

CITY OF AUBURN PLANNING BOARD
TUESDAY, OCTOBER 7, 2014 6:30 PM, MEMORIAL CITY HALL

Present: Sam Giangreco, Anne McCarthy, Tim Baroody, Crystal Cosentino, Frank Reginelli

Absent: Andy Tehan

Staff: Stephen Selvek, Senior Planner; Andrew Fusco, Corporation Counsel; Brian Hicks, Code Enforcement Officer

Agenda Items: Environmental SEQRA Review for Application of a Minor Site Plan at 7 Catlin Street

Applications Approved: SEQRA Negative Declaration of Minor Site Plan - 7 Catlin Street

Applications Denied: None

Applications Tabled: None

Chair calls the meeting to order. The Pledge of Allegiance is recited. Roll is called.

Agenda Item 1: Approval of September 2, 2014 Meeting Minutes.

Chair asks for a motion to approve the minutes of the September 2, 2014 meeting. So moved by Anne McCarthy, seconded by Crystal Cosentino. All members vote approval. No members opposed. Motion carried.

Agenda Item 2: Application for Minor Site Plan Review for the installation of a 22-vehicle parking lot located at 7 Catlin Street to serve Kosta's Bar and Grill. Applicant: Ioannis, Inc.

Chair requests staff update on the project.

Stephen Selvek- Last month we initiated the review of this proposed project with declaring ourselves as lead agency for Environmental Review. Since that time this went in front of Zoning Board of Appeals and they signed off on the Planning Board being Lead Agency. Therefore the Planning Board can move forward with the Environmental Review. I do want to bring your attention to Part II of the Environmental Impact Form, where I have drafted answers for the Board's consideration. I will review these answers and Part III Determination of Significance.

First item: will the proposed action create a material conflict with an adopted land use plan or zoning regulations? I indicated a large to moderate impact may occur. In this particular case, the NYS DEC has provided much more detailed guidance on Environmental Review including that if a use variance is required the action has the potential to have a moderate to large impact.

* Reviews remaining items on the form all of which are no or small impact may occur.*

Many of the times the projects that we review end up with no impacts or small impacts for all the items but in this case we do have the potential for a moderate to large impact on question 1 so we do need to complete Part III which is a Determination of Significance.

I drafted a response that the Board can discuss.

The proposed action creates a conflict with the City's zoning regulations (question 1) which has the potential to be a moderate to large impact, because the action requires a use variance. The potential impact is moderate in magnitude, because the proposed use is limited to a single parcel. Because a use variance "runs with the land," the impact has the potential to be long-term. However, the action is reversible, albeit unlikely, and an allowable use could occur on the site in the future. The impact is likely to occur.

The impact is not believed to be significant for the following reasons:

- 1) Moderate, not large, in magnitude.
- 2) Has the potential to be reversed.
- 3) While located in a residential zoning district, the setting and location of the parcel is such that it is adjacent to a commercial zone and separated from residential homes by a secondary driveway that serves an apartment complex.
- 4) Similar land uses exist already in the area.

These are my recommendations for the Board's consideration and if the Board has any questions or discussion around these recommendations, I encourage that. Last month, some of the neighbor's did have concerns with commercial creep into the neighborhood. While I feel there is an impact, it is not necessarily significant since the scope is limited to one parcel.

Tim Baroody- The reason why this is a moderate impact is that a use variance is needed?

Stephen Selvek- Correct.

Andrew Fusco- The State is telling us to be on the lookout that use variances may have a moderate to large environmental impact and if we find that they are large to moderate, than we have to require some type of mitigation by the developer. I agree with staff in highlighting that particular question for a hard look tonight but if you look at the answers that staff is recommending for part 3 of the EAF it negates the yes answer in part 2. Because we are not requiring any mitigation to part 2 the safest course is to direct the answer regarding the conflict to the zoning to be changed from a yes to a no.

Tim Baroody- It is my understanding that if it requires a use variance, they want you to call it moderate or large. It is not moderate or large and does not require any mitigation.

Andrew Fusco- Yes, I think it should be changed. I agree with Steve on the answers to part 2 but I also agree with all of the answers in part 3 which instead of mitigating it states that it is not a potential problem. I agree that it should be changed.

Tim Baroody- Should we make a motion to that?

Anne McCarthy- No, I think there should be more discussion. I have a question regarding number four (Part 1 Question 4) on the land uses on, adjoining and near the proposed action. This is a residential area.

Stephen Selvek- Within the Grant Ave corridor there are commercial uses.

Anne McCarthy- Are we presupposing that ZBA is going to give the variance?

Andrew Fusco- No, we are not presupposing because they are going to have to prove the case for a use variance, which requires a lot of proof, which I have not seen. This is simply the SEQRA phase of the

action and ZBA has deferred to the Planning Board on SEQR since you have much more experience on it and the ZBA does not have the staff to prepare the SEQR form. You are making findings in Part 3 of the SEQR form but you are not telling the ZBA what to do.

Anne McCarthy- Does the ZBA look at this form?

Andrew Fusco- Yes, they will.

Anne McCarthy- If we leave the question as a yes, will that make them think a little bit more. I am concerned since this is a residential area and I do not want to see this creep up any more.

Andrew Fusco- Do you disagree that similar land uses exist in the area?

Anne McCarthy- No, I don't. On Grant Ave they do. I wanted to clarify where you were talking about.

Andrew Fusco- Whether this is or is not consistent with the character of the neighborhood we are in fact finding that there are other uses in the area that are similar, parking lots. I think that it is fair to conclude that this lot is in the neighborhood of Kostas with its geographic proximity, but your finding in item 4 of part 3 of the EAF, does not predestine the ZBA's decision. They may consider the neighborhood larger.

Tim Baroody- Tonight we are looking at the environmental issue only.

Andrew Fusco- Correct.

Anne McCarthy- I understand that, but I am concerned with the commercialism creeping into that neighborhood.

Stephen Selvek- As a matter of the environmental issue, last meeting we discussed concerns with use. The use itself is not something that this Board governs but in the role of the environmental review it is something that this Board must consider. As I marked moderate to large impact I am willing to concede, if the Board felt that this was a moderate impact vs. a large impact, I can fully understand. As well as if this particular impact is significant. There are two different items that the Board must look at. First if this is a small, moderate, or large impact and secondly its significance. From a staff recommendation and a planning standpoint, I do not agree that there is no impact. This is rezoning or use variance of a parcel. I stand by my recommendation that it is a moderate impact and it's not significant because of the setting it is in. I do share a concern on the commercial creep into any of our residential neighborhoods but a significant impact would be, for example, a 300 house subdivision. I am new to these guidelines since I worked with the old SEQR form for 8+ years but I am being very diligent in reviewing the new form and guidelines that the DEC has provided.

Tim Baroody- Before, with the old form, it would have been moot.

Andrew Fusco- Not necessarily. If someone was taking a house and turning it into a large factory, it would be a large impact.

Stephen Selvek- My direction over a year ago would have been different. Its scale, scope and everything else it is a small impact.

Anne McCarthy- So you are saying because the NYS DEC says it needs a variance it is a moderate to large impact.

Stephen Selvek- That is their guidance.

Andrew Fusco- The distinction Steve has drawn between moderate and large, the courts has not done. The courts see the two words as synonymous in the regs and requires the mitigation of impact that are found to be large. Honestly, I do not think this is a large or even moderate impact, but I will leave that to you. I understand the directive of the DEC to red flag and take a look at impacts but not all use variances are large impacts. What the law looks for is this type of discussion that we are having. We are taking a hard look at this.

Stephen Selvek- I will note for clarification purposes that I use to draw a distinction between potentially large and significant because the forms use to be written that something had to be both large and significant but this one says potentially large or significant so they have changed the forms. It is my feeling that this is not a large impact and I have indicated that it is moderate.

Andrew Fusco- My only concern is that the courts have not caught up with the form yet. They are not going to hang onto the and/or.

Frank Reginelli- Is there anything in writing in local law, either State or County, that when there is a change in a use of property, if it is on a major highway like route 5, it has to be reviewed by County Planning Board?

Andrew Fusco- The County Planning Board has in many municipalities, including the City, to allow us to opt out of 239 referral. Normally it would be yes since it is within 500 feet of a State highway, but for about 20 years now the County has allowed Auburn to proceed to opt out of 239 referral because we have Planning Staff of our own.

Frank Reginelli- If this is not presented before the County Planning Board and we have a regulation in writing could someone file a cease and desist order?

Stephen Selvek-The procedure in which we follow is proper. The City has a Memorandum of Understanding with the County which excludes the City from the needed referral to the County because we hire a full time Planner.

Andrew Fusco- It is within section 239 of General Municipal Law which specifically allows the County to do that. This is not something that was unauthorized between the City and County.

Frank Reginelli- I understand that the County is allowing it but do they have a right to let something go without them being notified? The thing I am trying to avoid is that if there is a possibility for cease and desist.

Andrew Fusco- If someone were to bring an action before this Board or the Zoning Board, in this particular situation with noncompliance in section 239 of General Municipal Law, I am convinced that I would be successful in defending it.

Frank Reginelli- That is fine but we do not know until someone challenges it. The other thing that bothers me is, is this grave enough that this is altering the characteristic of the neighborhood.

Stephen Selvek- That is something that the Board does have to take into consideration when they are doing the environmental review. Again we have to take this into context. You are dealing with a property that is within hundreds feet of Grant Ave and is next to an emergency driveway for a housing complex. It is up to each individual Board member to determine if they feel that this is a change in character in the neighborhood. If this was a request for a property in the middle of a residential neighborhood with no other commercial properties around, I think you may look at that and say it is different than what is there. But this is a border property. Is there a significant change because of the proposed action? In the case of the SEQRA my recommendation would be no.

Frank Reginelli- I grew up in a neighborhood with restaurants all around that did nothing but create a lot of havoc. Should we be concerned with that or with the people who put a lot of time effort and money into their property?

Stephen Selvek- Let me outline for the Board what the alternative for a Negative Declaration is a Positive Declaration which states that there may be an impact. It does not state that there is an impact, but there may be an impact. That allows for the applicant to prepare an Environmental Impact Statement where they will look at the impact and provide additional information. That comes back to this Board and that information goes out for public comment and lands back into the lap of this Board to make a determination if that impact is large and significant. Given this proposed project and the given information and being a limited scope project, the information exists for a recommendation.

Anne McCarthy- How does a positive declaration impact Zoning Board? Does Zoning Board still move forward?

Andrew Fusco- It would put everything on hold.

Stephen Selvek- It cannot move forward until this particular item is considered. In regards to Zoning Board they are going to have to consider this issue that we are discussing tonight. They may not have the same thresholds vs. small or moderate impact they can determine that it is an impact on the neighborhood and not move forward on it. Where you may look at it and say there is an impact but it may be a small impact on the neighborhood. That information I will provide to the Zoning Board of Appeals.

Crystal Cosentino- We could approve this Negative Declaration and then look at it again as a site plan and really look at it and say is this the right plan for the neighborhood. Because this particular owner has additional property on the street and then he could potentially turn that into a commercial property. From an environmental standpoint I feel like there is reason to approve a Neg Dec today.

Stephen Selvek- The Environmental Review is separate from the Use Variance which is separate from the Site Plan Review. At this point you are looking at the largest look you possibly have on it and whether there are potentially large impacts. The use variance is an opportunity or the Zoning Board to look very specifically at the criteria for a use variance and if all the criteria are met which is everything from the financial side of it to the community character. Once it is back before this Board, this Board will take a look at whether the site plan meets the requirements of the zoning code ie. screening and vegetation. These items have been highlighted and discussed but the Board will be able to go through and make final determination on those items.

Tim Baroody- So tonight we are really allowing it to go to Zoning Board of Appeals to see if they could change the use variance.

Stephen Selvek- A Negative Declaration would allow that to happen but I will leave that to the Board.

Anne McCarthy- But does that parking lot belong in that neighborhood?

Sam Giangreco- I heard the concerns of the neighbors and the concerns with Calamar. There were concerns of the entrance next to the proposed parking lot. As far as altering the neighborhood, it has always been identified as at the end of Kostas, which the parking lot directly across from Kostas. Parking at night is on both sides of the street and I think the parking lot would help the neighborhood congestion and noise and such. Last meeting I believe that John (owner of Kostas) said that he does not have the intention of doing anything to the yellow house behind Kostas, which he owns. I think his intention is to alleviate the situation on the street. I understand the concern with creeping over but I do not think he has that intention.

Andrew Fusco- I will say that has been a concern that has been raised by residents.

Stephen Selvek- To clarify Anne's question as to if the parking lot is appropriate. As part of the environmental review process we do not get to decide whether that parking lot is appropriate there. We decide whether there are potential impacts associated with that parking lot being there. Zoning Board is able to determine whether that parking lot is appropriate in that neighborhood.

Anne McCarthy- Could I say that there is an impact on the character of the neighborhood?

Stephen Selvek- Yes that is a fair argument that you can make as a Board member.

Frank Reginelli- Can we say that the parking lot would be an upgrade for the neighborhood?

Andrew Fusco- You may find that there are other similar uses in the area but that does not bind the ZBA to come to the same conclusion.

Tim Baroody- When I was with the ZBA people would come and ask to build a parking lot to alleviate the parking.

Stephen Selvek- Within your packet there is a petition to support the parking lot and there are 12-13 individuals on Catlin and individuals on Lansing Street.

Chair asks for a motion to adopt the SEQRA Negative Declaration Resolution of Minor Site Plan application 7 Catlin Street. So moved by Frank Reginelli, seconded by Tim Baroody. Board member Anne McCarthy opposed. Motion carried.

Agenda Item 3: Other Matters

The date of the next Planning Board meeting is Wednesday, November 5, 2014 at 6:30 pm.

Motion to adjourn made by Frank Reginelli, Seconded by Tim Baroody. All members vote approval. None opposed. Meeting adjourned.

Respectively Submitted by Renee Jensen