

CITY OF OLEAN
DEPT. OF COMMUNITY DEVELOPMENT



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Olean Planning Board Meeting Minutes

Monday, August 24, 2020
Council Chambers
Olean Municipal Building

Attendance: **Chairman:** Tom Barnes (via telephone)
 Members: Chris Chapman
 Reed McElfresh
 Craig Polson (via telephone)
 Mark Sabella
 Jerry Steiner

Applicant(s): Peter Ebert, Cattaraugus Allegany BOCES

Staff: Keri Kerper, CD Program Coordinator
 Kathleen Monroe, Sr. Account Clerk Typist

Other(s): Bob Clark, Olean Times Herald
 Robert McNamara, 904 West State Street
 Tiffany Tredway, 904 West State Street
 Randy Tredway, 904 West State Street

1. Roll Call

Recognizing a quorum, Chairman Tom Barnes called the meeting to order at 6:35 p.m. and requested the roll call show all members present except Mary Fay.

2. Reading and approval of the July 13, 2020 public hearing and meeting minutes

A motion was made by Chris Chapman, seconded by Mark Sabella to approve the July 13, 2020 (Savarino Companies, LLC SP #03-20) public hearing minutes. Voice vote, ayes: Chris Chapman, Mark Sabella, Reed McElfresh and Jerry Steiner. Abstaining: Tom Barnes and Craig Polson. Motion carried.

A motion was made by Mark Sabella, seconded by Chris Chapman to approve the July 13, 2020 (VB West State, LLC) SP #04-20 public hearing minutes. Voice vote, ayes: Mark Sabella, Chris Chapman, Reed McElfresh and Jerry Steiner. Abstaining: Tom Barnes and Craig Polson. Motion carried.

A motion was made by Reed McElfresh, seconded by Mark Sabella to approve the July 13, 2020 meeting minutes. Voice vote, ayes: Reed McElfresh, Mark Sabella, Chris Chapman and Jerry Steiner. Abstaining: Tom Barnes and Craig Polson. Motion carried.

3. Old Business

There was no old business at this time.

4. New Business

i. Cattaraugus Allegany BOCES (SP #05-20) 644 Main Street

Mr. Ebert introduced himself to the Board and advised he is the Principal for Cattaraugus Allegany BOCES that is proposing to use the building located at the site as a K-12 public school for special education students. He explained the building was previously used as the Boardmanville Elementary School. Mr. Ebert advised the BOCES program was previously held at the former Ivers J. Norton Elementary School located at 421 West Henley Street. He indicated they would be leasing the building from Steve Pancio.

In response to a question, Mr. Ebert explained there would be no changes to the lighting or exterior of the building. He advised there are no plans for signage at this time; however, they would follow the permit process and contact Code Enforcement for a sign permit and approval, if or when they decide to add signage.

Mr. Ebert advised Cattaraugus Allegany BOCES has made application to the Zoning Board of Appeals (ZBOA) for a parking waiver and is seeking approval at its August 27, 2020 meeting.

Ms. Kerper noted the site location is over one acre; however, a Storm Water Pollution Prevention Plan was not required for the project as there would be no physical disturbance to the 2.45 acres of land. Mr. Barnes suggested that the Department of Public Works confirm the storm water discharge runoff is being conveyed into the City's storm water system as opposed to the sewer system.

A motion to declare the Planning Board Lead Agency for an uncoordinated NYSEQRA review was made by Jerry Steiner, seconded by Chris Chapman. Voice vote, ayes: Jerry Steiner, Chris Chapman, Reed McElfresh and Mark Sabella. Abstaining: Tom Barnes and Craig Polson. Motion carried.

The Planning Board reviewed Parts I & II of the Short Environmental Assessment Form prepared for the project and made the following changes to Part I: question 2. add "City of Olean Planning Board, New York State Department of Education and Zoning Board of Appeals"; question 3.a. add "2.45"; question 3.b. add "0"; question 3.c. add "2.45"; question 4. add "Urban, Commercial, Other and K-12 Public School"; question 12.b. change to "yes"; question 14. add "Urban"; There was discussion regarding whether the site is located in the 100-year flood plan, and Ms. Kerper advised she believes the site is located in the 500-year flood plan. She indicated she would verify the information and report back to the Board. No changes were made to Part II. After brief discussion, a motion indicating that the Planning Board made a finding that the project would have no significant impacts, and that the Planning Board

therefore issues a Negative Declaration for (SP #05-20), was made by Chris Chapman seconded by Reed McElfresh. Voice vote, ayes: Chris Chapman, Reed McElfresh, Mark Sabella and Jerry Steiner. Abstaining: Tom Barnes and Craig Polson. Motion carried.

A motion to certify the application complete was made by Jerry Steiner, seconded by Chris Chapman. Voice vote, ayes: Jerry Steiner, Chris Chapman, Reed McElfresh and Mark Sabella. Abstaining: Tom Barnes and Craig Polson. Motion carried.

A motion was made by Reed McElfresh, seconded by Mark Sabella to set the public hearing for Monday, September 14, 2020 at 6:30 p.m. Voice vote, ayes: Reed McElfresh, Mark Sabella, Chris Chapman and Jerry Steiner. Abstaining: Tom Barnes and Craig Polson. Motion carried.

Ms. Kerper explained the public hearing process to the applicant, and advised the materials would be emailed from the Department of Community Development on Wednesday morning.

Mr. Barnes noted the Board should have the ZBOA parking waiver decision and DPW comments prior to the next meeting.

Mr. Barnes asked if the New York State Department of Education has provided documentation approving the use of the facility and issued a Certificate of Occupancy. Mr. Ebert advised the school is currently going through the process and they anticipate having the Certificate of Occupancy and approval prior to the next meeting. He explained the process usually requires the Certificate of Occupancy prior to applying for the approval; however, due to COVID-19 and an application backlog, the New York State Department of Education is allowing applicants to seek State approval prior to the issuance of the Certificate of Occupancy.

Mr. Barnes requested a copy of the New York State Department of Education Certificate of Occupancy be forwarded to the Board when received.

5. Miscellaneous

Mr. Barnes explained to Mr. McNamara the operations at the 904 West State Street location have changed since the Planning Board approval issued on August 30, 2010. He indicated the City has received multiple complaints from residents regarding the smoke from the cooker. Mr. Barnes noted the applicant at a previous meeting offered to cook off-site if the smoke became an issue, and asked if the applicant would be willing to cook off-site and transfer the chicken to the location. Mr. McNamara indicated he does not remember promising to cook off-site and advised he is not willing to do so. He noted he feels the complaints received are cowardly complaints and not formal complaints.

Ms. Kerper explained complaints have been brought to the Board and to the Common Council's attention on the record during public meetings. She advised the Board has requested the applicant appear to address the violations to ensure compliance with the Site Plan application as presented and approved by the Board in accordance with the Zoning Ordinance.

Mr. McNamara asked if there were any names for the complaints, and Ms. Kerper indicated the complainants may be found in the meeting minutes. She explained the complaints were formally issued and captured in the meeting minutes of both the Common Council and Planning Board meetings. Ms. Kerper advised she was the Stenographer at the meeting when the applicant offered to cook off-site and

the agreement was captured in the meeting minutes. She noted many of the current Planning Board members were present at said meeting.

Mr. McNamara expressed concern that some of the memorandums received from Code Enforcement were threatening. Ms. Kerper explained the Planning Board is copied on the memorandums and they are not intended to be threatening. She further explained that Code Enforcement Supervisor Jennings is reciting the Code Regulations and requesting the violations be addressed.

Mr. Barnes advised the Planning Board approval is a legal authorization for the project and refers back to the Zoning Ordinance and conditions under which the approval was granted.

Ms. Kerper advised the tables/seating were not included in the original Site Plan application submitted and approved and may not be used for on-site consumption. Mr. McNamara indicated he only sells chicken for takeout and his business has not changed. Mr. Barnes explained that if you provide tables for on-site consumption, you are considered a restaurant. Mr. McNamara advised he possesses a business license through the Cattaraugus County Department of Health and a Veterans Permit that authorizes him to sell at the location.

Ms. Tredway asked what the business needs to do to address the issues, and Mr. Barnes explained the applicant should submit a new Site Plan application to operate as a restaurant and appear before the Board for review and approval or remove the tables. Mr. McNamara indicated he would put signs on the tables that state customers are not permitted to sit and eat food purchased from Tredway's Pit Stop. Mr. Barnes asked what the original Site Plan application read, and Ms. Kerper stated "adding a mobile food cart and mobile chicken and barbeque trailer".

Mr. McNamara indicated the license he currently holds allows him to sell goods at the location. He provided the Veterans Permit, and Ms. Kerper read the content of the document into the record as follows: "To Whom It May Concern, know ye that Robert R. McNamara who resides at 4322 Route 417, Allegany, NY 14706 having first presented his certificate, is an honorably discharged veteran from the Army of the United States and signed a statement as required by Section 32, General Business Laws of 1944 State of New York. I hereby certify that he is licensed to hawk, peddle, vent and sell his own goods, wares or merchandise or solicit trade upon the streets and highways within this County as provided by said law. In witness thereof, I set my hand and official seal on this 29th day of February 2019. Alan Bernstein, Clerk of Cattaraugus County. License #388". Ms. Kerper explained the license allows him to sell but not to operate as a restaurant or have on-site consumption.

Mr. McNamara referred to the July 22, 2019 Planning Board meeting minutes that read the City Attorney advised the stipulation of cooking off-site was not included as a condition in the approval and unfortunately cannot be enforced, and indicated he attended the meeting to try and resolve the violations. He advised the business has, in an effort to curtail the smoke complaints, switched their brand of charcoal from Kingsford, which is made of sawdust, to a different brand. Mr. McNamara indicated the smoke from the cooker is now 10% of what it used to be and only smokes for 15-20 minutes when the barbeque sauce is applied three days a week for six months out of the year.

Mr. McNamara advised the cooker is placed at the location as shown on the original Site Plan, yet Code Enforcement issued him a ticket. Mr. Tredway indicated that no one has tried to come up with a solution to the violations. Ms. Kerper advised there have been numerous letters trying to address the issues and the cooker was recently moved to its current location. Mr. Tredway explained the cooker was moved to its

current location at the City's request. Mr. Steiner inquired about switching to an enclosed cooker. Mr. McNamara referred to a photo of an enclosed cooker with filters and indicated that is what he is proposing for next year.

Mr. McNamara explained there are three tables that customers may sit and enjoy a meal. Ms. Kerper advised the Board is seeking compliance with the Site Plan as originally approved, and the applicant may not provide food for on-site consumption. Ms. Tredway expressed concern that someone may want to put them out of business. Ms. Kerper advised it is not the intent of the Board and reiterated the Board is simply asking for compliance of the original Site Plan approval.

Mr. McNamara advised he met with lawyers regarding the ticket issued from Code Enforcement and was advised the ticket was a breach of contract and a suable offense. Mr. Barnes advised the business is not the only project who has been notified that if they would like to operate as a restaurant, they would need to submit a new Site Plan application to operate as a restaurant and appear before the Board for its review and approval.

Mr. Tredway advised the 2020 permit received from the Cattaraugus County Department of Health allows the business to operate as a restaurant year-round. Ms. Kerper requested a copy of the County Health Department permit be provided to Code Enforcement as the enforcing agency. She referred to the Cattaraugus County Health Department permit presented and read the content of the document into the record as follows: To operate a restaurant/catering operation, this is to certify that Tredway Enterprises, LLC, the operator of Tredway's Pit Stop at 904 West State Street located in the City of Olean in Cattaraugus County is granted permission to operate said establishment in compliance with the provisions as subpart 14-1 of the State Sanitary Code and under the following conditions:

This permit is granted subject to any and all applicable State, Local and Municipal laws, ordinances, codes, rules and regulations.

All foods must be prepared either on-site or at a Health Department approved facility.

You must obtain a log indicating arrival time and temperature of all potentially hazardous foods that are not prepared at the place of service for high risk food service establishment.

This permit qualifies the holder to conduct an unlimited amount of public food service of any complexity at their establishment. Please note that certain types of high-risk food would require a scheduled process, still require approval from your local Health Department. Yogurt, cheese making, fermented foods and reduced oxygen packaging, fine catering. This permit qualifies the holder to conduct an unlimited amount of food service operations of any complexity off-site within Cattaraugus County in addition to public food service at this establishment. Effective date, April 21, 2020. Permit is nontransferable. This permit expires on April 30, 2021 and may be revoked or suspended for cause. This permit should be posted conspicuously. Facility Code #04-6584. Permit #04-6584. Operation ID # 891312 Kevin D. Watkins M.D., Permit Issuing Official.

She noted that Tredway Enterprises, LLC is a different operator than approved under the Site Plan review.

Mr. Chapman advised the business is not currently operating under the Local and Municipal Law and suggested the applicant submit a new Site Plan application. Ms. Kerper explained the applicant does not have a license to operate as a restaurant from the City.

Mr. McNamara noted the Common Council met and approved outdoor dining at establishments in the City. Ms. Kerper explained that businesses are required to apply and obtain a permit from the City. Mr. Sabella explained the businesses with outdoor seating were previously established as a restaurant and suggested a new Site Plan application would take a few weeks and the violations would be resolved. Mr. Tredway stated the business would never get a new Site Plan application approved by the Board. Mr. Steiner advised that no one wants to take the livelihood away from business owners, only to bring the operation into compliance.

Mr. Tredway advised the Cattaraugus County Health Department permit does not allow off-site cooking, and Ms. Kerper explained the permit read into the record stated the business may cook off-site and transfer foods. Mr. Tredway stated the operations will not cook off-site. He indicated there is no smoke being emitted at the location. Ms. Tredway advised there was smoke at the beginning of the year; however, the smoke has substantially decreased with the change in charcoal.

Mr. Tredway indicated no one has explained what exactly is out of compliance at the location. Ms. Kerper responded that numerous letters addressing the violations were sent to Mr. McNamara and had the City been aware of the Tredway Enterprises, LLC and change in operators, it would have listed the LLC on the letters. She explained that the business is currently in compliance regarding the placement of the dumpster and the parking lot after requests were made by Code Enforcement to do so.

Ms. Tredway asked what is out of compliance at the location. Ms. Kerper reiterated that the Board is requesting the business get into compliance with the Site Plan that was originally approved with the Zoning Ordinance and Zoning Law. She explained the tables were not included on the original Site Plan application and must be removed. Mr. Barnes called the meeting to order to allow the Board the opportunity to answer Ms. Tredway's question. Ms. Kerper reiterated the business may not provide food for on-site consumption.

Mr. Barnes advised the Board is happy to accept a new Site Plan application that includes the tables for sale and off-site consumption only or to operate the business as a restaurant. Mr. Tredway noted a new Site Plan application is fine for next year but the next eight weeks of operation Captain Jennings is threatening fines. Ms. Kerper suggested the Board and applicant must continue to work together to ensure fines are not issued. She thanked the business owners and explained this is the furthest the Board has gotten on these issues in years. Ms. Kerper explained that if a complaint is received, the Board may respond that they are working with the applicant to resolve the issue.

Ms. Tredway advised the business continues to evolve and grow every year. Mr. Barnes explained that this is not the first business who has evolved and changed their operations and those businesses have submitted a new Site Plan application with the proposed changes and appeared before the Board for its review and approval to ensure the proposed changes are consistent with the City's Zoning Ordinance.

Mr. Tredway reiterated the business will continue to operate as is for the next eight weeks and would curtail Ms. Kerper and the Board as well. He advised the business would submit a new Site Plan application in 2021 to include changes proposed at the location.

Ms. Kerper explained the process of how to complete and submit a Site Plan application along with the Board's process for review and approval. In response to Mr. McNamara's question, she advised an engineer stamped plan is not required. Mr. McElfresh suggested providing the applicant with their original SEQR document. Ms. Kerper noted she would provide the applicant a copy of the original SEQR submitted to the Board for reference when completing the new Site Plan application. She then offered assistance with submitting a new Site Plan application.

Ms. Kerper explained the Board does not want to hinder the business operations, rather bring the operation into compliance. She thanked the applicant for its patience, and for appearing before the Board to discuss the operations and move forward with an acceptable resolution. Ms. Kerper explained that if a complaint is received after a new Site Plan is approved, the Board would be able to advise the business is in compliance with the Site Plan as approved.

Mr. Chapman indicated the meeting has opened up a line of communication and suggested that if the applicant finds the business evolving, to reach out to the Board to receive guidance on how the proposed changes may affect compliance with the Site Plan approval.

6. Next Meeting Date

The next Planning Board meeting has been scheduled for Monday, September 14, 2020 at 6:30 p.m.

7. Adjournment

A motion to adjourn was made by Jerry Steiner, seconded by Chris Chapman. Voice vote, ayes: Jerry Steiner, Chris Chapman, Reed McElfresh and Mark Sabella. Abstaining: Tom Barnes and Craig Polson. Motion carried. The meeting ended at approximately 8:00 p.m.