

**Regular meeting of the Village of Brockport Planning Board was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Monday, October 15, 2013 at 7:00pm.**

**PRESENT:** Chair Arthur Appleby, Vice Chair Charles Switzer, Member Annette Locke, Member Kevin McCarthy, Member Laurie LoMonaco, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela W. Krahe

**ALSO PRESENT:** David Ver Steeg, David Strabel, Peter Feltner, Matthew Butler, Richard Butler, Sr., John Cramer, Christine Hamlin, Geoff Feltner

**CALL TO ORDER:** Chair Appleby called the meeting to order and led the Pledge of Allegiance.

**REVIEW OF MEETING MINUTES:** Chair Appleby called for a motion to approve the minutes of the previous meeting.

➔ Member Locke moved, Member Switzer seconded, carried with 4 in favor of approving the minutes of September 9, 2013 as amended. Member LoMonaco abstained as she was not seated on the board at the time of the meeting.

**WELCOME:** Chair Appleby welcomed new board member Laurie LoMonaco.

**CORRESPONDENCE:** Comments from Chatfield Engineers regarding tonight's applications.

**PUBLIC HEARINGS:** None

**OLD BUSINESS:**

1. Application of:      Name:            David VerSteeg  
                                 Address:        149 Park Avenue  
                                 Tax Map #:     069.13-5-28  
                                 Zoning:        Industrial Use District  
                                 Parcel Size:   ~1.2 acres  
                                 Prop. Class:   444  
                                 Purpose:       Renovate property into a climate-controlled public storage facility

**Presentation/discussion:**

Mr. Strabel had submitted revised plans in which all points from the September 9 meeting were addressed. A letter was received from Chatfield Engineers stating there are no remaining engineering concerns. Mr. Strabel emphasized the fencing will be cleaned up and the barbed wire removed. The Board wondered about painting the fence with aluminum paint, to which Mr. Strabel noted the neighbors do have privacy with the vines. The Board felt the grapevines should be removed and neighbors can put up a green barrier if they desire. Mr. Strabel made note that the applicant will paint the fence. Lighting will include a wall pack on south side of the barn. Shrubbery and mulch beds will be put in; an assortment of pines will go along the north border. Pavement will be patched where needed; the rough edge will be saw-cut to reestablish a straight edge. Overgrown weeds will be cut; the ground tilled and seeded.

Water service to the fire suppression system will be disconnected if it is not already. Applicants have not closed on the property, so they cannot do exploratory digging. Metal roofing on sleepers is the roofing of choice after checking pricing. The roofing color has not been selected yet; suggestion was for historic colors. Driveway will be sealed. New A/C units are to be kept on north side of building. Approximately 88 units, which are modular, will be bolted together. Internal temperatures will range from 55-80 degrees. The applicants do not anticipate much trash. It will be monitored and disposed of. Cameras will be onsite and will record offenders and they will be charged a fee. Existing trash will be cleaned up before applicants take possession and the interior, which is probably ¾ full, will be cleaned out. Exterior may be two-toned. Roof may be slate gray rather than red, as that would be a lot of red. According to current owner, the building had been green, so they may select green. They want it to look nice.

CEO Zarnstorff asked if one parking space will be designated handicapped. The space closest to the ramp will be. It was asked what controls are in place as to what customers may store, such as hazardous materials, batteries, gas, food, perishables, propane, etc. Mr. VerSteeg replied the contract is very specific about what may and may not be stored; owners maintain the right to inspect at any time.

**SEQR:**

➔ Member Switzer moved, Member LoMonaco seconded, unanimously carried to declare Village of Brockport Planning Board as lead agency.

Chair Appleby noted Part 1 of the SEAF had already been completed by the applicant, and that he,

**MINUTES OF PLANNING BOARD MEETING OF October 15, 2013**

CEO Zarnstorff and Clerk Krahe drafted Parts 2 and 3. The amended EAF answers follow:

Part II:

- A. No
- B. No: Listed action per 617.5 (c) (2) and (11)
- C1. There are no apparent adverse effects for the existing and/or proposed storage facility for air quality, customary traffic patterns, or substantial solid waste production or disposal needs. Site plan review has adequately addressed lighting, noise levels, and surface/groundwater quality and quantity. Impervious surfaces to be removed and grassy area added per site plan.
- C2. There are no agricultural or archeological aspects to this project. This is an architecturally significant structure that will benefit from the aesthetic improvements. Improvements to existing roof, building exterior, fencing and additional landscaping will benefit the surrounding neighborhood.
- C3. The proposed site has been continuously used as a commercial location with no known threatened species, habitats, etc. There will be no removal of existing vegetation; additional grassy area to be cultivated.
- C4. The use of this building as a self-storage facility is light industrial in nature and fits with the Town of Sweden/Village of Brockport Comprehensive Plan dated 2002, and amended 2005. No change in intensity of land use or use of natural resources is anticipated.
- C5. Growth and development have been consistent and similar in character with activities and development of storage facilities throughout the VOB industrial area.
- C6. The long term goal is to preserve this architecturally significant building through this renovation project with exterior preservation and infrastructure improvements.
- C7. Proposed improvements to the existing building are applicable to compliance with the requirements of the current version of the NYS Energy Conservation Construction Code.
- D. No
- E. No

Part III:

*This action will not result in any significant adverse environmental impacts, as supported below:  
We have determined this proposed Type II Listed action IS NOT LIKELY to result in any significant adverse environmental impacts based upon our review of the project details with the applicant as well as the Village Building Inspector / Code Enforcement Officer, the Village Engineer, and the Village Attorney.*

➔ Member Switzer moved, Member Locke seconded, unanimously carried to declare this a Type II Listed Action per 6NYCRR 617.5 (c) (2) and (11).

➔ Member Switzer moved, Member Locke seconded, unanimously carried to declare a Negative Declaration.

The Resolution reads as follows:

**RESOLUTION OF THE PLANNING BOARD OF THE VILLAGE OF BROCKPORT  
October 15, 2013**

**STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”)  
DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE  
NEGATIVE DECLARATION**

Lead Agency: Planning Board of the Village of Brockport  
Address: 49 State Street / Brockport, NY 14420

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act (SEQRA), pursuant to Article 8 of the State of New York Environmental Conservation Law.

The lead agency has determined that the proposed action described below **WILL NOT** have a significant effect on the environment.

- Title of Action:** 149 Park Avenue, Brockport, NY
- SEQRA Status:** Type II Listed Action per 6NYCRR 617.5 (c) (2) and (11)
- Conditioned Negative Declaration:** No
- Description of Action:** Renovation of an existing private lumber storage building into climate-controlled public storage

**WHEREAS**, a review under SEQRA has been undertaken and as the single involved agency the Village of Brockport Planning Board is the lead agency pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law; and

**WHEREAS**, the Village of Brockport Planning Board, in accordance with Section 617.7 (a) – (d), has evaluated the proposed action for determination of significance; and

**WHEREAS**, the reasonably related long term, short term, direct, indirect, and cumulative impacts of the project have been considered in the determination of non-significance; and

## MINUTES OF PLANNING BOARD MEETING OF October 15, 2013

**NOW, THEREFORE**, be it resolved by the Village of Brockport Planning Board that:

Based upon the Planning Board's thorough and careful review of the project, including the Environmental Assessment Form, project plan, and all other materials in connection therewith, and with input from the applicant and his architect, as well as the Building Inspector / Code Enforcement Officer, Engineer, and Attorney of the Village of Brockport, this Board hereby determines that the project will not result in any significant environmental impacts and hereby issues a negative declaration pursuant to SEQRA.

- Member Switzer moved, Member LoMonaco seconded, unanimously carried to approve the application to renovate the facility into a climate-controlled public storage facility subject to the fence being repaired and the applicants obtain advice from the Historic Preservation Board regarding historic colors.

### **NEW BUSINESS:**

1. Application of:
- |              |   |
|--------------|---|
| Name:        | Matthew Butler                          |
| Address:     | 46 Main Street                          |
| Tax Map #:   | 068.52-4-18                             |
| Zoning:      | B-Business                              |
| Parcel Size: | 26' wide x 116.16' deep                 |
| Prop. Class: | 481                                     |
| Purpose:     | Change of use from vacant to vapor shop |

### **Presentation/discussion:**

Matthew Butler explained his business plan, which is informational in nature. The concept of a vapor shop is fairly new. They will be open 7 days a week from 10-8, except Sunday from 10-5, and closed some holidays. The lease has been signed with owner Ted Hawley. The shop is 1100 sq ft; a temporary wall will be put up to extend office and storage space. A small lounge with a TV will be added for customers to try products; the remainder will be sales space. Employees will park behind Chase Bank. An alarm system and cameras will be in the store and at the rear of the building.

The shop is 100% tobacco free with no tobacco products available. Richard Butler showed a sample cigar-style product and noted they all operate in the same fashion. Components include a battery, an atomizer (heating element) and storage of liquid in a cartridge. There are automatic and manual models. Both Richard and Matt are former smokers, switched to e-cigarettes 3 months ago, and haven't touched a cigarette since. They selected Brockport for their store because they live nearby and cannot get any e-cigarette products within 15 miles of here.

Nicotine liquid is not regulated by the FDA at this time. If liquid is purchased overseas it is unknown what is in it. Owners will mix ingredients for the nicotine liquid onsite and those ingredients are pharmaceutical grade or FDA approved, as are the flavorings. Most of the ingredients are produced in the US, some are from Italy. Nicotine strength varies from 0 to 24mg/ml, which equates to 2.4%. To alleviate the possibility of liability, the nicotine they purchase will be a much lower strength than the lethal dose.

There will be no tobacco in these cigarettes. The Supreme Court held that the FDA cannot regulate this under the rules of tobacco. Flavors will include cherry, bubblegum, watermelon, etc. You must be 18 to purchase the products and ID is required. There are many different models of personal vaporizers, some of which are used as attention-getters. The Board asked if there were any hookas; the applicants replied "no." They will offer only cigarette-style, no pipes. The business plan submitted by the applicants includes links to an indoor air quality study. There is no odor and no known secondhand smoke issues. It is an alternative to tobacco smoking. There are thousands fewer chemicals than in nicotine.

The board questioned how the ingredients are mixed. Mr. Butler explained there are no hazardous materials. There will be a sink, they will put liquids in beakers, mix it, and put it in cartridges. Nothing is combustible; the ingredients used are food grade. It is an historic district downtown and they don't want anything that could cause combustion. They will use rubber gloves, no certification is needed and there is no agency regulation. The most potent strength they offer could cause skin irritation at the worst.

A cigarette comes with its own battery charger. The shop will offer vaporizers, liquid, and batteries. Price range for the liquid is \$5-15. The most expensive package they offer contains two batteries, cigarettes, and a charger for \$80. A single unit is \$35. More expensive units can have led lights, variable voltages, etc. As for the shop window, it will have a frosty decal, there will be a "tobacco free" sign and a fish tank. There will be no products in the window.

As for the exterior sign, they have taken the current sign taken down, removed the letters, and are putting up new letters on the same sign. On the bracket that sticks out from building, they will order a new oval sign, copying what was there before. Member LoMonaco asked if they have already filed for

## MINUTES OF PLANNING BOARD MEETING OF October 15, 2013

their S-corp; they affirmed.

The board questioned whether or not synthetic marijuana would be offered. The applicants emphatically replied “no” and stated they want as little association with businesses such as the 420 Emporium as possible. The benefit of their product is to get people off tobacco. As for those who may start this habit after never having smoked before, the applicants stated it is a personal choice. Some users reduce their nicotine from 24mg to 12 or even 6. The shop will offer 0mg, which contains no nicotine.

They will not market on the college campus as the campus is smoke free and many state universities are also e-cigarette free. CEO Zarnstorff mentioned when he sat on the SUNY Brockport smoke-free task force a couple of years ago they did not discuss e-cigarettes at the time. He offered to put the applicants in touch with appropriate college staff to see about the regulations.

The applicant voiced that heart health is still a concern because of the nicotine.

Mr. Cramer commented he would like to buy gold, silver, and precious metals out of the location as well. There would be no advertising. The board did not voice any concerns.

Chair Appleby requested a motion; none was brought forward. The Chair explained that because this is an allowed use, no motion or approval is needed from the board. The Chair thanked the applicants and wished them luck.

Board members questioned why there was no motion. Some members remarked they would prefer the applicants open their store in Holley if that's where they live. Some members opined the business won't be open long, though perhaps internet sales would bolster their income. It is a permitted use and cannot be disapproved.

The Board discussed the wording of codes and the difficult task of trying to include every possibility. If a type of business is not on the non-permitted use list, then it is permitted by default. CEO Zarnstorff enlightened the board about City of Rochester changes to Special Permits so some types of applicants may need a Special Permit while others may not. The Board noted when you permit businesses like this, you may alienate other potential businesses. Chair Appleby pointed out the Planning Board's job is to stay within code and if there is no code to uphold a decision, you run the risk of being sued. This board does not have discretionary authority.

### **OTHER BUSINESS:**

- The appearance of the former convenience store on Main Street that was supposed to reopen as a church was brought up. The board questioned whether they could ask the owners to clean up, move out, or sell. CEO Zarnstorff suggested having the church return to this board if they want to move forward with renovations. As for the items in the building, they cannot be regulated. CEO Zarnstorff said he classifies it as vacant. The Board asked if the paper could at least be put back up in the windows. There was discussion of whether churches are federally protected. CEO Zarnstorff recalled the owner of the property had gifted it to the church, but the Board asked if it's not acting as a church, how it can be protected. Zarnstorff suggested asking the assessor for some insight and if they are indeed exempted; he also said we could try reaching out to them to see if they could clean up the property. He noted there is a similar situation with Christian Center Church on King Street, where inside the building are piles of materials but the exterior looks nicer.
- Planning Board Training Requirements and Opportunities – Reminded members of the need for 4 hours per fiscal year; reimbursement upon proof of completion. CEO Zarnstorff noted he attended the zoning and planning case law workshop last year and was pleased with content.

**NEXT REGULAR MEETING:** Tuesday, November 12, 2013 7:00pm; application materials due by Noon Tuesday, October 29.

### **ADJOURNMENT:**

- ➔ Member Locke moved, Member Switzer seconded, unanimously carried that the meeting be adjourned at 8:33pm.

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Pamela W. Krahe, Clerk