

Planning Board Meeting Minutes
Village of Ballston Spa
Held on February 14, 2024

The meeting was called to order at 6:58pm by Chairman O'Connor

Chairman present: Rory O'Connor

Members present: John Battenfield, Scott Burlingame, Peter Martin, Mike McNamara,
Attorney Stefanie Bitter

Pledge of Allegiance

Chairman O'Connor requested a motion to approve the minutes of the January 10, 2024 meeting. A motion was made by Member Martin, seconded by Member McNamara, to approve the minutes of the January 10, 2024 meeting. The motion was approved.

Old Business: None

New Business:

101 Fairground Avenue – (Tax ID #216.23-1-5.1) Applicant -Brett Bogan. Application for a Subdivision Approval and Site Plan Review.

Chairman O'Connor stated that the applicant has gotten approval from the Zoning Board of Appeals for this project. Mr. Bogan provided a map. This has gone thru SEQR at the Zoning Board level as a Type 2 action, so we will not have to address it here.

Member Burlingame asked what percentage of lot coverage he anticipates, as it was not listed on the survey. There is a 20% maximum building coverage allowed and 30% minimum green space allowed. He noted that the green space calculation must include taking out the driveway and paved area in the calculation for the green space number. He noted that it looks like the applicant is getting close to that, so he needs to get that defined. Mr. Bogan stated that they are looking to build a 1400-1600 square foot house and a 24' x 20' garage. They have no exact plans as of now. They are looking at modular houses.

Member McNamara stated that Mr. Bogan will need to address several items: (1) A permit is needed for a grinder pump from Saratoga County. You should have your engineer send the plan to the County. It must be within 10' of a paved surface. He may need an easement along the front from Mr. Whittredge for the sewer hookup. This

should be addressed before you close the deal for the lot. (2) The street water is shown in the wrong place. It is shown right next to the sewer, and it probably is on the other side. (5) He will need a permit for the curb cut for the driveway from the Village DPW. (6) There must be a 10' separation between the water and sewer and the driveway the same thing. Member McNamara stated they are all fixable things, but he does not think he will get a permit as it is now. Chairman O'Connor stated that all notes must be on the site plan itself. Building Inspector LaFountain stated that the water and sewer may be in the same trench. Chairman O'Connor asked if Mr. Bogan was planning on putting in any screening along the driveway or around this property. Mr. Bogan answered no, they are not planning on planting any trees or shrubbery. Chairman O'Connor stated that some landscaping is needed on both sides of the driveway to define the driveway. He asked for clarification of ownership of existing fencing, noting that all fencing needs to be shown on the site plan. Member Martin asked if there would be any issue with storm water with the neighbors. Mr. Bogan replied no, that the land was flat.

Chairman O'Connor stated that once Mr. Bogan adds the items discussed tonight to the Site Plan with as much detail as you can provide, and bring back it to us, assuming the Board agrees, they can proceed with a very quick administrative action approval. The applicant must provide 2 mylars for the County. After the final document is provided, we will get you on the agenda for a public hearing.

92 Milton Avenue – (Tax ID #216.32-2-51) Applicant -Waleed Alalkawi. Application for a Site Plan Review.

Paul Kelly introduced himself as the attorney for the owner, Mr. Avenarius. He stated that he wanted to speak to a reasonable solution for what is going on at 92 Milton Avenue. The fact is that this is a 3800 square foot commercial building in a commercial district. It has a parking lot and is currently used as a laundromat. There are currently 3 entrances, 1 on Milton Avenue and 2 on Malta Avenue. The single entrance on Milton Avenue is accessible directly from the municipal sidewalk. The 2 entrances on Malta Avenue are accessible from the owner's parking lot. The front half of the building facing Milton Avenue will now have a separate restaurant and the rear will remain a laundromat. The restaurant will use 2 of the existing entrances, 1 on Milton Avenue and 1 on Malta Avenue. The laundromat will use the remaining existing entrance on Malta Avenue. The parking lot entrance has a dedicated concrete sidewalk. The concrete sidewalk travels approximately 60 to 70 feet with a slope of less than 1 inch per foot and is wider than 36". The Village has expressed concern regarding the building accessibility and listed 6 areas of concern. We have a few ideas regarding the resolutions of these concerns. Mr. Avenarius has spoken with a registered architect, Mr. Farnum. In good faith, we have these 6 items we would like to go over and then we

will walk through the zoning laws as they apply to these facts. The Milton Avenue restaurant from the municipal sidewalk to the entrance will stay the same. No work needs to be done. Items 2 and 3, from Malta Avenue parking lot, the owner will create at each end of that existing 60' to 70' sidewalk at both the restaurant and the laundromat, an existing sidewalk directly to the entrance of each point of ingress and egress to those stores, one to the pizza shop and one to the laundromat. The restaurant access point will meet ADA transition requirements going over the curb from the parking lot and so will the laundromat. Since they are on each side, they will be compliant and close to the entrances, and there is no slope between the 2 entrances, just a regular path of travel between the 2 entrances. So, I think that satisfies everything that the Building Department and the Village are looking for in terms of accessibility. We are going through the zoning issue now and how we got to some of the interpretation of the law, because I want to make sure we are giving you all the information that you needed. A sketch was shown, but not submitted, indicating where the sidewalk is and the entrance at each place. We start with the zoning map for the Village of Ballston Spa, and it reflects a commercial building in a commercial district. Also, talk about Article 2, Section 138 the definitions, defining the change of use, Section 138-140 of the applicability of that section, items A thru G, Table Attachment A of 138 and Attachment 6 Schedule C1 Table for Section 205 and Site Plan Review of 205 and building standards are incorporated by reference. When we walk through this, first we bump into Change of Use. It says the important key terms here in the definition – from residential to commercial or industrial to one of the other uses. This is commercial to commercial. So, then we go to the next part. Change in intensity, a change in the nature substance, if such change affects any of the usual elements such as parking, drainage or traffic or signage. It doesn't affect any of those. Everything is still the same. Then it goes on to say, and this is important, that a change of occupancy or a change of ownership in it by itself, shall not be construed as a change of use. A change of tenancy is not listed in the code. It was referenced a few times, but it is not defined, as referenced in the context of change of use, which brings us to 138 – 40 for a Site Plan applicability. That also refers to a change of use for a Site Plan Approval is required as part of the criteria for a Special Use Permit. That is not the case here. For a change of tenancy, which is undefined, it lists Items A-G. The proposed tenant falls into the, it says shall be subject to a Site Plan unless the following conditions are met. The tenant falls into the same or lesser class. This is found on Table 8A, 138 Table A, and we see that this table contains residential and commercial and agricultural uses. Both uses are still within the commercial, granted they are a little bit different as a subcategory, but they are still commercial to commercial. Further, a laundromat is a special use permit, which would be a higher class than a restaurant, which does not require a special use permit. So, when you are reading this, it is the same or a lesser class, which is the case. It is a laundromat going down to a restaurant. And it says as the existing tenant calculation of parking requirements, the parking requirements don't change. Then we come down to Table C1 for Attachment 6 which lists the parking requirements as 2 spots per 1000 square foot of gross commercial space. The parking

requirements don't change. Everything is still the same. The tenant does not require any site amendment. It's the same general commercial use. The use is in compliance. And the last one, if there is solely a change in tenancy, applications filed in the Building Department can be approved for \$50. So, we have covered a lot of where the zoning is on here, and the purpose of a Site Plan Review, again comes down to a change of use, tenancy, or intensity of use, which will affect the characteristics of the site in terms of parking, loading access, draining of utilities or other services. It doesn't affect the parking. It doesn't even come into play. So, when you are looking at all of this, I don't think a Site Plan is appropriate or required on here. Now, having said that, Mr. Avenarius has taken the time to make accommodation for the building to have adequate access which meets all the standards that you would need in a new building, and there is no other changes on here. So, the zoning law is clear on what defines a change of use, but it really doesn't say what defines a change of tenancy and how the law operates is that code can't be vague or ambiguous or it has to be clear. And any vagueness or ambiguity is called against the municipality in favor of the owner. So if there are any discrepancies on how this is to be applied, we would have some leniency towards the owner and I think that the owner has done a good job of putting together something that will satisfy the building code and have those doors be accessible at the appropriate transitions. Are there any questions?

Chairman O'Connor thanked Mr. Kelly for his presentation. He stated that we are the Planning Board, not the Zoning Board. We are interested in the Site Plan aspect of this and the change in tenancy. We have a disagreement with your determination of the term tenancy, admittedly vague, but there it is. It was a laundromat. It's now going to be a restaurant. That kicks in the Site Plan Review based on our code and based on the determination of the Village Attorney as well as our Building Inspector. He stated that he is sure you are aware of the history of Mr. Avenarius meeting with both the Building Inspector here and as well with the Town of Milton on his site. He stated that he was with him, and they went over everything, and you are quite right that we came to an understanding of what needed to be done with the understanding that whatever was done would have to agree with ADA requirements of the Federal Government. That is beyond our scope. Your schedule, albeit a nice one, was not what he expected tonight. We expected a plan from a professional giving us the specifics in terms of what this would look like. The pitch of the existing ramp that is there does not comply. None of that has been brought up. Our biggest concern is the ADA requirement and without that information we have basically only one option and that is to refer this our engineers to determine exactly what is there and what isn't and table this until we get a response from them. Mr. Kelly stated that he neglected to do this, but he has a letter from the architect. Chairman O'Connor stated that was interesting and that would add a lot. Mr. Kelly passed out copies of the letter to the Board. Mr. Kelly stated that he wanted to make sure everyone was on the same page because he knows the code can be difficult. Chairman O'Connor read item 1 on the letter. The Milton Avenue entrance will be re-opened as is. He understands that and it is also understood that that is not

handicapped accessible even though it is at grade level, it is not adequate. Items #2 and #3 state that on the Malta Avenue side, Mr. Avenarius will create a ramp access to the pizza shop and a ramped access to the laundromat from the east. Both ramps will be accessed from the parking lot. That is fine. Item #4 states the pizza shop entrance will have an ADA compliant landing. Chairman O'Connor asked if that means you are closing off the ramp? Mr. Kelly stated they can do that as clarification. Chairman O'Connor stated that during one of the discussions they had, Mr. Avenarius was going to have his expert determine whether that ramp actually met ADA requirements. If it did, therefore it didn't need to be blocked off. Our concern from that is if Mr. Avenarius' property does not meet the necessary grade, there is a liability there waiting to happen for both he and the Village. Item #6 states a railing on the north side of the sidewalk is not needed. The handicapped access will be provided by both ramps. Chairman O'Connor stated that is something we would have to refer to our engineers. He noted that we are not experts on the ADA rulings and until we have the drawing showing us all of this, we really can't do much with the application. Dave Avenarius interjected that when we had a meeting with the Mayor along with you, Dave LaFountain, and myself and we did walk up there, I was given key points which Kathy provided, and you said we should hire a professional to address this. He stated that what you had explained to me was that even though you had 2 entrances, 1 had to be ADA compliant. There are 2 entrances for the tenant, 2 entrances for the laundromat, and he has come up with 1 for each, ADA compliant. Therefore, the other situations don't need to be blocked off as they are not being used for ADA. You have the 1 that you need. Building Inspector LaFountain stated that if the existing ramp remains the way it is with a 3" drop the length of the building, it needs to be covered. Submit your plan to the engineer and the engineer will figure it out and whatever they decide is fine with him. Mr. Avenarius said that the Milton Ave entrance will not be the ADA entrance. It will stay as is. On the Malta Ave side, they will create access to the pizza place/restaurant as the ramp, curb ramp with roughly 3 1/2" of sidewalk, 36' wide. This would be the ramp directly into the pizza place on the north side. The entrance will have an ADA compliant landing, because it was 4'10" and we needed 5'. He will flush out and get 2" to get you the 5'. The entrance to the laundromat code gives you 3/4", I was 1 1/4". He will soften that and make it compliant. We came here tonight to get our building permit because we are months behind from something that should have been issued to get started. Building Inspector LaFountain stated that he can assure you that if it should have been issued, it would have been. Attorney Bitter stated that just for procedurally, as she understands it, Dave LaFountain did not issue a building permit, correct, and brought you here? Mr. Avenarius answered correct. She stated that this is Site Plan, am I right?. Mr. Avenarius answered right. Although she appreciates the arguments of the attorney that you should not be here, arguing to this Board is not the proper venue to do that. You should have appealed to the Zoning Board, but you didn't, so here we are. Mr. Avenarius stated he met with Rory and Dave and the Mayor and said this is the way to do this. Attorney Bitter stated the Mayor does not have any jurisdiction over these Boards, but your attorney will tell you that the Code tells you that if you did not agree, you should

have gone to the Zoning Board as an appeal, but you didn't and you are here. Mr. Avenarius said that he was not told that. Attorney Bitter stated that your attorney is very knowledgeable and does a good job. With that being said, she stated that she will turn it over to this Board to review Site Plan. Member Burlingame stated that regardless of whether or not they should be here, they must meet ADA requirements regardless. Mr. Kelly stated they do have ADA accessibility for both businesses. He wants to make sure that that's OK as to what you are looking for. Mr. Avenarius stated that Rory told him to get a professional drawing of what we intend to do and submit it to the Board and he will get his building permit. Chairman O'Connor stated that it was also discussed that we also needed the elevations on the drawing that we are working with for the Site Plan which we do not have. That is what a Site Plan Review is for. He is concerned that we don't have a drawing that shows us the details needed so that we can meet with our engineers and discuss to be certain you do meet ADA requirements, so that the Village can pass on this, and you can get your permit. Mr. Kelly asked if they could submit a sketch and drawings to be reviewed prior to the next meeting to expedite this. Chairman O'Connor replied yes. He noted that we are not ADA experts, and we want to help Mr. Avenarius and his tenant move this forward. We need to protect the Village and Mr. Avenarius from future liability. Mr. Kelly stated everyone is on the same page, and we will get you what you need as Mr. Avenarius and his tenant are anxious to get things going. He asked what the timetable would look like after they submit the sketch and drawings. Chairman O'Connor stated that if you can get us that material, we will send it to members of the Board and to the attorneys for review, and we will get a response back to you before the next meeting, if we get all the information we need. Chairman O'Connor stated that we are moving in the right direction and that we want to help him to the best of our ability. He asked Mr. Avenarius if he had any idea of how much this will cost. Mr. Kelly answered maybe in the thousands, not the tens of thousands. Mr. Avenarius said he had no cost estimate. Mr. Kelly said they will get that information to the Board. Building Inspector LaFountain asked if you submit a plan that makes the building handicap accessible, what happens to the existing ramp? The ramp that is there now, one from Milton Avenue and one from the parking lot, it's still a ramp, still looks like a ramp and acts like a ramp, but it's not in compliance. Mr. Avenarius asked why it is not in compliance. Building Inspector LaFountain answered because it has a 3" curb that somebody can roll off. Member McNamara stated that this is why you have a plan. You are talking about something in your head that other people are not necessarily seeing. Chairman O'Connor stated when he met with Mr. Farnum, he told him what we needed, that we needed drawings with attention to this ramp in regards to ADA standards. He said he would then do that and I believe that he talked to you and I believe the Building Inspector. Building Inspector LaFountain stated that he met Mr. Farnum on site. Chairman O'Connor stated we need a drawing and that once we have that we will do whatever it takes to move you forward, but you have to give us something to work with. Mr. Kelly stated they will get the plans and get the drawings. Member McNamara stated that he needs a dedicated space for the ramp and that is something you should do depending on where the ramp is, you have to put the space

there where it is accessible to the ramp. Mr. Avenarius disagreed. He stated he will have that in the space that works the best. Member McNamara stated that doesn't address the problem, and this is why you need a plan because the plan can be referred to and acknowledged. Mr. Avenarius said that this is the way he was told to do it ahead of time.

Chairman O'Connor opened Public Comment. Hearing none, Public Comment was closed.

Member McNamara stated that they will have to do SEQR as well when we have a plan. He noted that there are three questions on the SEQR form that are not filled out - #3, #5, and #14 and we need that filled out. We cannot execute SEQR without a complete form. Mr. Avenarius stated that was something his tenant filled out. Mr. Avenarius asked if we could talk about them now. Member McNamara replied no, fill them out on the form.

A motion was made to adjourn at 7:45pm by Member Battenfield and seconded by Member Martin. The motion carried.

Respectfully submitted,

Kathleen Barner
Building Department Clerk