

Approved March 4, 2021

**Village of Kinderhook
Planning Board
6 Chatham Street
Kinderhook, New York 12106
Minutes of January 7, 2021**

This meeting was held remotely as part of the Village of Kinderhook's COVID-19 response plan.

Present via Zoom: Chairman Kevin Monahan, Vice Chairman Bruce Charbonneau, Susan Patterson, Tina Lang, Abram Van Alstyne, Village Attorney Rob Fitzsimmons, Code Enforcement Officer Peter Bujanow, Village Board Liaison Mark Browne, Trustee Mike Abrams, Secretary Carol van Denburgh, Economic Development Director Renee Shur, Applicant Paul Calcagno, Attorney William Better, D.McElligott, N.Jones, K.Stein, and approximately 20 other participants.

Public Hearing: 7:03pm. Kevin Monahan introduces himself as Chairman of the Planning Board and other members introduce themselves to the public. P.Calcagno discusses the Modification of the Site Plan for 1-3 Broad Street, Lot#43.20-2-46 and the proposed ice cream shop "Spumoni Gardens". He will take the cottage and utilize it to sell Italian ice, ice cream and spumoni. He will be replacing the pea stone gravel in the sitting area with concrete and adding twenty, four-seater tables. Everything else stays the same. B.Charbonneau asks what P.Calcagno has for soft scape in the area. P.Calcagno states the softscape has already been planted with evergreens and other planting varieties. B.Charbonneau asks about the softening the wall of the bagel shop and P.Calcagno states there are tall trees already there. T.Langs asks why he wants to replace the pebbles with concrete. P.Calcagno states the pebbles are not sanitary when food is dropped and he will be doing a stamped concrete. B.Charbonneau asks where the trash will go for the ice cream shop. P.Calcagno states it is all one business. There are trashcans there now and the trash goes into the same dumpster as the bagel shop. R.Fitzsimmons discusses the last meeting of this subject on March 5, 2020 making sure nothing has changed. Replacing the pea stone with concrete, utilizing the carriage house for ice cream, the hours of operation proposed to be 11-8, Broad Street Bagel hours to be modified from 8-8, lighting incorporated with shading, a code compliant fence to be installed between residential and business use, additional outdoor seating of twenty four-seat tables, no outdoor waitressing, would be self-serve. P.Calcagno says that evergreens have been installed instead of a fence. COVID restrictions will dictate service requirements. A.VanAlstyne asks about the sails versus the umbrellas in the seating area. P.Calcagno will be addressing this issue and others with the Historic Preservation Commission at their January meeting. B.Charbonneau prefers the individual umbrellas instead of the sails. The code says keeping the aesthetics in mind is part of the review. T.Lang prefers the sails. P.Calcagno has heard from people both ways. He feels it is more aesthetically pleasing with the seasonal triangular sails, one color (dark), and have the old-fashioned Edison bulbs shining downward for lighting. K.Monahan ask R. Fitzsimmons if there is no regulation with umbrellas, R.Fitzsimmons says no, as they are temporary, non-structures. K.Monahan prefers the sails as the offer a higher site line and clearer view. D.McElligott (resident) says umbrellas in high winds can become a safety hazard, sails are a great idea as they can look very professional. N.Jones and K.Stein like the sails as

well but discuss the need for more trash receptacles in the area as the one outside the bagel shop gets very full. P.Calcagno states that there are two trash cans in the seating area behind the plantings. He does empty the municipal trash can daily and, on the weekends, when there is a lot of walking traffic. T.Lang states people dump their personal trash in the container. P.Calcagno states it is a cost of doing business. R.Fitzsimmons asks about the second floor dining at the Flammerie, as that was on the March 2020 meeting agenda. P.Calcagno states they have cleaned and painted the room but will address the Flammerie at a later date due to the COVID restrictions. P.Calcagno discusses the public bathrooms up at Lake Placid. As a community, we may want to look at this with increased bike trail usage and the need for more outdoor venues. P.Calcagno will be meeting with the HPC to discuss replacing the concrete steps at the bagel shop & bakery with proper height stones with a wider width.

Motion to close the Public Hearing by B.Charbonneau, A.VanAlstyne seconds, all in favor.

Call to Order: 7:25pm

Approve minutes: T.Lang motions to approve the Planning Board meeting minutes of December 3, 2020 and December 17, 2020. A.VanAlstyne seconds, all in favor.

Funds Remaining: \$1153.26

Correspondence: 1. Received from R.Shur, Village of Kinderhook Economic Development Director, a positive letter of support for 1-3 Broad Street “Spumoni Gardens”. This letter will be on file with the final minutes.

2. Received from R.Shur, as a private citizen, provided documents of categories of artwork can be used for the advisory opinion on The School. This also will be on file with the final minutes.

Old Business: Paul Calcagno, Modification of Site Plan, 1-3 Broad Street Lot#43.20-2-46. Proposed ice cream shop “Spumoni Gardens. R.Fitzsimmons goes through the SEQRA form:

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? NO
2. Will the proposed action result in a change in use or intensity of use of land? NO
3. Will the proposed action impair the character or quality of the existing community? NO
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? NO
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? NO
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? NO
7. Will the proposed action impact existing: public/private water supplies or public/private wastewater treatment utilities? NO
8. Will the proposed action impair the character or quality of important historic, archeological, architectural or aesthetic resources? NO

9. Will the proposed action result in an adverse change to natural resources (wetlands, waterbodies, groundwater, air quality, flora and fauna)? NO
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? NO
11. Will the proposed action create a hazard to environmental resources or human health? NO

Motion made by S.Patterson to issue a negative declaration for purposes of SEQRA. T.Lang seconds, all in favor.

Motion made by A.VanAlstyne to approve the Modification of Site Plan, 1-3 Broad Street. This would include approving the sails. If HPC does not approve the sails, then default to the umbrellas. T.Lang seconds, all in favor.

New Business:

1. Site Plan Review for 6 Broad Street
Paul Calcagno Kinderhook NY Lot#43.20-1-28
Proposed wine & liquor shop “Broad Street Wine & Liquor”

P.Calcagno sent pictures of the interior of the building. The main floor would be used for the store and the basement for storage. There is a handicap ramp in the back for accessibility and deliveries. Broad Street Wine & Liquor would rent the location from PCJ Development. B.Charbonneau asks how much of the lot is leftover. P.Calcagno states there is 20 feet in the back of the property. The original size of the building was 100’ deep, now it is 80’ deep. K.Monahan asks if the handicap access is accessed off of Albany Avenue or Broad Street. P.Calcagno states Broad Street. S.Patterson asks about proposed hours. P.Calcagno states it would be open for sales 7 days a week 9-9 and 12-6 on Sundays. They can be inside the building working, just cannot have sales outside of these times. A.VanAlstyne asks who will be running the liquor store as the application says Meghan Calcagno. P.Calcagno states Broad Street Wine & Liquor. He has to get the building’s use approved first in order for the pending application to move forward with the NYS Liquor Authority. This building was built with very strong trusses which would work well with the heavy boxes of liquor. A.VanAlstyne asks if the building has a full basement. P.Calcagno states yes with high ceilings. B.Charbonneau states in the B1 business district and the building is 80-85% of the site plan and we could accept this as the final site plan. S.Patterson asks about the no parking requirement as it is retail. R.Fitzsimmons confirms as this is the modification that was made by the Village where we are not counting parking spaces. Using existing facilities and buildings in the business district. R.Fitzsimmons asks about signage. P.Calcagno says once this is approved, he can come back to Planning Board with signage idea or use compliant signage on the building and hanging off the building, which would stay within code requirements and keep within the natural look of the village. This would require HPC review as well. The Planning Board is comfortable with approving for signage as long as it is code compliant and approved by the HPC.

There is no Public Hearing needed as it is a Site Plan review, not a Special Use Permit. M.Browne asks to confirm that this is an approval for a liquor store/retail. R.Fitzsimmons confirms this would be the first use for the building since it was rebuilt. SEQRA questions read previously. If no one envisions a negative environmental impact by this project, motion could be made for a negative declaration of SEQRA. Motion

made by A.VanAlstyne to issue a negative declaration for purposes of SEQRA. S.Patterson seconds, all in favor.

Motion to accept the Site Plan review for 6 Broad Street made by T.Lang, K.Monahan seconds, all in favor.

2. Advisory Opinion discussion for 25 Broad Street “The School”.

W.Better speaks on behalf of J.Shainman “The School”. He confirms all Planning Board members have received a copy of the application submitted to the Zoning Board of Appeals. This is a cultural arts facility operated since 2012. Earlier this year, an installation of art by Nick Cave was proposed with an affixed vinyl product. On October 5, 2020, a letter was submitted by the Building Inspector stating that the installation of “Truth Be Told” was an unlawful sign or banner and a Certificate of Appropriateness was required by the Historic Preservation Commission. Within the 60-day period, an appeal was made to the Zoning Board of Appeals. The Planning Board gets to make an advisory opinion on that appeal. W.Better states that their position on this is “Truth Be Told” is not a sign, banner or billboard. A small sign narrative is on the front yard of The School that describes what this work of art is. The Village Zoning ordinance defines sign as a structure or device, attached to a structure or painted or represented on a structure, which is in the nature of an announcement, direction or advertisement. There is nothing in the words “Truth Be Told” that constitutes a direction, announcement or advertisement. The Village ordinance also describes what a sign isn’t. A sign does not include a variety of flags, insignias, organizational items that reflect a campaign, a drive, a movement or an event which is temporary in nature. This piece of art was installed for a 90-day period of time in association with the election and is temporary in nature. Art Omi in the Town of Ghent does not get involved with the changing out of art. In order to go in front of the HPC, you have to apply for a building permit. If you don’t need a building permit, you don’t go to the HPC. There are signs throughout the village that don’t require a building permit, “Justice for Harold”, “Black Lives Matter” and seasonal decorations as they are ideas. The concern here may be the size. The application tries to define art, which is nearly impossible. He refers to the correspondence received from R.Shur. The Visual Artists Rights Act that prohibits people from modifying art once it is created. This is a cultural arts facility that does not sell anything. There is no sign or billboard, it is art.

A.VanAlstyne asks the question at what point was the Village first approached and what needed to be accomplished regulatorily. W.Better refers to the affidavit of C.Hanrahan. The dialogue went on for several months and this was time sensitive. A building permit was not submitted as it is their position that it did not warrant one. T.Lang discusses the timeline on getting responses. A.VanAlstyne feels the time deadline was out of the village’s control and the process should have been started earlier. The people trying to put it up were very disrespectful to the village and how this was handled. R.Fitzsimmons discusses the meeting they had with J.Shainman and his representatives to discuss the options, what The School wanted to do and what was the Village process. The School was familiar with the process as in the past they received the change of use by going to the Planning Board, went to the ZBA for the two banners that were put up, and went back to ZBA for the art in the front yard as accessory. One option was to put the lettering on banners which had already been approved. The School said “no” as this would be altering Nick Cave’s work and it had to be the whole façade of the building. The Village wanted to be reviewed through our process, The School said it is their right to put up as

art. The ZBA to determine is what is there based upon that use and what the zoning code says, art, which is exempt, or subject to regulation with an amendment of a site plan or a variance from the ZBA. W.Better discusses the village's definition of a sign and states that zoning ordinances are inconsistent with people's property rights. People deserve a more prompt turnaround time. The question is, is it a sign, banner, billboard or art? A.VanAlstyne asks if the Truth be Told installation is only the lettering on the outside or is there a larger installation on the inside of the building? C.Hanrahan refers to the August 13th email. There is nothing related specifically to this artwork in the building, there is other artwork but the building is closed to the public due to the pandemic. B.Charbonneau spent a lot of time reading about the definition of a sign. He would recommend to the Board that they grant the variance.

P.Bujanow discusses that in 2012, the Planning Board approved certain conditions for the property at 25 Broad Street. The property sits in a residential area and a historic landmarks district. An application can get to the HPC in ways other than a building permit. Anything visible in a public way that gets modified on a building in the HPC district goes to the HPC for review. The minutes of Dec.12, 2012, the Planning Board approved the 25 Broad Street building to be a cultural facility, allowing an exception that typically would not be allowed. There were a number of stipulations (8) that were provided in the approval letter to J.Shainman including any external changes to the building or new signage is to be reviewed by the CEO or HPC review. The minutes also note that J.Shainman states no art will be displayed in the front of the building. An application was approved for banners with certain size requirements. There are other buildings in the Village of Kinderhook with lettering on them which over the years was deemed to be signage. The original email in August to P.Bujanow in regards to this project did not have any sense of urgency and was described as a vinyl wrap. Subsequent meetings and conversations occurred with C.Hanrahan, C.Griffen and P.Bujanow. P.Bujanow contacted New York State Department of State as they certify NYS Code Officials. There was not a formal application submitted for this project and the project was denied based on what P.Bujanow understood it to be at that time. Several weeks later, he understood it to be vinyl lettering which NYSDS had concerns over the flammability of the product. The minutes also discussed the proposal of apartments in the building. W.Better states that this is not about building code issues but zoning issues. R.Fitzsimmons states that the issue before the Zoning Board that the Planning Board is giving an advisory opinion on is "is it art or a sign subject to site plan regulations." C.Griffen states there is NOT an apartment in The School, never said it would be wrapped completely, always explained the urgency of the timing, and they have a 3M fire test stating it is less flammable than vinyl siding. W.Better reiterates the topic, is it a sign, is it a billboard, is it a banner, or is it art. The discussion of flammability is to create fear as the product is less flammable than the wood that everybody's house is built out of. A.VanAlstyne called the phone number on the documents for the product that is being used, 3M's Graphic Film Support line, and spoke with a person who said it was just as flammable as most anything else. K.Monahan states we need to stick to the point whether this is art or not for the advisory opinion. R.Bostick asks if public comment will be heard at this meeting, R.Fitzsimmons states no. She asks if a letter can be sent, R.Fitzsimmons states yes.

P.Bujanow summarizes that 25 Broad Street is located in a Historic Landmarks district and residential district. A special use permit was granted to make this a cultural facility with specific stipulations, one being any modifications to the front of the building go to

the CEO and/or HPC and all art would be displayed in the back of the building. An extended size banner request was later granted as was artwork in front of the building. In 2018, an application was submitted, and later withdrawn, for façade artwork. C.Griffen states this was going to be a giant neon sign so they knew they would have to go through the normal processes for this. Every other time there was a request to change the building, J.Shainman complied with the stipulations that were put in place when this site was approved as a cultural facility. This time, there was no application or understanding of a sense of urgency. C.Griffen states that was not true about the sense of urgency which was conveyed on August 13. An artist comes up with an idea and they are responding to something in the culture so you have to act quick to realize that artist's vision so there was not time to do everything. C.Hanrahan thinks a lot of this is about misunderstanding and miscommunication. The idea of urgency came about a week after August 13 in an in person meeting at Village Hall with P.Bujanow and C.Hanrahan. A formal application was not submitted because of the previous accessory use which was granted to display artwork. They thought it would be a good to open a conversation about the project. J.Shainman's goal is to be a good member of the community as the nature of the art business is not a normal process. We need to step back and see what is best for everyone.

W.Better states that on October 5, P.Bujanow sent a letter to his client stating Truth be Told is a sign, banner or billboard. There is a certain amount of time to appeal the decision. If it does not fit within the definitions of the Zoning ordinance, it is not subject to regulations as such and that is their position on this.

S.Patterson states she appreciates the overview that everyone has provided. There are two members on the Planning Board as well as the Village Attorney who have been with this project since its inception in 2012. There have been a lot of variations on the original intent and restrictions of the special use permit. There is nothing in the Village code, and maybe there should be, that addresses art and culture. The Comprehensive Plan does have language to promote the arts and cultural opportunities in the Village.

B.Charbonneau personally would recommend that the ZBA grant the variance. He thinks it is possible to be a sign and a piece of art. He asks W.Better how long this will be in place? W.Better states it is temporary in nature and scheduled to come down in the month of January.

S.Patterson agrees that The School has been a gift to this community. She looks at this as a genuine piece of art and in her interpretation of the village code, it is not a sign.

T.Lang agrees that it is art also and Nick Cave is not a sign painter.

K.Monahan views this as art and not a sign. The School has always abided by what we have asked.

A.VanAlstyne will agree if people agree it is art, it is art but he does not agree or appreciate how it was handled and he is against it.

P.Bujanow asks K.Monahan if you call it art, and one of the stipulations states that art can only be displayed in the rear of the building, how do you square that with your recommendation? W.Better, said there was subsequently an allowance for art on the

front lawn. P.Bujanow states that accessory use, in the residential district, only allows for art in the rear of the building. K.Monahan states for this meeting, the advisory opinion is if it is a sign or if it is a piece of art. R.Fitzsimmons states the issue appealed to the Zoning Board is the right to have the installation exempt from zoning because it is art rather than the Code Enforcement Officers determination that it is signage.

B.Charbonneau does not want to be the arbitrator or art for every time someone wants to put something on the lawn. S.Patterson states we are not qualified to state it is art, but what we have said is it is not a sign. K.Monahan says he does not know art but it is not a sign in his opinion.

R.Fitzsimmons says a summary is needed for the ZBA to process the decision.

Motion to issue an advisory opinion to the Zoning Board that a majority of the members of the Planning Board, three out of five, K.Monahan, S.Patterson & T.Lang, believe that it should not be regulated as a sign and should be considered potentially as art. One member, B.Charbonneau, says it should be regulated but should be considered for a variance. One member, A.VanAlstyne accepts it as being called art, because art can be anything that you want, but disagrees with every other aspect of this. Not convinced it is not a sign and should not have been contained in this way. It is an artistic sign. Motion to approve made by B.Charbonneau, S. Patterson seconds, all in favor “aye” except A.VanAlstyne “nay”.

Next Meeting: February 4, 2021

Adjournment: 9:00pm -K.Lang motions to adjourn. S.Patterson seconds. All in favor.

Carol van Denburgh

Secretary to the Planning Board