

VILLAGE OF HONEOYE FALS ZONING BOARD OF APPEALS

MEETING MINUTES JULY 22, 2013

MEMBERS PRESENT: Hank Besanceney, Patrick Brennan, Mark Donahoe, Barry Kissack, Stephanie Tolan

ALSO PRESENT: Danny Bassette, Ray Milne, James Bonsignore, Victoria Bush, Judy Lewis, Mary Szlosek, Sara Gilbert, Helen Zamboni, Esq., Clair Milburn, Gary Milburn, Paul Kammermeier, Paul Kohler, Gail Kohler, Don Oppedisano, John Moffitt, Roger Greiten, John Hoffman, and Deric West, Judi Barrett, Charlie Johnson

Chair Besanceney called the meeting to order at 7:00 PM

USE VARIANCE 116 West Main Street To allow drive thru at restaurant

Mark Donahoe recused himself from this application.

Brian Bouchard, engineer with CHA Consulting representing JFJ Holdings the franchisee for Dunkin Donuts in this matter prepared the site plan and presented the general aspects of the site plan and provided a business description for a Dunkin Donuts restaurant. According to the Village Zoning Code, the General Commercial Zoning District allows restaurants. This requested use variance is for the drive thru aspect only. Reviewed traffic impact from a drive thru, based on a traffic engineering manual a drive thru does not increase traffic due to the drive thru aspect alone. The manual states that 100 car trips per hour for a restaurant with a drive thru and 108 trips per hour for a restaurant without a drive thru. Therefore a drive thru by itself does not increase traffic to a restaurant. The drive thru aspect of the Dunkin Donuts business model is a significant portion of the expected income.

John Langey, from Costello, Cooney & Fearon Law Firm, stated he is a land use zoning attorney who represents 12 different Towns in the Syracuse area. He stated that he reviewed the standards for review of a variance request that includes a unique hardship. He stated that he did not believe that the granting of this variance would create a precedent, as property is surrounded by uses with drive thrus such as banks and a drug store. A unique hardship of this property is that the property has been on the market for approximately 10 years without a sale. An additional unique aspect of this property is the narrow frontage and deep shape of the lot.

He states the Dunkin Donuts restaurant will fit into the character of the neighborhood because a restaurant is an allowed use. Trash is reduced due to the nature of customers bringing their own coffee cups for reuse which is a unique characteristic of this restaurant. It is often a concern that drive thrus generate additional trash. CHA Engineers designed the site to help minimize this by placement of specialize trash receptacles available at the drive thru lane. A typical sale includes a coffee cup and donut which is quite different in terms of trash generation from a typical McDonald's type restaurant sale. So this does not create a precedent as Dunkin Donuts is a unique type of restaurant.

We do believe it is unique, we believe that the essential character of the neighborhood will not be changed as there are other restaurants in the neighborhood and other businesses with drive thrus. Adding a drive thru to a restaurant in and of itself will not alter the essential character of the neighborhood. There will be no traffic impact by virtue of the drive thru. Our goal here is to make you comfortable with the potential environmental impacts of traffic and trash has been addressed thru the site design and the nature of the use itself. We feel we have addressed these (trash & traffic) in our application and legal memorandum.

It is not a self created hardship because the estate owns this property, meaning that the ownership has been transferred thru the estate. The property has been on the market for 10 years, and other deals have fallen through. Therefore there is nothing the owner can do but entertain the application for the Dunkin Donuts.

Another unique nature of the Dunkin Donuts business is that most customers utilize the drive thru component and therefore it becomes part of the economic model of the business. There is really no Dunkin Donuts without a drive thru component. This drive thru component is therefore not a self created hardship to the owner in this case. When everything is considered by the Board they can feel comfortable in approving this application that they are not creating a precedent. Because we have put together an application that proves it is a unique hardship that is not self created and with the financial piece that falls in line with the legal standard the Board can be comfortable that it does not create a true precedent for any future cases.

Kissick asks: if there are other Dunkin Donuts in the area without a drive thru?

Langey responds: there may be other Dunkin Donuts without drive thrus, however this application contains a drive thru. Bouchard notes that typically 53% of total business is derived from the drive thru. Locations without drive thru likely have different characteristics that enable the business model to be successful. In this case the applicant is pursuing the drive thru based on this location and cannot speak to the applicant's decision to proceed without a drive thru.

Langey states: they believe the primary concerns of the Board around prohibiting a drive thru are traffic and trash generation which they have addressed. The volume of trash generated is the same whether one purchases in the store or purchases at the drive thru. The site design includes additional trash receptacles and the nature of the business is mostly coffee and limited baked goods which do not generate very much trash.

Kissick asks: whether Dunkin Donuts is moving towards a more restaurant type model with more sit down options and moving away from a pure take out model. He states if this is the case then potentially more cars will be coming to the site. He said they are adding Restaurant to the name instead of just Dunkin Donuts. Langey responds that this site will not have restaurant added to the name and will serve primarily coffee and donuts. Dunkin Donuts has developed a very limited lunch menu but without any grilling or cooking that produces any odors or fumes.

Besanceney shows two photos of Dunkin Donuts on Monroe Ave without drive thru, which is closer to Rochester. Langey states that if we can control the concerns of the drive thru then the drive thru becomes innocuous. Besanceney states: that you are trying to tell us that this drive thru is really necessary and we are not sure that it is. You are blowing everything in one direction, trying to make a stink about it and we know for sure that they are other ones in other locations without drive thrus.

Bouchard states that location does make a difference. They feel this location requires the drive thru at this site. Langey says when I represent zoning boards I ask the applicants to prove the case that it's a unique hardship and it's not self created and can you show some financial data then the ZBA has the discretion to go ahead and grant the use variance. I understand that these use variances are not granted every day. We have tried to take away all of the bad parts of what a drive thru could mean and why your ordinance doesn't want to have drive thrus necessarily. This is a site that has other drive thrus around it.

Besanceney states: that comparing the other drive thrus is like comparing apples and oranges, while both fruits they are different. These drive thrus service medications for the drug store and money transactions from banks. Our statute states food exclusively is excluded from drive thrus and the other ones don't count here as this is for a restaurant. Langey states that in terms of traffic they are similar. Besanceney states that is beside the point.

Tolan asks: about traffic, asking that typical fast food drive thru restaurants have their customers spread evenly throughout the day while Dunkin Donut's volume will be concentrated between 6 am-10 am. Bouchard responds that this is correct and other comparable restaurants have their peak traffic times as well, generally around dinner times. Other drive thru restaurants would have traffic studies that would document the am and pm peak times as well as evening hour peak times.

Tolan asks: it wouldn't necessarily be more total traffic. Bouchard agrees. Tolan asks that all of the traffic is concentrated in the morning hours. Bouchard agrees.

Langey asks: if ZBA perceives the issues from a drive thru are traffic and potentially the amount of trash generated. Are there other issues with the drive thru? Besanceney states that Village Law states no drive thru restaurants. Langey states that there must be a reason for this. Besanceney states they don't list the reason. Langey states that why we are here to show you we have mitigated these concerns.

Besanceney states: there other businesses around the country without drive thrus. The Village is updating the Comprehensive Plan and at some point this Law might be changed. I go by what the Village Law says. Langey responds by reminding the Board that they have the power to grant relief. There is no point in holding a meeting if there is no chance of ever getting relief. If a complete application has been presented to you and the applicant has proven their case then under the right circumstances the Board could possible approve a drive thru restaurant.

Brouhard states he wants to review the project that was presented to the Planning Board. The Planning Board said that the standard Dunkin Donuts building design would not be adequate and to be prepared to improve the design to better blend with the Village character. The franchisee is willing to work with the Planning Board on a building and sign design that will be acceptable. The overall site is designed to meet all other requirements and does not require any relief to operate the business.

Besanceney states: the property has had several buyers in the past with deals falling thru. Langey invites the Lewis Estate representative to speak to the point. Helen Zamboni, attorney representing the Lewis Estate, responds that for the last 10 years the estate has been trying to sell the property. It is an odd shaped parcel of land that included the former railroad bed and runway strip. The airport and railroad portions were sold to an adjoining neighbor. The dealership parcel was sold at auction to Josh Landscaping. There are two parcels left. This one and an additional 100' wide section both of which front on Main Street. There have been several attempts and buyers since Ev Lewis died and either because the Village has turned down the application or the buyer has recognized that the current zoning restrictions would prevent an economic return. If you turn this down tonight it will continue to sit there as it has been for the last 10 years with whatever is existing there because the estate cannot afford to take down the buildings. You are looking at the loss of Village taxes and County sales tax of which a portion are returned to the Village. It will remain as it is until someday someone else comes along and makes an application that will require approval from the Village. This is a hardship that is long standing. I really urge you to seriously consider the application here. This is a unique request because of the nature of the property around it and this Board has the authority to grant a variance.

Besanceney states: I think you have made your point madam.

Langey introduces Erik Stropp to review his Use Variance Market Study report. Erik states he was retained to determine if there was financial hardship on this property. The report based on current zoning lists the 23 permitted uses for this parcel. I examined the value and prices associated with each of those permitted uses. Thru my analysis I concluded that due to different reasons, included in the report, there are only two viable uses considering physical limitations of the property. The Dunkin Donuts design at 2300 sq. ft. is the maximum building size the site can support. This building size then eliminates about 18 of the permitted uses because the required building would need to be larger than 2300 SF. Therefore I established that a tavern and restaurant are the only viable use. There have been no new tavern buildings recently constructed in the area. Bars and taverns are not built new today due to current economic conditions. Therefore the restaurant is the highest and best use for the property that also justifies the high cost of construction. An analysis between a restaurant with and without a drive thru determined that gross sales would reduced by \$70K without drive thru. That could be significant enough that the project would not be economically viable.

Besanceney asks: what made you select Honeoye Falls instead of Route 15A which is a main road with more traffic and this site is kind off the beaten track. Langey responds the franchisee has determined that this site met its needs and saw the possibility to help improve the area. This is not the nicest lot in the Village and as designed by CHA meets the needs of Dunkin Donuts. They are not in the business of creating a business that will fail. They do want to be in the Village with pedestrian traffic and take advantage of the patio with beautiful

landscaping. They don't want to be out in the middle of nowhere, they want to have the Village aspect be a part of their store, where people can enjoy the store on a Sunday morning.

Langey states: he is the Planning Board attorney for Onondaga, a town outside of Syracuse, and with a cooperative effort with the Planning Board and Dunkin Donuts feels we have the most beautiful Dunkin Donuts in the area. They keep the area and property very clean and it does have a drive thru and it's a success. I think as a Board this can be a difficult thing to do. As an attorney I have presented 5 use variances and obtained all 5 because I have turned down a lot of others. I took this one because it makes sense and I knew I could prove the case. I'm not just rolling the dice hoping you are going to approve the use variance. We think we have put in front of you all the evidence you would need to make a decisions that in this limited instance at this particular site with these particular facts we the Board think you as the applicant have met your burden of proof and risen to that very high level of proving a use variance and we are comfortable approving the variance knowing that it will not create a precedent. There are project features that have been designed into this that will address the concerns of this very limited variance of the restaurant with a drive thru. We think we have built a case comfortable approving.

John Hoffman resident of 61 East Street speaks: as a long time resident I want to offer my observations. If you build the Dunkin Donuts I will be a customer but the bank's drive thru has existed for 40 years and pre dates zoning laws and is grandfathered. Village turned down the Market Place's request for a drive thru several years ago in order to sell donuts and coffee as I remember. Village Square development across street was denied permission for various businesses with drive thru features during the approval phase. Drug store drive thru is good as it keeps contagious people out of the store and helps elderly customers and invalids to get their medications which is a real hardship. Village Law is Village Law. Village is currently reviewing and updating their master plan and may in their wisdom make changes to this Law. I think it would be wrong to grant this at this point. Asks if it is possible to build a store to allow a drive thru to be added later if the law is changed. Regarding the small size of the lot he says that estate's attorney stated that there were two lots left to sell so if someone wanted a larger building they could buy the other lot. Hoffman says: Is this the only salvation for this lot? I find it hard to believe.

Paul Kammermeier resident of 5 Ontario speaks: Drive thru customers are much less likely to shop in other businesses in the Village. This is anti-ethical to the idea of a Village. Financial hardship to the estate is not a valid point in my opinion. I would not ask the Village to rezone my house so that it would be worth more money so that I could make more money. So that should not be considered in my opinion.

Besanceney asks: if it is acceptable with applicant to have public hearing interspersed with the applicant presentation. Langey responds that it is up to the Board.

Roger Greiten resident of 42 Village Trail speaks: I am concerned that this will set a precedent down the line for other areas. I am concerned about the traffic. I like the bakery at the Market Place and the coffee at Enjoys so I would not be buying from Dunkin Donuts.

Zamboni responds that the current buyer was not interested in the second parcel.

Besanceney states: well that's life.

Zamboni: just wanted to clear up that that was a previous speakers solution to buy the other parcel.

Denise Heischman resident of 36 Maplewood speaks: The Law is pretty specific about no drive thru at restaurants. One reason that hasn't been mentioned yet is that drive thrus do not generate traffic for other businesses. It may set a precedent in particular for other restaurant drive thrus. The zoning in that area was specific to not create an outlying area with fast food chains and strip malls.

Langey speaks: I need to have the Board comfortable with the idea that just because the Law says no drive thrus that the Board acknowledges that they have the authority to grant relief. I know the public says that the law is very specific and I agree it is very specific. But that's the role of this Board to go ahead to grant an

approval if we have proven our case. We believe we have detailed the legal standard upon which the Board can act. The Board cannot simply say that the Law is specific and we cannot grant a variance. In actuality that is why the Board is here to grant these special circumstances and say that you have designed a project like no other and that you have addressed the issues we are concerned about. We have proven that this is a unique hardship, shown financial data and shown this is not self created.

That alone doesn't make it precedential. If someone else comes forward they cannot say they have all the same things that we have shown you. I can't speak to the other cases that might have been turned down before, but my sense is that they didn't prove their case. In our circumstance we have put together a case that you can say yes to. I think that the difference between what happened in the past and what could happen in the future is that we have proved our case.

Besanceney states: I have a problem with the fact that you state the hardship is not self created but it actually is because you can build the restaurant without the drive thru. It is the drive thru that creates the hardship that you are creating.

Langey responds: you will see in our papers is that this model is necessary for this particular site. That is what our client tells us from their financial side. I know you have showed photos with Dunkin Donuts without drive thrus but this site requires a drive thru. I appreciate your comment.

Stropp responds: without a drive thru the project might not be viable, it might not generate enough gross sales. It might not go forward without the drive thru.

Tolan says: you say "might not". I'm sure you have run the numbers.

Stropp: My numbers show \$70,000 dollars. When 55% of the business is derived from the drive thru, if that wasn't there, what I calculated is that some people would not stop there. This will reduce the gross sales and therefore reduce the revenue and would not make the project viable.

Kissack: From what I am hearing the drive thru is not the only negative. The audience has mentioned other negatives.

Stropp: As an appraiser and speaking about the use, if this doesn't go thru there is a good chance this will stay vacant for another 10-15 years because of site issues.

Besanceney: Dunkin Donuts has a recognizable name which is enough by itself to generate business. The name is already a draw regardless of where you put it.

Stoop: That is a good point and you could be right. What I'm saying is that the loss of revenue from a sit down 2300 sq. ft. restaurant would not generate enough revenue to make all of the investment worth it.

Langey: What we don't want is to build it without the drive thru and my client is one of the larger franchisees in the country. However what I have seen in communities where a project tries to take off without the drive thru component and the business fails and now the building is there but after they move out no one moves in and we have a project that doesn't look too good. We don't want that. We would like to be successful and pay taxes and let people know that this is a good service with a good design that is not going to create the issues that your code was developed to prevent. We have found a way on this particular site to address those.

Mark Donahoe states: he works for Dunkin Brands and would like to make a few comments with applicant's permission. I have been on ZBA for over 10 years and have worked for Dunkin Donuts for over 5 years. These gentlemen have done an excellent job, great questions from the Board and the audience has been excellent. I would like to clarify relative to a drive thru and not a drive thru. This goes to what Erik is talking about, economics. The store being shown is located on Monroe Avenue near twelve corners. There are probably thousands of homes in just this neighborhood. This store was purchased as a working unit. Therefore the cost of this project was significantly less than the one being proposed tonight. Therefore the owner could consider no drive thru. There are other stores without drive thrus. Some sites do not lend themselves to drive thrus but

they are a minority. Between 55%-60% of business is generated by the drive thru. The cost to build a store without a drive thru is the same as one with a drive thru. The only difference is the window. The store is laid out the same and making the coffee, donuts, sandwiches are all the same. The same number of seats same everything including costs but without 60% of the customers coming in. Who are the customers. They already live here. We have a good product. People who come to my kids sporting events already come to the event with a Dunkin Donuts or Tim Horton's cup in their hands. And you know what they are asking us? Where do you go to eat around here. Another thing, Dunkin Donuts is trying to broaden its product line to get people into the store in the afternoons. It is a morning business. Dunkin Donuts is a beverage business we sell coffee espresso, hot chocolate, etc. the donuts and sandwiches are more secondary. We are trying to start a snack line, provide Wi-Fi with comfortable seating that makes a place for people to come to hang out. These are likely the same drive thru customers from the morning that we want to come back to the store and relax in the afternoon. I appreciate the challenging decision the Board has to make.

Besanceney states that this part of the meeting is closed and moves onto the next item.

AREA VARIANCE Pine Trail

To allow 50' building ht. where 35' is maximum

Jim Bonsignore counsel for the applicant, George Kaleh, project owner and Sara Gilbert from TY-Lin, project engineer. Jim Bonsignore states: Application is for relief from the maximum allowed building height. This project's design goal is to make the most aesthetically pleasing design possible. The 49.5' building height being proposed is to include some amenities and architectural elements. The primary criteria is the balancing test, whether the applicant's benefit is outweighed by the detriment of the health, safety and welfare of the surrounding community. In this case the benefit to the applicant is clear. To utilize more modern architecture styles and to offer amenities that generally wouldn't be available. There is no detriment what so ever to the surrounding communities. In fact this project will actually enhance the surrounding community by virtue of the cluster development allowing greater open space. You can see on the site plan, community gardens have been shown along with trails and open space that all contribute to enhancing the community. Another amenity is the elevators in every building allowing all buildings to be fully accessible. In a two story building this would not be the case. The elevator allows first floor living or access on all three levels. Providing additional alternatives to live in an upscale community of this nature.

There are also 5 other questions. Whether an undesirable change in the neighborhood or a detriment to the surrounding properties will occur. The granting of this variance you will see a newer more architectural pleasing style. It's going to offer additional amenities that are not typically available in two story buildings. The nature of this project will only enhance the surrounding community. The residential use of this project is a permitted use. So we have tried to conform to the community while preserving as much open space as possible while providing the types of amenities that customers are looking for.

Whether the benefit sought can be achieved by other means feasible. Again in theory the buildings could be spread out over the property but then you are looking at flat roof buildings which create an undesirable look like the 1970's and will disturb a greater area of the site in additional paving and more building footprints. All of this could be accomplished however in a more undesirable affect than what is currently being proposed.

Whether the variance is substantial. We are going from an allowed 35' to 49.5' building height, so you are talking about a 14.5' increase basically a 1 story difference. Based on the architecture this really is not a substantial variance. The design of this project creates a nice vista with beautiful buildings. None of the architectural features would be possible without the granting of the variance. So from that aspect we do not believe the variance is substantial.

Whether the variance will have any adverse impact on the physical or environmental conditions. As I've already noted this configuration of the property actually decrease the environmental impact by going up and reducing the overall site disturbance and creating more open space.

Whether the hardship is self created which is not a factor for denial by itself. Most area variances include an element of self creation. However when you go back to the balancing test. This applicant is proposing something that meets his needs and will provide something beneficial to the community. Simply put the benefit to the applicant and the community far outweighs any negative impact by granting the variance to allow an additional 14' of building height.

Besanceney asks: about the ugly buildings. Since this project was already approved by the Planning Board these would be your own buildings that you are talking about. I don't understand your comment of creating ugly buildings.

Bonsignore states: I was talking specifically about the 3 story building. Without the variance a 3 story building will have a flat roof which is what I was referring to. 2 story buildings would be aesthetically pleasing but create more environmental impact.

Kaleh states: the question being: could we build a 3 story building without a variance, yes we probably could but it would not be something that you are going to want to see nor is something I would want to put my name on.

Tolan asks: you are basically talking about lopping off this top part (roof).

Kaleh responds: yes and that would not be pretty and the snow build up would be substantial.

Besanceney asks: about that the project was approved with 2 story buildings.

Kaleh responds: that yes we did have it fully approved but that there was more site disturbance.

Besanceney asks: about building in phases.

Kaleh responds: no it would not be built all at once.

Besanceney asks: what is the demand for apartments in the area, how would you build this project.

Kaleh responds: we would build 2-3 buildings and hope that they don't sit there for a long time.

Kissack asks: will this be 3 phases.

Kaleh responds: the project is designed for 156 apartments, contained in 6 buildings of 26 apartments in each. So we would do 2-3 buildings in the first round and wait and see how quickly they fill.

Bonsignore states: that the phasing is typically done from a financing perspective. Banks will want to see that the project is viable. The applicant is not in the business of building projects that will fail. We have done a market analysis and are aware of the demand in the area. We wouldn't be sitting here tonight if we didn't think the project in its entirety wouldn't be viable. I am aware that this project was presented to the Planning Board at their 7/1/13 workshop meeting and asks Johnson to report.

Johnson states: The Planning Board reviewed this project and had some concerns about spacing of parking, if there is enough landscaping and providing green space to break up the parking areas a little bit more. They weren't particularly concerned about the 3 story aspect. The look of the buildings and the rendering did a lot to make them feel comfortable with the third story. Initial feedback from Fire Department was related to building code issues and turning radiuses of trucks within the site. So it is more about the site design versus the height of the building.

Szlosek states: (Planning Board chairperson speaks from the audience) the Board would have an issue with flat roof buildings.

Kissack asks whether the project has to go back to the Planning Board because of this variance.

Johnson states: This project was approved in 2002, renewed in 2008 and re-approved again in 2013 all using two story structures. This is a brand new design so it would start all over through the Planning Board approval process. So if this variance was granted tonight they would start at square one with the Planning Board.

Kissack asks: if the first phase was built and demand was low so that the project could stay like that but you would not want that I'm sure.

Kaleh responds: I guess that's possible.

Bonsignore: state that the applicant is not in the business of investing in a project to only have a first phase constructed. We anticipate that the phase one will be rented in 12-18 months. Then he can continue his success and build more buildings.

Kaleh states: the 2 story building project was going to be built in phases. The 3 story building type will work much better due to the inclusion of the elevator which is a huge benefit. I think there is a greater chance of slow build out with the 2 story building type.

Donahue asks: if an elevator is required with the 2 story buildings.

Johnson responds: that there were enough ground floor units to meet accessibility requirements. The elevator would be required in a 3 story building.

Brennan asks: how many units were there in the 2 story buildings?

Bonsignore responds that the total number of units are the same. It is the added amenities that creates the difference.

Gilbert states: that there is a lot more green space in this design and 25% less paved areas. We can accommodate all of the fire departments concerns with turning radius.

Bonsignore states: These buildings are sprinklered as well.

Besanceney states: you are asking for a major area variance at almost 50%. That is a major jump. The code states that 35' is the max. height for buildings that contain a residency.

Bonsignore states: Mr. Chairman I have spoken with Charlie about that code section it refers to the structures in sub section A and enumerates those structures that if contained a residence could not go over 35'. But that is not the case here with a wholly residential new building being proposed.

Gilbert states: the topography is unique which falls away from the road. These buildings will not be towering over you and look set down.

Brennan states: that the higher buildings would be visible from Corby Road to the south.

Bonsignore states: that when you are looking at substantial you can't just look at the numbers. You have to examine the totality the project and its site and what is being proposed. In this instance what is being proposed the buildings are being scaled such that they will fit into the Village scheme and the overall Village character. While at the same time allowing for some accommodation to the applicant but also to residents who will have amenities available to them that otherwise would not.

Kissack asks: if the variance were approved and 3 buildings were completed could the rest of the project be reviewed periodically to insure that the project is continuing as it was intended.

Johnson responds: the Board could certainly add conditions of approval that would create this oversight, however the applicant may not accept them. For instance you could approve phase 1 only and have the applicant come back for a variance on the rest of the project. That's an example of a condition the Board could impose if they see fit.

Gilbert states: we have worked hard to make a uniform look to the project and would not want to risk a piecemeal appearance that could result from approvals over time.

Donahue asks: What was the roof height at 2 stories.

Johnson states based on the drawings it is approximately 32'.

Donahue asks: What was the roof pitch.

Gilbert states: the roof is 5/12.

Gilbert states: the apartment ceiling heights are 9' which is the way the market is going.

Brennan states: the roof line adds a lot to the character

Donohue asks: could the roof be designed to reduce the overall height.

Gilbert states; I spoke with the architect who said modifications could be made to reduce 1-3'

Kaleh states: the 5/12 roof is about as shallow as I would want to go to keep the architectural look as good as possible. Changing the pitch would not achieve any substantial height savings.

Gilbert states: we are trying to balance the appearance with the Planning Board who is requesting a residential feel.

Bonsignore states: that altering pitched roofs of 1-3' changes the overall look of the building and appears more like a flat roof building which is not as appealing.

Besanceney opens the public hearing for comments from the audience.

John Hofman states: He generally likes pitched roofs. The project with 2 story buildings was approved and now it seems that the company is trying to get more. I have no problem with 156 apartments in this community. These taller buildings will be visible from Main Street and this doesn't seem to fit the overall character of the Village.

Szlosek states: As Planning Board chair, the applicant has been very receptive to meet the aesthetics standards that are valuable to the Village. They have really worked with us. The PB would have a significant problem approving a flat roof design.

Hoffman states: it sounds like a third story wasn't necessary several months before why the sudden change now.

Kaleh states: that there is a large elderly population in the Village that would not rent an apartment that you would have to walk upstairs to. The elevator makes all of the apartments appealing to them. However this will not be an age restricted development but we believe that a significant number of the residents will be elderly.

Brennan asks to see the two story design.

Kissack asks: if traffic was a consideration on Pine Trail.

Johnson states: a traffic study was completed in 2002. When the Planning Board reviewed the project again in 2013 it was determined that no changes to the traffic study were necessary. Also the Village has developed a cost per dwelling unit to be applied to the eventual installation of the traffic light at West Main. The traffic light will be installed in accordance with the bench marks established in the traffic study. Village Code requires two parking spaces for each dwelling unit.

Bonsignore states: that because all apartments will be accessed by elevator a higher percentage of residents will be elderly which do not normally own more than one car thereby potentially reducing the traffic load.

Besanceney states that this part of the meeting is closed and moves onto the business portion of the meeting.

116 West Main

Brennan makes a motion to approve the drive thru as submitted, where no drive thru is permitted, Tolan seconds.

Discussion: Kissack is concerned about setting a precedent. Tolan states that the applicant has stated that this is the business model. Brennan does not feel that the hardship was proven. Tolan stated that the allowed uses that were evaluated in the appraisers report and determined to not be feasible were opinion based or erroneous. Seemed to be a sales pitch without enough hard data to support the findings. Besanceney is concerned about creating a precedent and that over riding the law creates a non conforming use. The Village is still developing the comprehensive plan so who is to say what will be down the road. Also the Comprehensive Plan survey results were about 50/50 for drive thru restaurants. Tolan stated that this applicant did not show how they were substantially different from any other fast food restaurant with a drive thru.

Besanceney called for a vote to approve motion as originally stated: all in favor-0; all against-unanimous. Motion failed.

Pine Trail

Kissack makes motion to approve a 49.5' building height as submitted where 35' is allowed, Donahue seconds.

Discussion: Tolan this is big for the scale of the village and is a large increase, some 40%, from what is allowed. Kissack is concerned about the project appearance during the phases of construction which may go for years until final build out. Besanceney is concerned that the applicant is merely pushing the envelope. Brennan likes the use of elevators for elderly residents and the visible nature when viewed from Corby Road. Donahoe reminds the Board that this variance request trades increased green space for building height. ZBA has granted variances for increased building heights in the past but not for this substantial request. Besanceney reminds the Board that some of these were for mistakes made during construction. The Monroe Street house request for additional height was denied.

Besanceney called for a vote to approve motion as originally stated: all in favor-0; all against-unanimous. Motion failed.

A motion made to adjourn the meeting at 9:07 PM. All in favor, motion carried

Respectfully submitted,

Charlie Johnson, CEO