

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, April 25, 2018, at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Weeden (not in attendance), Mbr. Crowley, Mbr. Steed, Mbr. Romano, Atty. Kevin Dowd, Eng. Dawn Kalisky of Lanc & Tully, Maria Beltrametti, Walt Lindner, Maryanne Lindner, Tim McElduff of Drake & Loeb, Thomas Olley of Thomas Olley Engineering, Jane Hoeffner, Mark Mont, Damian Brady, Brian Pawelski

OPEN: Chrm. Conero opened the meeting with the Pledge of Allegiance.

ADJOURNED PUBLIC HEARING

RE: DUNN ROAD 213-3-4.22

A MOTION was made to RECONVENE THE PUBLIC HEARING at 7:30 pm by Chrm. Conero and seconded by Mbr. Romano and carried 4 Ayes 0 Nays.

Chrm. Conero said we adjourned the public hearing to hear more comments from the public on this project. We also had questions; the County Planning Department had sent a letter recommending disapproval of this so we asked our attorney to work out something with the County, to explain our side of this.

Atty. Dowd said he sent a letter dated April 3rd to the County Planning Department and the County Attorney's office, Damian Brady, who is here tonight, had a long conversation with him yesterday and with the applicant's attorney, and this afternoon the County has issued a new letter with new conditions and removing the negative recommendation. All Board members have that, and he's not sure what the Chrm. wants to enter into the record, obviously the letter is of the record. But, the letter says: Orange County Department of Planning has provided comments on their March 28th letter and this letter that was issued today amends, supplements that March 28th letter and updates and replaces binding comments previously made in the March 28th letter. In doing so, the Planning Department says that (in conversations with the OCP attorney and Mr. Brady is here), based upon new information that they say was supplied to them at discussions about the discussions with the FAA between the applicant and FAA and the letter that the FAA issued back in December, with certain conditions, that they were changing their negative recommendation to a recommendation with one binding comment that we ensure that the applicant complies with all the recommendations provided by the FAA in its December 8, 2017 letter, which was a determination of no hazard to air navigation letter. In addition, because we found out through this process that our zoning map was incorrect, that it does not show the flight path and transitional flight path of the airport over village property and also town property, that they are recommending, and I don't think anyone on this board or village board will disagree, that we must update our zoning map and mostly our zoning laws, to prevent this from happening again and that may even require the modification of 35ft height level where this flight path and transitional flight path occur. Again, there's not too many places in the village that it happens, we sorely don't want a repetition of any miscommunications and the misunderstandings of what happened, here in this particular application. The planning department has pledged its support and help in preparing revised maps, revised zoning laws, recommendations of like and he feels as their attorney, and as the village attorney, that it's a good thing that needs to be done. It mentions that the town's maps are incorrect and the town is adjacent to this property so it's very important that the town be made aware of the fact that their maps aren't correct and they make some transitional changes to their maps and zoning laws. That said, it's basically approved subject to the modifications pursuant to the FAA recommendations and that clears the way for a simple

majority vote to approve unless you're going to override and I recommend that you don't override, the FAA is really the authority here that controls flight paths and flight patterns in the like of airports, and airspace, I don't think the outfit has any objections to any of that. One of the other discussions he had with Mr. Brady was the fact that originally we talked about having a cupola put on, and of course if we put a cupola on a 32ft high building, it would probably either exceed the 35ft so if the applicant wants to go to the zoning board for a variance and secondly, it would create an additional potential hazard that would have to go back to the FAA. As you can see from the drawing there, the original intent was to look like a barn with one straight roofline and a cupola but with the two lines the cupola would look out of place. It would be disproportionate and off kilter and, we talked about this at the last meeting, there's no way we would recommend that you put a cupola on that building now. It's inadvisable and unwise to put a cupola on a building because of height and hazard issues. It comes down to, you don't want to put a cupola on this building and Mr. Brady told the Planning commissioner as well, that idea is gone.

Chrm. Conero said one of our people that spoke was concerned about that too, where he brought up, is the proposed cupola going to be on the structure and we told him no, it could not be. He also had concerns about the color, whether it light yellow, brown. I ask everybody who goes by it what color do you think that building is? They'll say its beige. I don't know if it's brown or yellow.

Mr. Olley said he contacted the building contractor and the product that is used from a company, AB Martin, and that is the official color in their color chips, its beige. They're accurate in the description.

Mbr. Romano said Parks and Rec Historic Preservation recommend a darker color.

Atty. Dowd said and our AHRB recommended a dark red, to make it look like a barn. It's confusing astheically. The house it's meant to protect, Mr. Wiggins home, is really a beige. The house immediately down Dunn Road is white and all of the airport buildings are these beige-type of looking buildings.

Mr. Olley said more yellow.

Mbr. Crowley said they talked about that at a planning meeting at one time, we shot around green and red, and that would make it stand out even more based on the color.

Atty. Dowd said people don't want this standing out, yelling at them look-at-me type thing. A dark brown or red is going to do just that. Even if you put trees around it and landscaping. The lighter color seems to be more in line with what's around the property than any recommendations that we've gotten from the architectural boards. And those are just recommendations, they are not a requirement. You could ask the applicant if he would want to paint it dark brown or a darker brown, you could certainly ask that question. I don't know what the response would be. But what would be the purpose of that; you'd have to look at. Does that make it more aesthetically pleasing to you, as a board, after reviewing this as opposed to the color it is now?

Mbr. Crowley said the color it looks, it definitely looks like a warehouse, I don't know if it were red or green that it would make a difference.

Mbr. Romano agreed that it looks like a warehouse and that she sees yellow.

Atty. Dowd said those are the comments that you have outstanding and the most critical one was the Planning Department and they have now revised their decision of March 28th.

Mbr. Crowley asked the attorney if they are revising their decision, saying that it does not, a determination of no hazard to air navigation.

Atty. Dowd said that's the FAA.

Mbr. Crowley continued, right. The FAA is saying that. In order to be in compliance with the FAA, County Planning is saying that we should recommend restrictions of any building height to 32ft and the FAA lighting requirements. It seems like they are contradicting their statement because they're saying that they're making the recommendation that we restrict the height now to under 32ft, although that's what our zoning is, because of hazard to air navigation.

Atty. Dowd said there's two agencies involved here. There's the FAA, which is really the federal regulator of air space and air control. And then there's County Planning Dept. In this particular case, the FAA has said that the 32ft height falls in the flight path and transitional flight path and is a non-hazard to aviation with the condition that the two points located on the building have these red lights be placed, which the applicant has no problem doing. Those red lights are around the whole perimeter of the airport and around Dunn Road. The Planning department is saying that with the information they have from the FAA, the only recommendation they are making is that we impose on our potential approval of this project, amended site plan, is that they comply, in all respects with the FAA letter of non-hazard. So that in some point in time, they want to raise above 32ft or don't want to put the lights on it, then that would not be meeting the conditions of the FAA. It would be a violation of our approval, it would be a violation of the recommendation of the Planning Department but more importantly it would be a violation of the FAA rules and that's what really governs the area. The Planning Department realizes that their letter, Mr. Brady, tell me whether I'm right or wrong here...

Mr. Brady said you are absolutely correct. He apologizes that sometimes it looks like double negatives in the letter because it's non-hazard (inaudible) navigation. What we're saying is follow the FAA's guidance in that proposition.

Chrm. Conero said we talked about staggered plantings. Have you modified the landscaping plan?

Mr. Olley said he did but he didn't submit it for consideration for tonight's meeting but he brought a copy of how he would achieve that on the Wiggin's side of the property. We would double up that row of plantings, same species, same height and whatever conditions that need to be added to the plan, we would certainly put those on there. Given the County Planning's letter and the binding recommendation that one of the best things to do would be to indicate right on the building or on site plan where those obstruction lights are to be placed and that type of housekeeping and if there's something else that may come up tonight.

Chrm. Conero confirmed they would not exceed 20ft in height.

Mr. Olley said no. The eave line on that side of the building is 12 and the ridgeline is 24. As those trees mature they're going to provide substantial screening for that end of the building.

Chrm. Conero said ok.

Mbr. Crowley asked, that's the side that is adjacent to Mr. Wiggins.

Mr. Olley indicates where on the site plan.

Mbr. Crowley asked if there would be anything in the front, as far as landscaping.

Mr. Olley said there are foundation plantings in the front. There is a septic system so they can't plant within that septic system but there calls for boxwood, barberry as foundation plantings along the face of the building to breakup that...

Mbr. Crowley added, the bleakness of it, the very industrial look that it has.

Ms. Kalisky said the additional trees are in addition to what was previously approved.

Chrm. Conero opened the Public Hearing for public comment.

Brian Pawelski – 272A Union Street – He rents an apartment in Mr. Wiggins house. He said he was there almost a year and a half ago when...everyone was in agreement, it was all approved for the plans, this gentleman was here representing the applicant. (There is discussion correcting who represented the applicant.) We promise you this, don't worry, it's going to be done so everyone said okay. That's alright. That's not what was done. It was done in violation as opposed to the height of it, the color of it; it was supposed to be a dark red color and one roof line, a low roof line 24ft in height. None of that was done. He lives next door to there. Now you put red lights. I understand there are already existing lights in the front, that's inconsequential, this situation. Now you're going to put more lights on the back of my property. My point is, why am I paying for this persons misdeeds? He knew what was supposed to be done. He had approval for this. He goes and does something completely different and you're telling me it's easier to come and get approval, go and do what you want, and if someone objects to it, makes public light and then it's easier for him to just, please, forgiveness. Don't ask for permission, just give me forgiveness. He has to pay for that. For his, what he violated. He pays nothing. Mr. Pawelski continued, he's not asking for the building to be taken down, he just asking, build it as it was approved in 2016 when he was there. According to those plans, why does a resident in here have to pay for this guy doing what he chose to do, violating it?

Chrm. Conero said he believes that's why he reapplied. For an amended site plan.

Atty. Dowd said he'll leave it to the applicant. He doesn't believe he was there last month (Mr. Pawelski) when we started the public hearing on this revised application and the explanation that the attorney and the engineer gave to the board as to how this building was built higher than the plans that were approved. But, one of the things that you have to understand is that the height restriction in the zone that this building is in is 35ft, so the fact that the applicant came forward and voluntarily said that it was going to be no higher than 24ft with a peaked roof was in point to us but if he came in at that time and said it was going to be 32ft we could not say no to that because of the fact that the 32ft is within our zoning law. The only thing that got out of kilter here, was the fact that it was 32ft and not 24ft and the FAA process of looking at the flight path and the transitional flight path as far as the height restrictions. So, the village, in this situation where we stopped work as soon as the building went up and realized it was higher than it was supposed to be and they've done no work; it's on a stop work order.

Brian Pawelski said it was the residents bringing that to the attention.

Chrm. Conero said it was the building inspector.

Atty. Dowd said it was the building inspector.

Brian Pawelski said no it wasn't. He was at a public meeting when he brought up; it was a public meeting, he brought up about, Maria was here, too, that there was an issue. And everyone said we all noticed this, it's higher than it was supposed to be. That's completely false.

Atty. Dowd said the building inspector is going by the building plans that he received.

Brian Pawelski said the building inspector did not bring up that there was a violation.

Atty. Dowd said okay. Fine. But once it was brought to whoever's attention, the building inspector, the village board whoever it was, there was an immediate stop work order on the property. And the applicant has obeyed and abided by that stop work order. In the interim, the applicant has applied to the FAA with the building as it stands and from that agency received permission to leave the building up, as is, provided they put two lights on the building. The applicant then came back to us and said I want to amend my site plan so I can keep the 32ft high building with these conditions and that's where we are right now. So, again, had he started with the premise of it being 32ft, we could not have said no based upon the 32ft.

Maria Beltrametti spoke out of line (that that is hypothetical).

Atty. Dowd said no, it's not hypothetical, the law says 35ft!

Maria said they didn't come in that way.

Atty. Dowd said he understands that and that explanation was given to you and you can ask the applicant's attorney and engineer to give the same explanation they gave to us last month. There was a mistake in the representations made by the applicants surveyor, at the time, was the one that was here a year and a half ago, who represented that it was going to be between 22-24ft high. That representative made those representations and apparently the applicant never agreed to that representation.

Maria is speaking out of line. She has not being recognized by the Board to speak. Inaudible...too many people speaking at once.

Brian Pawelski continued, you grant approval based on what this new beautiful drawing shows; they're going to do this, that and then if, in six months or a year something else is changed. Then we're here again and, no, he asked for...at what point does someone have responsibility to, I don't understand. What purpose...do here?

Maria is still speaking out of order.

Chrm. Conero said like our attorney is telling you, if this was proposed to us at 35ft, we would have no legal right to say no to that. But I understand that...

Inaudible...too many people speaking at once.

Brian Pawelski interrupted...would that have been, made that more difficult of a process for him. Was it easier for him to say initially, 24ft and then throw up...

Chrm. Conero said I understand that, but again, they are able to come in here, legally...

Brian Pawelski said more lights in the back that shine 24/7...

Chrm. Conero said so your concern is the lights.

Brian Pawelski said and the size of the building. The original roof line, that first one was fine. That's no problem. It's a big building. You don't live there so it doesn't bother you. He doesn't understand how this...

Chrm. Conero said if the applicant came in here seeking a variance for height, we could have an issue with that and they would have to go before the ZBA for that. Because it meets the zoning, he could do that. It meets FAA approval so the airport doesn't have a problem it. It meets the County Planning, so they don't have a problem with it.

Brian Pawelski questioned, its non-nuisance?

Chrm. Conero said it's a non-nuisance business.

Brian Pawelski asked, what if when it's operational, all of a sudden, he thinks it was said about 2 years ago, that it was only going to be like a truck a day. What if there's going in and out of there? Then what recourse does he have then?

Chrm. Conero said what you should do is contact the building inspector or the village board and talk to them and tell them what's going on.

Mbr. Crowley said if we want to go with hypothetical, if we say no, they pull out, any business can go in there and it can be 20 trucks a day, if you want to go on hypothetical.

Chrm. Conero said he understands their frustration with it but thinks the lights have to be there for safety reasons.

Brian Pawelski said but it didn't have to be there if it was twenty...why does it have to be there at all. What is the reason?

Inaudible...too many people speaking at once.

Mbr. Crowley said it would still need it on the low end, it would still need a red light. If it was at 22ft it would still need the red light. The light has to be there.

Mr. McElduff said as soon as the stop order is lifted, they can get the electrical there and get the lights there. After the first public hearing, we had sent the specs, you had asked what type of lights.

Chrm. Conero said we have them.

Maria Beltrametti (recognized to speak) said she's sorry but she can tell by the way none of you are saying anything, this is an end run by the builder and his whatever, I know there was some situation with the guy who was representing the project initially. But there was an end run around the FAA and so the neighbors that have to live there all of a sudden are living at the

airport. They have a building as big as a hanger with lights on top of it right outside their bedroom windows. How would any of you feel if that was your back yard?

Chrm. Conero said he probably wouldn't like it.

Maria Beltrametti said you would be outraged.

Chrm. Conero said I wouldn't be outraged. I would realize that maybe if I wanted to protect that area that maybe I would've purchased it to protect the area.

Maria Beltrametti said that is purely hypothetical.

Mbr. Romano said public hearings are to address issues not to prevent someone from building on their property.

Mbr. Crowley said unfortunately, that house is surrounded by industrial zoning all the way around it; it circles his entire home.

Maria Beltrametti said we had a public hearing and it was discussed at length so that it would impact the Wiggins house as little as possible, as well as the farmland on that side of the airport. The airport has been there for a long time, nobody is saying that the airport should change its boundaries but in affect, this is what has happened. It's jumped Dunn Road and now Brian and Jim and Bob are living at the airport...

Mbr. Crowley said she's got news for Maria, that airport, it has already jumped the fence, the airport. That airport is only going to get bigger, only going to get bigger. And there's nothing we can do about it. The County came in, eminent domain, and purchased land, it's only going to get bigger. And that...are we, am I particularly happy about that? No. But I can't do anything about that.

Maria Beltrametti said it's completely academic at this point. So what we have on the table is a public hearing and understanding by everybody and an end run by the builder or owner around this board and around the airport because they misrepresented the building and said it was already an existing building.

Mr. Olley said he would like to get something on record. The building permit application was for this building, at the 32ft, so no one did an end run around the village. As we said previously, the applicant felt that he was entitled to construct that and submitted plans. He didn't do some subversive act and put up a building under the cover of darkness that was at some height that was beyond what was legal, and the second thing is there is absolutely no truth to there was an end run around the FAA. As soon as the applicant became aware of the fact that he had to go to the FAA, because of the difference in the transitional air space, he did and consulted with them and followed their instructions to a T and submitted that documentation. There are some accusations being made that are not...

Maria Beltrametti asked about the drawing, doesn't it count for anything?

Chrm. Conero said we are not going to do this. Does anybody else want to comment? Walt?

Walt Lindner said the biggest glitch that he sees, is, having looked at the file, is we have that one drawing that shows the 18ft – 24ft scale, maybe questionable. The actual prints that were signed

by the board, all it has on it is the code of up to 35ft and he understands, he agrees with Maria in some ways, it does look a little questionable as to what they originally said and what they then did but the way he understands it is they basically lost that initial approval, they had to reapply, and as you said, as a board we have no choice but to allow something that's less than 35ft. So, as a village we need to look at the zoning, we need to redo the maps, we need to change the height requirements in that area so if somebody else puts up a building they don't come and say you've got this 32ft building, that's what we want.

Chrm. Conero agreed. He said part of the Master Plan Committee, when they talked and looked at the Master Plan, that transitional air space ever came up. This has been off our radar as far as modifying the plans or modifying the zoning to the transitional air space, that we had no idea had changed. Obviously, the Town doesn't know either. We didn't know this. Does anyone else have any other comments? No other questions?

A MOTION was made to CLOSE THE PUBLIC HEARING at 8:02 pm by Chrm. Conero and seconded by Mbr. Crowley and carried 4 Ayes 0 Nays.

A MOTION was made to DECLARE NEGATIVE DECLARATION, TYPE 1 ACTION by Chrm. Conero and seconded by Mbr. Romano and carried 4 Ayes 0 Nays.

A MOTION was made to APPROVE THE AMENDED SITE PLAN FOR ZAFIR, LLC, 330 DUNN ROAD

With the conditions that:

- The building stay at 32ft max**
- Comply with all of the FAA conditions from 12/19/17 letter**
- Install necessary lighting required**
- Landscaping to stagger and not exceed 20ft**
- Remain a low-impact, non-nuisance operation**
- Return to Planning Board if use changes**
- Outstanding fees must be paid**

by Mbr. Romano and seconded by Chrm. Conero and carried 3 Ayes 1 Nays.

RE: MINUTES

A MOTION was made to ACCEPT THE MINUTES OF March 28, 2018, by Mbr. Romano and seconded by Chrm. Conero and carried 4 Ayes 0 Nays.

RE: ADJOURNMENT:

A MOTION was made to ADJOURN THE MEETING AT 8:06 pm by Mbr. Crowley and was seconded by Mbr. Steed and carried 4 Ayes 0 Nays.

Tina Murphy, Deputy Village Clerk