be more restrictive. The station layout shall eliminate the necessity of any vehicle's backing into a public right-of-way.

The redevelopment of this sight conflicts with the current Comprehensive Plan
Comprehensive Plan for the Town of Shandaken
July 2005

“Above all, we want to preserve the artistic, cultural, educational, and historical assets of our town. We recognize that The Catskill Park and Forest Preserve, the Belleayre Ski Center, and the scenic value of Routes 28 and 42 are our centerpiece assets. We want to preserve the character of these corridors as clusters of commercial enterprises separated by open spaces and with a minimum of roadside advertisements and with non-intrusive signage.

By no means are we "against developers". We will work in good faith with any cooperative developer to be sure their proposed plans and developments conform to the criteria set forth in this Comprehensive Plan and the existing ordinances of the Town.”

Most rural communities, like the Town of Shandaken, were originally established without comprehensive plans, review boards, or regulatory controls. The historic hamlets and natural features, which shaped growth and rural roads, remain from the era of initial development, and combine to create a picturesque environment that has formed the basis for a long-standing tourist-based economy.

Land Use & Development Limitations

The present land use pattern has been influenced by the historic pattern of hamlet development, highway-oriented transportation, and state land ownership. The Town includes 12 hamlets (six delineated areas), each with a distinct character.

IV. IMPLEMENTATION PLAN

A. Natural, Historic & Cultural Features and Resources

1) Land Use Plan, Zoning Law, Development/Site Plan Regulation Changes

a. The Town of Shandaken Land Use Plan, Zoning Law and Development/ Site Plan Regulations should be updated to ensure that natural, historic, and cultural features that are important to the Town are protected. Priority: Immediate

c. Specific design standards and review procedures should be established for structures that may detract from the character of the hamlets, villages, or overall community. Priority: Short-Term

C. Development Patterns

Hamlets

- Hamlet revitalization should be promoted and coordinated through use of available loan and grant programs to encourage business development and building renovation.
- New development within the hamlet areas should be compatible with the existing hamlet development, as appropriate to the capacity of sewer and water systems.
- Buildings and signs should be consistent with the architecture and rural character of the area in terms of design and materials

Route 28 Corridor

- Between the hamlets, Route 28 is the image of the Central Catskills - long views of mountains, glimpses of mountain streams open fields and wooded hillsides and a varied array of small, diverse structures and uses glimpsed at 55 mile per hour. In general, development along this corridor should not be extensively promoted and should be limited to small, cottage-type businesses. The design principle for Route 28 should be to blend manmade development into the natural landscape to the maximum extent possible and to prevent an increase in development intensity in terms of physical and visual impact.

- Buildings and signs should be consistent with the architecture and rural character of the area in terms of design and materials.

D. Historic Resources

Shandaken has seven sites, which are listed on the National Register of Historic places:

- Camp Wapanachki (currently Zen Mountain Monastery), Mt. Tremper
- Phoenicia Railroad Station, Phoenicia (Empire State Railway Museum)
- District Schoolhouse No. 14, Pine Hill
- Elm Street Stone Bridge, Pine Hill
- Mill Street Stone Bridge, Pine Hill
- Morton Memorial Library, Pine Hill
- Tremper Mountain Fire Tower, Mt. Tremper

*Not in plan, Ulster Hotel, Pine Hill. So, 5 of the 8 sites are in Pine Hill

If you have read this far, I sincerely thank you for that. And thank you for any consideration you have given my comments. Your feedback will likewise be appreciated.

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