

**MINUTES** of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, May 22, 2019, at 7:30 pm.

**ATTENDANCE:** Chrm. Conero (late), Mbr. Crowley (absent), Mbr. Steed, Mbr. Romano, Mbr. Meyer, Atty. Kevin Dowd (absent), Dawn DeSantis of Lanc & Tully, Zachary Szabo of Engineering Properties

**OPEN:** Mbr. Romano opened the meeting with the Pledge of Allegiance.

**ADJOURNED PUBLIC HEARING**

**RE: LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22**

Ms. DeSantis stated that Ms. Bombardieri, representative for Loosestrife Fields – Phase II, did not have any new information to provide to the Board. They are awaiting comment from the Building Inspector, the Fire Department and ACOE, who also needs additional information.

**A MOTION was made to REOPEN THE PUBLIC HEARING FOR LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22 by Mbr. Steed, seconded by Mbr. Meyer and carried 3 Ayes 0 Nays.**

There is no comment from the public.

**A MOTION was made to ADJOURN THE PUBLIC HEARING FOR LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22, TO WEDNESDAY, JUNE 26, 2019 AT 7:30PM by Mbr. Steed, seconded by Mbr. Romano and carried 3 Ayes 0 Nays.**

**OLD BUSINESS:**

**RE: City Winery 204-1-1**

Zachary Szabo is representing City Winery. They received the comments and forwarded them to the architect, Todd Zwigard.

Ms. DeSantis said City Winery site plan was approved. One of the conditions of the approval was the providing of the landscaping plan for Planning Board review and approval. That was prior to the issuance of CO that way they could commence work that they needed to do; it wasn't the planting season, anyway. They did submit the landscaping plan as required but the buffer, the screening trees that they are proposing are too infrequent in number and spacing and they are deciduous trees (they lose their leaves in the fall and winter) and that doesn't provide adequate screening. They did provide a copy of the comments to Engineering Properties until today because the plan was not prepared Engineering Properties, it was prepared by the architect for City Winery but it does not meet the screening requirement. They were provided a copy of their letter, Engineering Properties will ensure that they have a copy of their letter and assist them in whatever they need to know to provide a plan that is consistent with the screening and buffering requirements.

Mbr. Romano questioned the deer fence running from the river. Ms. DeSantis asked if Mr. Szabo knew anything about that. Mr. Szabo isn't sure. He asked if it were on the plan. Ms. DeSantis said it is on the landscape plan. It isn't labeled. It just says deer fence. Mr. Szabo said it's labeled on

the far left. Ms. DeSantis said just with a lieder in text. And to please send two full size plans with the next submission.

Chrm. Conero asked if there were an issue with the deer fence or just the specifications on what a deer fence is. Ms. DeSantis said a little bit of both. It wasn't on the site plan. She understands the need for it at a winery. You can use a different fence type in certain areas where the buffer trees are proposed. Like a stockade; that can serve as a buffer screening. It is permitted in the code. They could also transition to a stockade-type fence.

Chrm. Conero asked what a deer fence looked like. Is it a metal type of mesh fence that you'd see at apple farms? Ms. DeSantis said yes, and she's assuming since it hasn't shown anywhere up until this plan. What is the intent? What does it look like? If it's a big wire, they may need to transition along the historic property line to a stockade. They need more detail.

Mr. Szabo said he would confirm with the architect and his boss.

Chrm. Conero said the concern is that they've talked about this buffer for the neighbors. If there's a fence there, they'd like to see some detail on it and what it consists of.

Mbr. Meyer said you mentioned that the leaves would lose their leaves in the fall. Ms. DeSantis said those trees are not considered a buffer. This is not interfering with the project. They have time to make changes.

## **NEW BUSINESS**

### **RE: Noorlander Lot Line Change – 206-7-9 & 206-7-11**

Mr. Szabo is representing the applicant. This is a lot line change. There are no physical improvements on the lot. He can revise the bulk table. The EAF, they are not doing anything on the lot that will cause damage as far as archaeological sensitive areas or endangered species. The stockade fence that is along the southern portion of the property was put up a while ago. Ms. DeSantis said in 2005. He said they received a building permit for that fence. Ms. DeSantis asked if a plot plan with a fence location that was permitted or...Mr. Szabo said it might be in the records, they don't have a copy of that. He said along this entire right of way, there is a covered porch over this line. Ms. DeSantis said if the Noorlanders have a building permit with a plot plan where the fence is being located and has been signed off, that is something they will review with the attorney and an easement would be required. You cannot construct anything in the Village right of way. Mr. Szabo asked, even if it's preexisting. Ms. DeSantis said it is not preexisting; it's 2005. The issue is that the Village is looking at drainage improvements throughout the Village so in order to put drainage on Sears Street, they would have to remove that fence. They are not going to remove it and reinstall it, you cannot have fencing along there. In discussions with the DPW Superintendent and the Village Attorney, that came up. Since the Noorlanders aren't here this evening to offer additional information, this is the information that we are going to need. They will need to either move the fence; move it onto their property line or, if they had a building permit and they were permitted to put the fence there, there's a plot plan, a certified survey indicating that. They (the Village) would not permit construction of a fence outside of someone's property. Mr. Szabo asked, if there is a building permit this would be a non-issue? Ms. DeSantis said as long as it has a plot plan associated with it that says, "We're putting this on your property," and the Village says, "Okay, go right ahead." If it's just a building permit for a fence, with no associated survey data of the parcel and just the assumption that is was on the property line, then we'll have to see. It would have to have an easement granted from the Village for that.

The properties here on Clinton Street, like where the steps are, there are encroachment easements for them. Chrm. Conero asked if the easements would come from the Village Board. Ms. DeSantis said yes. She said the burden of proof is not on the Village here, the burden of proof is on the applicant to prove that they had permission to construct a fence on Village property. That's what we'll need to see. Mr. Szabo asked if the drainage improvements that are taking place in the Village are going to include a widening of Sears Street. Ms. DeSantis said they don't know yet. These are contemplated improvements throughout the Village but the Village does have that 50ft right of way. That is their property and if they want to...Mbr. Romano said she's on Union and knows that the Village owns a certain amount of feet into her property; she cannot touch it, it's not hers.

Chrm. Conero asked for clarification of what lot lines they are changing. Mr. Szabo said this is the lot line to be deleted (indicates on site plan) and that is going to be extended out here. This is going to be a new lot and this one is going to...Chrm. Conero said Lot 1, this lot line, is for the 2-story brick, Lot 1 as we see it now. Mr. Szabo said that is...Chrm. Conero said the bigger one, the L shape. Ms. DeSantis said they are going to L the other way. Mbr. Romano asked if they would still be the owners of both. Ms. DeSantis said yes, they are two separate parcels owned by the same owner. Chrm. Conero asked if there would be two driveways; if this is approved we'll have two driveways into the same piece of property. Where would the driveway be for Lot 2? Where is Lot 1 and 2 going to be for the proposed subdivision? Mr. Szabo said the proposed subdivision, this will be Lot 1 and this will be Lot 2. These darker lines will be Lot 2, including the two-story brick and one-story frame and then the 2-story brick will include just the house. Mbr. Romano said the back parking area with the garage...Mr. Szabo said will be included in Lot 1. Mbr. Romano asked where the parking would be for 2. Mr. Szabo said currently, this house parks on this gravel dirt surface (indicates on site plan). Ms. DeSantis said it will need a driveway on the parcel. Mr. Szabo said he will have to speak with the client about that. They believe they spoke about having a common access easement, here, so this house can park on this side of the property (indicates on site plan), which they can revise and provide. Ms. DeSantis said you will either need a new driveway on proposed Lot 2 or you'll have to have a shared parking easement. Mr. Szabo said, the common access easement is probably the way they are going to go and they will revise that accordingly. Ms. DeSantis said they are not allowed to have parking on the street. Mr. Szabo said he believes the code states "two off-street parking/spots." Chrm. Conero asked what the proposed parking is for Lot 2. Mr. Szabo said they will have to provide a common access easement there so this house could park there. Currently, and in the future, they will probably be parking on the side. Chrm. Conero said on the plans, we're looking at a common parking area with an easement there. Mr. Szabo said they will probably park 1 and 2 here and they will provide an easement that goes across. Ms. DeSantis said in addition to the moving of the fence, they will have to do an easement for the fence line that is on proposed Lot 1 or that will need to be relocated there onto the property line or inside the property line. Mbr. Romano asked if that was the back fence. Ms. DeSantis said yes, it's along the driveway. Mr. Szabo said this is an extension of this fence that runs to that garage. Chrm. Conero asked if any of that fence needed to be changed. Mr. Szabo said nothing on the property, only what is within the right of way here. Mbr. Romano asked if Lot 2 tries to park there, how will they get in with the fence there. Will there be a door? Chrm. Conero said because Lot 1 is going to be a flag lot, the fence will be in Lot 1. Ms. DeSantis said it can't be in Lot 1. Chrm. Conero asked Mr. Szabo if he understood that. Mr. Szabo said yes. Chrm. Conero said this is different from the one on Sears Street because that is on Village land. We're talking about the other fence back here. Mbr. Romano said that fence has to be moved to Lot 1 properly...Ms. DeSantis said it has to be moved entirely onto proposed Lot 2. Mr. Szabo asked, even if they provide a break in the fence? Ms. DeSantis said you can't even encumber the driveway to that magnitude with a fence line, it would owned by Lot 1. Say Sam Smith comes and buys Lot 1, not saying anything is for sale but, once again, we're not planning

for who lives there now, we're planning for the property. Sam Smith comes and buys proposed Lot 1 and he lives there and says well that's my driveway, there's a fence in my driveway. Then we have the problem. They'll say it's not our problem, we're permitted to do that because we went to the Planning Board and they said it was ok. Then you have a civil problem and then the Village gets brought into court on that problem because why would you approve to have a lot encumbered by someone else's fence. Or, Sam Smith says it's my property and I'm ripping that fence down. Then again, Joe Jones buys Lot 2 and he wants the fence there. Chrm. Conero asked why the fence can't just be part of proposed Lot 1 and it's their fence, not Lot 2's? With the Lot 2 boundary, it's back here? The fence is really part of Lot 1, is it not? Mr. Szabo said up to this point here (indicates on site plan). If they were to break it at that point and say that's the end of this fence, yes. Chrm. Conero said you're saying it's because it's between this fence. Ms. DeSantis said no it's bisecting a whole section of that parcel. You'll recall when we had a subdivision just up the street, here. 82 Union. The same thing when they subdivided they had a fence that ran along the back. They had to take that fence down and put it on Proposed Lot 1. Chrm. Conero said the same with the lot on the corner of Charles and Wallkill. That was a two lot subdivision and his fence encroached on one of the lots and he had to relocate the fence onto his new lot. Ms. DeSantis said if they want to change the proposed lot line to just the other side of that fence line but then again, branch off that fence line, as well and have your parking where the driveway currently exists. Mr. Szabo said this is something he will have to speak with the client about. He cannot answer that. Ms. DeSantis said they aren't here to have the discussion with you, you'll just have to go back and let them know what we've required and what can be done. Chrm. Conero asked if that would be a solution, to move the lot line along the fence. Ms. DeSantis said, right but also provide a cut off instead of right here at this line where they can still have a driveway on their property. They have to provide the driveway on their property and parking for two vehicles. Chrm. Conero asked if they can do that with an easement. Ms. DeSantis said they need to speak with Kevin. Mbr. Romano asked if they need to go before the AHRB. Mr. Szabo said since there are not physical improvements...Ms. DeSantis said it's a lot line change. It's in the Historic District and it's SHPO, but it's a lot line change, no physical change, just on paper. They are removing or modifying the line. Chrm. Conero said the Planning Board can determine whether it's a neg dec, right? Ms. DeSantis said it's right on the DEC website. You click on the environmental resource mapper and it fills in a lot of what the DEC database has. We know there's a bald eagle in the Village but we're not disturbing them with a lot line change. We aren't cutting down any trees, either. It does have to go to OC Planning because it will be revised.

Ms. DeSantis looks in the Village Code book for the parking requirements but said they must defer to the Village Attorney. Two spaces are required but the question is whether or not the parking can be done with a shared easement. Two spots are required for commercial, that it is permissible with commercial; she's never had it in a residential application so it can't be answered right now.

Mr. Szabo asked if the Board could become lead agency on this project and waive the public hearing because there is no physical improvement taking place on this property. Ms. DeSantis doesn't think they can waive a public hearing on a subdivision. Mr. Szabo said it isn't a subdivision it's just a lot line change. Ms. DeSantis said by code, it is a subdivision. We don't have a lot line change in the code. Chrm. Conero said they aren't waiving a public hearing; they need to speak with the Attorney. You'll be back with revisions and clarity on some things. Mr. Szabo asked if they could set a public hearing today. Ms. DeSantis said they need revised maps for that. Chrm. Conero said, they can get the ball rolling next month, provided they have a good map and good layout. Ms. DeSantis said then it can be sent to County Planning. Chrm. Conero confirmed, it doesn't need to go to SHPO because it is a lot line change. Ms. DeSantis said the only physical alteration is the removal/moving of an existing fence. That doesn't impact anything.

Chrm. Conero asked Ms. Murphy to get an interpretation from Atty. Dowd and send to Engineering Properties.

**RE: MINUTES:**

**A MOTION was made to APPROVE THE MEETING MINUTES OF APRIL 24, 2019 by Mbr. Romano, seconded by Mbr. Meyer and carried 4 Ayes 0 Nays.**

**RE: ADJOURNMENT:**

**A MOTION was made to ADJOURN THE MEETING AT 8:13 pm by Mbr. Romano, seconded by Chrm. Conero and carried 4 Ayes 0 Nays.**

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Tina Murphy, Deputy Village Clerk